IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MISSOURI PET BREEDERS ASSOCIATION, *et. al.*,	)	
Plaintiffs,	)	
v.	)	14 CV 6930
	)	The Honorable Matthew Kennelly
COUNTY OF COOK, *et. al.*,	)	
Defendants.	)	

DEFENDANTS' 12(b)(1) AND 12(b)(6) MOTION TO DISMISS THE AMENDED COMPLAINT

RESPECTFULLY SUBMITTED,

ANITA ALVAREZ
State's Attorney of Cook County, Illinois

By: */s/ Jayman A. Avery III*
Jayman A. Avery III
Kent S. Ray
Assistant State's Attorneys
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-7780

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DEFENDANTS' 12(b)(1) AND 12(b)(6) MOTION TO DISMISS THE AMENDED COMPLAINT

NOW COME the County of Cook, ("County"), Toni Preckwinkle, President, Cook County Board of Commissioners, in her official capacity, and Dr. Donna Alexander, Director of the Cook County Department of Animal & Rabies Control, in her official capacity, (collectively "Defendants"), by their attorney Anita Alvarez, State's Attorney of Cook County, through her Assistant State's Attorneys, Jayman A. Avery III and Kent Ray, and move this Honorable Court pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the Amended Complaint ("Amended Complaint"). For their motion, Defendants state:

I. INTRODUCTION.

The Amended Complaint sets forth supposed harms that will befall the Plaintiffs if the challenged Cook County Companion Animal and Consumer Protection Ordinance ("Ordinance")[1] remains in effect. The Amended Complaint is brought in federal court purportedly because the Ordinance violates federal constitutional provisions. In their prior

[1] The Ordinance is set forth in Exhibit A to the original Complaint. Pertinent provisions of it are also set forth in the Appendix to this Motion, as well as pertinent provisions of statutes and regulations.

Motion to Dismiss the original Verified Complaint ("original Complaint"), Defendants stated that the original Complaint erroneously ignored the plain language of the Ordinance, statutes, and regulations, and did not state a claim under federal or state law. The Amended Complaint does not cure the defects in the original Complaint. Moreover, the Ordinance is rationally related to the harms it is intended to address. For the reasons that follow, the Amended Complaint should be dismissed.

II. FACTS.

On April 9, 2014, the Cook County Board of Commissioners passed an amendment to the Ordinance which adopted new regulations for the sources of animals from which Cook County pet shops could obtain animals for sale. Plaintiffs, Missouri Pet Breeders Association ("MPBA"), Starfish Venture, Inc. d/b/a Petland of Hoffman Estates ("Petland Hoffman Estates"), Dan Star, Janet Star, Happiness is Pets of Arlington Heights, Inc. ("Happiness"), Ronald Berning, J&J Management, Inc. d/b/a Petland of Chicago Ridge ("Petland Chicago Ridge"), and James Maciejewski (collectively "Plaintiffs"),[2] brought a six-count complaint against the Defendants challenging the April 9, 2014 amendment to the Ordinance. Plaintiffs filed motions for temporary restraining order and for preliminary injunction, respectively. On September 11, 2014, the parties agreed, and this Court entered an order, staying the implementation and enforcement of the April 9, 2014 amendment to Ordinance during the pendency of this case until a decision on the merits is made by this Court. Dkt. No. 11. Thereafter, Defendants filed their Motion to Dismiss the original Complaint. Dkt. No. 18.

[2] Petland Hoffman Estates, Happiness, and Petland Chicago Ridge will also be referred to as "the Pet Shops" where applicable. The Ordinance regulates the Pet Shops, by regulating "pet shops," generally. The Ordinance does not regulate MPBA or the other plaintiffs, except as owners of the Pet Shops.

On October 22, 2014, after Defendants presented their Motion to Dismiss the original Complaint, Plaintiffs were granted until November 20, 2014 to respond to the motion to dismiss and file an amended complaint. Dkt. No. 20. Plaintiffs did not file a response to the motion to dismiss; instead they filed the Amended Complaint. Dkt. No. 21.

The Amended Complaint adds little if anything to the original Complaint. In the main, the Amended Complaint adds §1983 claims to Counts I, II, and IV, adds a "foreign Commerce Clause" claim to Counts I and III, adds the Illinois Constitution to Count III, and adds additional facts in paragraph 22 pertaining to MPBA. The Amended Complaint only removes the request for preliminary injunctive relief in Count VI. Neither individually, nor collectively, do the additions cure the defects in the original Complaint. The Amended Complaint, therefore, should be dismissed.

III. LEGAL STANDARDS.

A motion to dismiss for lack of Article III standing is considered under Rule 12(b)(1). *Muelbauer v. General Motors Corp.*, 431 F. Supp. 2d 847, 865 (N.D. Ill. 2006). In an analysis of a 12(b)(1) motion, the Court does not accept the factual allegations of the complaint as true. *Fortuna's Cab Service, Inc. v. Camden*, 269 F. Supp. 2d 562, 564 (D.C. N.J. 2003). Plaintiff bears the burden of proof as to standing. *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F. 3d 440, 443 (7th Cir. 2009).

Under Rule 12(b)(6), dismissal is proper "if the complaint fails to set forth sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Bell Atlantic v. Twombley*, 550 U.S. 544, 570 (2007). The plausibility standard is not akin to a "probability requirement," but it asks for more than a mere possibility that a defendant has acted unlawfully. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009). Allegations

in the form of legal conclusions are insufficient to survive a Rule 12(b)(6) motion. *Adams v. Indianapolis*, 742 F. 3d 720, 728 (7th Cir. 2014). "*Twombley* and *Iqbal* require more than mere notice." *Id.* at 729.

This case involves the interpretation of statutes, federal regulations, and the Ordinance. In the federal courts, when a court analyzes an agency's interpretation of an act of Congress, as long as the agency stays within Congress' delegation, it is free to make policy choices in interpreting the statute, and such interpretations are entitled to deference. *Arizona Public Service Co. v. EPA*, 211 F. 3d 1280, 1287 (D.C. Cir. 2000). The reviewing court must first exhaust the traditional tools of statutory construction to determine whether Congress has spoken to the precise question at issue. *Chevron U.S.A. v. Natural Resource Defense Council, Inc.*, 467 U.S. 837, 843 (1984). In applying these tools, the court looks at the language employed by Congress and assumes that the ordinary meaning of that language accurately expresses the legislative purpose. *DeHart v. Town of Austin*, 39 F. 3d 718, 722 (7th Cir. 1994).

Illinois law requires a reviewing court to evaluate the meaning of a challenged ordinance as it is clearly expressed in its language, and not to infer or imply another meaning. *Norris v. City of Chicago*, 230 Ill. App. 3d 1037, 1043 (1st Dist. 1992). One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole and words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000). In addition, if the legislative body has expressed its intention in clear and unmistakable terms, one should not look beyond the language. *Monat v. County of Cook*, 322 Ill. App. 3d 499, 506 (1st Dist. 2001).

IV. ARGUMENT.

A. THE AMENDED COMPLAINT IS GENERALLY DEFECTIVE.

1. MPBA DOES NOT HAVE STANDING; NONE OF THE PLAINTIFFS HAVE STANDING TO RAISE THE FOREIGN COMMERCE CLAUSE (12(b)(1)).

There are three types of standing applicable to MPBA: 1) Article III, constitutional standing, on its own behalf; 2) Article III, constitutional standing, on behalf of its members; and 3) non-constitutional "prudential standing." MPBA does not meet any of these standing requirements.

Despite adding a few additional allegations pertaining to its associational purpose (*see* Amended Complaint at par. 22), MPBA does not have independent, Article III standing on its own behalf. This type of standing requires an injury in fact, a causal connection between the defendant and the injury (traceability), and that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife, Inc.*, 504 U.S. 555, 560 (1992).

In *Milwaukee Police Assoc. v. Board of Police & Fire Commissioners of the City of Milwaukee*, 708 F. 3d. 921 (7th Cir. 2013), an association brought suit claiming that one of its members had been discriminated against because she was not hired as a policewoman. *Id.* at 923. In considering the association's own standing, the court held that it did not have standing because it only alleged one of its members would be harmed by the City's conduct. *Id.* at 926-27. Here, like in *Milwaukee Police Assoc.*, MPBA merely alleges generally that its members will be adversely impacted by the Ordinance. Amended Complaint, at pars. 2, 9, 22. In *Brady Campaign to Prevent Gun Violence United With the Million Mom March v. Ashcroft*, 339 F. Supp. 3d 68 (D. D.C. 2004), the court found that plaintiff did not have Article III standing because there was no traceability and no justiciability for any of its

members. *Id.* at 74. Here, the Ordinance does not even regulate any of MPBA's members. Thus, MPBA does not have standing to sue on its own behalf.

With respect to associational standing, in the seminal case of *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977), the United States Supreme Court established the three-part test that an association must meet to have standing to bring suit on behalf of its members: 1) its members would otherwise have standing to sue in their own right; 2) the interests it seeks to protect are germane to the organization's purpose; and 3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Id.* at 343. MPBA does not have associational standing.

In a case strikingly similar to the instant case involving a challenge to a municipal animal ordinance requiring spaying and neutering against nearly identical constitutional challenges, the court held that the associational plaintiff did not meet the first two *Hunt* elements, and thus did not have standing to challenge the ordinance. *American Canine Foundation v. Sun*, 2007 U.S. Dist. Lexis 90004, at 6-10 (N.D. Cal. 2007) (unpublished). With respect to the first element, the court ruled that the association had not identified a specific member located within an area to which the ordinance applied. *Id.* at 8. Likewise, MPBA does not identify a specific member who is located in Cook County, Illinois, *i.e.*, who is subject to the Ordinance, and, in fact, none of its members are subject to the Ordinance. Amended Complaint at pars. 2, 9, 22. With respect to the second element, the court stated that the association had not expressly defined the organization's purpose in its complaint. *Sun*, 2007 U.S. Dist. Lexis 90004, at 9. Here, MPBA's recent attempt to define its purpose is imprecise at best, bears no relation to the Ordinance and its limitations, and still lacking

under the principle laid down in *Sun*. *See* Amended Complaint at pars. 2, 9, 22. MPBA does not have associational standing.

In *Irish Lesbian and Gay Organization v. Giuliani*, 143 F. 3d 638 (2nd Cir. 1998), the court held that the plaintiff association did not meet the third *Hunt* prong because the injuries alleged in the complaint suffered by its members would require the participation of individual members in the lawsuit to establish damages. *Id.* at 649. Here, MPBA has not alleged sufficient facts to establish whether or not the participation of individual members in the lawsuit is required. Nonetheless, when considering the Ordinance requirement under section 10-13(b)(3) (breeders' requirements), it is plainly evident that such individual participation of its members would be required.

MPBA does not have prudential standing, either. It is a basic premise that for purposes of prudential standing, one cannot sue in a federal court to enforce someone else's legal rights. *Main Street Organization of Realtors v. Calumet City, Illinois,* 505 F. 3d 742, 746 (7th Cir. 2007), *cert. den.*, 553 U.S. 1079 (2008). In *Main Street Organization*, the court held that the association of realtors did not meet prudential standing because its members were suing to enforce the property rights of owners of residential property and not its members own rights.[3] *Id.* Importantly, Calumet City's ordinance imposed no duties or sanctions on real estate brokers (*i.e.*, plaintiff's members). *Id.* Here, the Ordinance imposes no duties, sanctions, requirements, or burdens on MPBA or its breeder members. Because MPBA members would not have standing to sue in their own right, MPBA does not have prudential standing, nor can it meet the first element for associational standing.

[3] The majority focused on prudential standing and did not characterize its holding as failure to meet the first element of the *Hunt* test. However, the concurrence would have held that the association did not meet the first requirement of associational standing because its members were only collaterally and not directly affected by the ordinance. *Id.* at 750-51.

Finally, a recently decided case also holds that MPBA does not have either Article III or prudential standing to raise its foreign Commerce Clause or Supremacy Clause challenges and that the remaining Plaintiffs do not have standing to raise their foreign Commerce Clause challenge to the Ordinance. In *Ouellette v. Mills*, 2014 U.S. Dist. Lexis 66880, (D.C. Maine 2014) (unpublished), the court held that a trade organization similarly situated with MPBA did not have Article III standing to challenge the Maine Pharmacy Act on either Commerce Clause or pre-emption grounds because it had not identified a concrete and particularized, impending harm to it under the Act.[4] *Id.* at 4. With respect to "prudential standing," the court dismissed the entire count premised on the foreign Commerce Clause because all the plaintiffs were United States citizens challenging a state law. *Id.* at 7. MPBA, all its members, and the Pet Shops, sit in comparable positions with the plaintiffs in *Ouellette* whose foreign Commerce Clause count was dismissed.

For all the foregoing reasons, MPBA does not have either type of Article III standing (personal or associational), or prudential standing, and the Pet Shops do not have standing to bring their foreign Commerce Clause challenge. MPBA should be dismissed from the case and the foreign Commerce Clause aspects of Count I and Count III should be dismissed for lack of standing.

2. PLAINTIFFS FAILED TO PROPERLY PLEAD A CAUSE OF ACTION(12(b)(6)).

Plaintiffs also fail to state a claim under Rule 12(b)(6) because the Amended Complaint is insufficiently pleaded and should be dismissed. The minor additions to the Amended Complaint do not remedy Plaintiffs' pleadings defects. The determination of

[4] A different trade organization and its members were found to have Article III standing because they were made up of Maine residents who were specifically harmed by the Act. *Id.*, at 3. Here, MPBA is neither a Cook County nor Illinois resident and neither it nor its members are subject to, nor harmed by the Ordinance.

whether a complaint properly states a claim upon which relief can be granted begins with Federal Rule of Civil Procedure 8(a)(2), which requires only a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests. *Bell Atlantic Corp. v. Twombley*, 550 U.S. 544, 555. Rule 8(a)(2) still requires a showing, rather than a blanket assertion, of entitlement to relief. *Id.* at 556, n. 3. Rule 8(a)(2) does not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. *Id.* at 570.

The 7th Circuit has recognized and adopted this standard in *Adams v. Indianapolis*, 742 F. 3d 720 (7th Cir. 2014). There, the court discussed the differences between notice-pleading and fact-pleading considered in *Twombley* and *Iqbal*. *Adams*, 742 F. 3d at 729. The 7th Circuit noted that, "the point is that it is necessary to give the defendants notice of the claims against them, not that giving the defendants notice is sufficient to state a claim" (*Id.*), thereby providing guidance to litigants and to the lower federal courts that complaints have to actually state a cognizable claim. Here, Plaintiffs assert speculative, conclusory, and unsubstantiated claims in each count. These fail to meet the pleading standard accepted in this Circuit, and warrant dismissal of the entire Amended Complaint because it fails to set forth sufficient facts to state a legally cognizable claim.

B. THE AMENDED COMPLAINT BY COUNT.

There are numerous federal decisions that support dismissal of the Amended Complaint for failure to state a claim upon which relief can be granted. The breadth of the discussions and holdings plainly show that Plaintiffs have failed to state a cause of action

under any of their claims and the Amended Complaint should be dismissed. Each count will be discussed in turn.

1. COMMERCE CLAUSE (Count I).

Plaintiffs now contend that the Ordinance violates both the foreign and domestic aspects of the Commerce Clause of the United States Constitution. The Commerce Clause grants to Congress the authority, "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." United States Constitution, Sec. 8, Cl. 3. Despite adding a §1983 claim to Count I, it still fails.

Specifically, Plaintiffs allege that the Ordinance differentiates on its face between in-state and out-of-state pounds because "pound" is defined as one licensed by the State of Illinois Department of Agriculture, which, in turn licenses pounds located in this State. Amended Complaint, at par. 74 (*citing* 225 ILCS 605/3). Importantly, none of the Plaintiffs are "out-of-state pounds." Moreover, the face of the Ordinance does not discriminate against out-of-state pounds because it specifically allows the Pet Shops to obtain animals from a host of facilities "**operated by any subdivision of local, state or federal government**." Ch. 10, sec. 10-13(a)(1) of the Ordinance (emphasis supplied). Plainly, this means governmental animal control facilities at whatever level of government, not just Illinois pounds. Plaintiffs' allegation is erroneous because it attempts to single out one source of animals from a list in the Ordinance, ignoring the plain language thereof, in violation of applicable law. *See DeHart v. Town of Austin*, 39 F. 3d 718, 722 (7th Cir. 1994); *Norris v. City of Chicago*, 230 Ill. App. 3d 1037, 1043 (1st Dist. 1992).

Plaintiffs further assert for the first time in the Amended Complaint that the newly enacted Importation of Live Dogs federal regulation means the Ordinance violates the

foreign Commerce Clause. Amended Complaint at par. 81. Under foreign Commerce Clause case law (like interstate (domestic) Commerce Clause analysis), if the Federal Government has affirmatively acted with respect to the power of the States to act, the case does not call for Commerce Clause analysis at all. *Wardair Canada Inc. v. Florida Department of Revenue*, 477 U.S. 1, 9 (1986). Here, 9 C.F.R. 2.150 was specifically adopted to carry out the federal Animal Welfare Act ("AWA") codified at 7 U.S.C. §2131, *et. seq*. 9 C.F.R. 2.150. The Federal Government has affirmatively acted in the AWA to allow the state and local regulation of animals by adding savings clauses. *See, e.g.,* 7 U.S.C. §2143(a)(8) (Paragraph (1) shall not prohibit any State (or a political subdivision of such State) from promulgating standards in addition to those standards promulgated by the Secretary under paragraph (1)). Accordingly, Plaintiffs' foreign Commerce Clause claims fail.[5]

Even if this Court were to engage in foreign Commerce Clause analysis, the Amended Complaint fails to state a cause of action under applicable case law. In *Pacific Northwest Venison Producers v. Smitch*, 20 F.3d 1008 (9th Cir. 1994), the 9th Circuit upheld the State of Washington's outright ban of imported wild animals against foreign and domestic Commerce Clause challenges. *Id.* at 1017. The Court stated that Washington had not engaged in prohibited economic protectionism and that plaintiffs' economic investment was not protected by the Commerce Clause against legitimate state regulations protective of native wildlife. *Id.* Here, not only does the Ordinance advance legitimate local interests, it does not work a ban of any kind against foreign or domestic commerce; it simply limits the source of animals that can be obtained by the (local) Pet Shops.

[5] As discussed below, Plaintiffs' interstate (domestic) Commerce Clause claims fail for the same reason.

National Solid Waste Management Association v. Granholm, 344 F. Supp. 2d 559 (E.D. Mich. 2004) holds similarly. In that case, the court denied preliminary injunctive relief on the grounds that plaintiffs did not have a likelihood of success on the merits of their foreign and domestic Commerce Clause claims. *Id.* at 566. Not only did the Court hold that the Michigan "Solid Waste Control Package" law did not distinguish between in-state and out-of-state waste, but the Court also rejected statements by proponents of the law with respect to whether the lawmakers had a intent to discriminate against out-of-state waste. *Id.* Here, the Ordinance does not distinguish between in-state and out-of-state animals, and this Court should further reject Plaintiffs' reference to statements of County Board members on this subject.

With respect to the savings clauses in the AWA, in *Zimmerman v. Wolff*, 622 F. Supp. 2d 240 (E.D. Pa. 2008), the court held that a Pennsylvania statute regulating dog breeders did not violate the domestic Commerce Clause and dismissed the complaint because plaintiff would be unable to state a claim under it. *Id.* at 246. Importantly, the court held that the Pennsylvania law was not subject to the Commerce Clause even if it interferes with interstate commerce because it was specifically authorized by Congress in 7 U.S.C. §2143(a)(8). *Id.* The court held that the savings clause would also save local action from Commerce Clause analysis. *Id.* Under *Zimmerman*, the Ordinance is not subject to Commerce Clause analysis and Count I of the Complaint should be dismissed. *Accord Kerr v. Kimmell*, 740 F. Supp. 1525, 1529 (D.C. Kan. 1990) (Kansas dog breeders' law did not violate Commerce Clause because 7 U.S.C. §2143(a)(8) specifically authorized state and local regulation of animal welfare).

Courts also have upheld municipal animal welfare ordinances against domestic Commerce Clause challenges. In *DeHart v. Town of Austin*, 39 F. 3d 718 (7th Cir. 1994), the 7th Circuit affirmed the grant of summary judgment in favor of defendant. *Id.* at 724. In *DeHart*, plaintiff challenged the town's ordinance that banned the keeping of wild animals under the Commerce Clause and Supremacy Clause. *Id.* at 721. With respect to the Commerce Clause, the court held that the ordinance did not affect simple protectionism, but regulated evenhandedly by imposing a complete ban on commerce in wild or dangerous animals within the town of Austin without regard to the state of origin of the animals. *Id.* at 723. The court further held that because the ordinance did not discriminate between interstate and intrastate commerce, the incidental burden on interstate commerce was not clearly excessive in relation to the putative local benefits. *Id.* at 724.

Here, the Ordinance regulates evenhandedly by imposing a regulation on the types of breeders from which the Pet Shops (and all pet shops within the County of Cook, for that matter) can purchase animals without regard to the origin of the animals. Thus, the Ordinance does not discriminate between interstate and intrastate commerce. Further, any burden on interstate commerce is not clearly excessive in relation to the local consumer benefits described in the Ordinance. *See* Ch. 10, sec. 10-1(1) (Protecting the citizens of Cook County from rabies by specifying such preventive and control measures as may be necessary), (4) (Encouraging responsible pet ownership), and (5) (Promoting community and consumer awareness of animal control and welfare).

In *American Canine Foundation v. Sun*, 2007 U.S. Dist. Lexis 90004 (N.D. Cal. 2007) (unpublished), the court held that the ordinance did not unjustifiably discriminate on its face against out-of-state entities and regulated evenhandedly in that it required all dogs

owned or kept within Los Angeles County's jurisdiction be spayed or neutered. *Id.* at 26. Further, the ordinance did not impose significant, if any, burdens on interstate trade or travel. *Id.* The court concluded that such a neutral, locally focused regulation was consistent with the Commerce Clause. *Id.* Here, the Ordinance does not discriminate on its face against out-of-state entities because it imposes a regulation on the types of breeders from which the Pet Shops (and all pet shops within the County's jurisdiction) can purchase animals without regard to the origin of the animals. Thus, the Ordinance is a neutral, locally focused regulation that does not impose any burden on interstate commerce.

Similarly, Chicago's ordinance that banned the sale of *foie gras* in local restaurants was upheld against foreign and domestic Commerce Clause challenges when the District Court dismissed plaintiffs' complaint. *Illinois Restaurant Association v. Chicago*, 492 F. Supp. 2d 891, 905-06 (N.D. Ill. 2007), *vacated on other grounds*, 2008 U.S. Dist. Lexis 123765, at 2 (unpublished).[6] In that case, the court stated that it had severe reservations about a rule requiring courts to use the dormant Commerce Clause to strike down any local law which result in inconsistencies on a national or international level. *Id.* at 905. The court was unpersuaded that any extraterritorial economic effects of the ordinance in other states or countries meant that it is unconstitutional under either the foreign or domestic Commerce Clause. *Id.* The court specifically found that the City's *foie gras* ordinance neither favors nor provides advantages or protection to local economic interests. *Id.* at 901. The Court held that the Ordinance was not facially discriminatory and did not violate the Commerce Clause. *Id.* at 905. Like the City's *foie gras* ordinance, the instant Ordinance

[6] The order dismissing plaintiffs' complaint was vacated because the 7th Circuit determined that the appeal was moot because the City had repealed the ordinance. Thus, the legal principles in the case remain relevant to this Court's analysis of the Ordinance.

does not favor or provide advantages or protection to local economic interests because it does not regulate the location of the sources of animals, it only limits the number of breeding animals present at such sources. *See* Ch. 10, sec. 10-13(a)(3)(ii) and (iii) of the Ordinance. For the same reasons, it is not facially discriminatory. Like the court in *Illinois Restaurant Association*, this Court should also dismiss Plaintiffs' Amended Complaint.

Finally, in *Fortuna's Cab Service, Inc. v. Camden*, 269 F. Supp. 2d 562 (D.C. N.J. 2003), the Court rejected the plaintiffs' Commerce Clause challenge to the city of Camden's taxicab ordinance and the removal of taxi stands when it granted defendants' motions to dismiss. *Id.* at 563. The court found that each of the taxicab owners and operators were located within the city of Camden and were not out-of-state entities allegedly being discriminated against by the regulations. *Id.* at 566.

Irrespective of the erroneous claims of the Plaintiffs, interstate commerce is not implicated in this case, either. The Ordinance regulates pet shops within the jurisdiction of the County. The Pet Shops are operating and located within the County. Contrary to Plaintiffs' claims, the Ordinance does not state or result in favoring in-County, or even in-state, businesses such as breeders or pet shops. The Ordinance does not even regulate breeders, the only out-of-state entities remotely relevant here. Therefore, dismissal of Count I is warranted.

2. RATIONAL BASIS (Equal Protection) (Count II).

It can hardly be disputed that the instant Ordinance is subject to the rational basis rule because no fundamental right is at issue and no suspect class is involved. Amended Complaint, at par. 7. *See Greater Chicago Combine and Center, Inc. v. City of Chicago*, 2004 U.S. Dist. Lexis 25706, at 15 (unpublished), *aff'd, Greater Chicago Combine and Center, Inc. v.*

City of Chicago, 431 F.3d 1065 (2005). Under the rational basis standard, federal courts do not review the wisdom or desirability of fairly debatable legislative choices; rather, the legislation is presumed valid and will be sustained if the classification is rationally related to a legitimate state interest. *Greater Chicago Combine*, 431 F. 3d at 1072-73. In that case, the 7th Circuit held that the City's ordinance prohibiting the keeping of pigeons in residential areas, as opposed to other animals that may be kept in such areas, did not violate the equal protection clause because the adverse health and nuisance concerns generated by pigeons warranted greater or immediate attention in residential areas where people predominantly live. *Id.* The District Court stated even more directly that the City was free to make distinctions as to which animals, or animal breeds, warranted greater attention because of annoyance or danger. *Greater Chicago Combine*, 2004 U.S. Dist. Lexis 25706, at 19. Here, the County likewise is entitled to make distinctions among the sources of animals sold in Cook County in the interest of public health and safety.

The holding and rationale of *Kerr v. Kimmell*, 740 F. Supp. 1525 (D.C. Kan. 1990), also supports the County's position. In *Kerr*, the court recited the well-established rule that legislative solutions will be respected if the distinctions drawn have some basis in practical experience or if some legitimate state interest is advanced. *Id.* at 1530. Plainly, legitimate state interests are advanced by the Ordinance. *See* Ch. 10, sec. 10-1(1) (Protecting the citizens of Cook County from rabies by specifying such preventive and control measures as may be necessary), (2) (Protecting animals from improper use, abuse, neglect, inhumane treatment and health hazards, particularly rabies), (4) (Encouraging responsible pet ownership), and (5) (Promoting community and consumer awareness of animal control and welfare); Preamble to the April 9, 2014 amendment to the Ordinance (original

Complaint, at Exhibit A). Importantly, the distinctions drawn, limiting the source of pets to be sold at retail to government facilities, private shelters, and small (hobby) breeders, are legitimate in light of the dangers of mass-breeding facilities to the animals (inhumane conditions, overcrowding, likelihood of diseases, and the number of animals discarded), not to mention the harm to consumers who purchase such animals. Ultimately, *Kerr* held in favor of the defendants over plaintiff's equal protection challenge to the Kansas dog licensing statute (*Id.* at 1530), and this Court should do likewise.

The holding in *American Canine Foundation v. Sun*, 2007 U.S. Dist. Lexis 90004 (N.D. Cal. 2007) (unpublished), also disposes of Plaintiffs' equal protection challenge. There, the court held that Los Angeles County's stated reasons for enacting the ordinance, to increase the safety of its citizens, to reduce animal overpopulation, and to aid in animal identification and reunification, constituted a rational basis for the legislation at issue. *Id.* at 20. Here, the County's justifications for the Ordinance, not only those enumerated in Ch. 10, sec. 10-1(1), (2), (4), and (5) of the Ordinance (*see supra.*, at 16-17), but also those set forth in the Preamble to the April 9, 2014 amendment to the Ordinance (*see supra.*, at 16-17), easily justify the Ordinance under rational basis analysis.

Plaintiffs' general equal protection argument and its over-inclusive and under-inclusive arguments can be disposed of summarily. In *Greater Chicago Combine*, the 7th Circuit, stated, "we can put this issue to rest by simply acknowledging that a city's decision to address a problem gradually is rational. … For these reasons, [Plaintiff] cannot show that it is 'wholly impossible' to relate this governmental action to legitimate government objectives, and, as a result, we cannot disturb the ordinance under the equal protection clause." 431 F. 3d at 1072-73. Like the plaintiffs in *Greater Chicago Combine*, the instant

Plaintiffs allege that the Ordinance does not completely solve the problems it is intended to address. Amended Complaint, at pars. 86-89. But, as the court in *Greater Chicago Combine* held, that is not a sufficient reason to jettison an ordinance, this Ordinance, because it addresses the problems one at a time.

3. PREEMPTION (Count III).

Though Plaintiffs did not specifically raise the Supremacy Clause, their pre-emption challenge under federal law is properly analyzed under that clause. *Zimmerman v. Wolff*, 622 F. Supp. 2d at 244. The Ordinance is not preempted under federal law because of the savings clauses contained in the AWA (7 U.S.C. § 2143(a)(8) and 7 U.S.C. § 2145(b)).[7] A plain reading of the Ordinance establishes that it provides standards for the type of breeder who can supply animals to the Pet Shops, that it carries out the purpose of the AWA, and that it covers the subject of humane treatment of animals. *See*, *e.g.*, Ch. 10, § 10-13(a)(3) of the Ordinance; Ch. 10, sec. 10-1(1), (2), (4), and (5) of the Ordinance. Thus, under the AWA, the Ordinance is not pre-empted. Count III should be dismissed, despite containing a §1983 claim.

Case law supports this conclusion, as well. In *DeHart v. Town of Austin*, 39 F. 3d 718 (7th Cir. 1994), the court held that the AWA does not evince an intent to preempt state or local regulation of animal or public welfare. "Indeed, [the savings clauses in] the Animal Welfare Act expressly contemplated state and local regulation of animals." Id. at 722. In *Kerr v. Kimmell*, 740 F. Supp. 1525 (D.C. Kan. 1990), the court held that the savings clauses

[7] 7 U.S.C. § 2143(a)(8), in its plain language, provides that, "[p]aragraph (1) shall not prohibit any State (or a political subdivision of such State) from promulgating standards in addition to those standards promulgated by the Secretary under paragraph (1)." 7 U.S.C. § 2143(a)(8). 7 U.S.C. § 2145(b) provides, in pertinent part, "[t]he Secretary is authorized to cooperate with the officials of the various States or political subdivisions thereof in carrying out the purposes of this Act, and any State, local, or municipal legislation or ordinance on the same subject." 7 U.S.C. § 2145(b).

cited above show that Congress anticipated that states would remain active in this area of traditional state interest. "Thus, plaintiff's argument that Congress intended to totally occupy the field of animal welfare is belied by the express language of the federal statutes cited above." *Id.* at 1530. In *Zimmerman v. Wolff*, 622 F. Supp. 2d 240 (E.D. Pa. 2008), the court held that plaintiff was not entitled to amend his complaint to add a claim for pre-emption under the Supremacy Clause because the AWA savings clauses expressly allowed state and local regulation of animals. *Id.* at 248 (discussing the same savings clauses and *citing Sun*, *DeHart*, and *Kerr*). Finally, the court in *American Canine Foundation v. Sun*, 2007 U.S. Dist. Lexis 90004 (N.D. Cal. 2007) (unpublished), stated that the savings clause in 7 U.S.C. § 2143(a)(8) expressly provides for local regulation. *Id.* at 13-14 (the few cases that have considered whether the AWA preempts local regulation of animal ownership, breeding, or sale, have found no preemption (*citing DeHart* and *Kerr*)). As the United States Supreme Court stated in *Wardair Canada Inc. v. Florida Department of Revenue*, 477 U.S. 1 (1986) when it considered the code section related to state taxes on air travel, "to the degree that Congress considered the power of the States to tax air travel, it expressly and unequivocally permitted the States to exercise that authority. In other words, rather than prohibit state regulation in the area, Congress invited it. This is not the stuff of pre-emption." *Id.* at 7. Pre-emption is not present here, either.

Plaintiffs have not identified any State statute or regulation that pre-empts the Ordinance. They simply state that: 1) the Ordinance is beyond the County's constitutional home-rule powers under Art. VII, section 6(a) of the Illinois Constitution; and 2) the Illinois "Puppy Lemon Law" ("Law") (§225 ILCS 605/3.15) has highly regulated requirements for disclosures that must be made by the Pet Shops. Amended Complaint, at pars. 93, 102.

Thus, Count III is insufficiently pleaded because it does not contain enough facts to state a cognizable claim. *Adams v. Indianapolis*, 742 F. 3d at 728. Moreover, the Ordinance is well within the County's home-rule powers and is not pre-empted by state law.

The powers of an Illinois home-rule entity are expansive. *Illinois Restaurant Association*, 492 F. Supp. 2d at 894-95; *accord*, *Evanston v. Create, Inc.*, 85 Ill. 2d 101, 107 (1981) (home-rules powers are broad and imprecise in order to allow greater flexibility). The County is a home-rule entity. Illinois Constitution, Art. VII, Sec. 6(a); *Chicago Bar Association v. County of Cook*, 102 Ill. 2d 438, 440 (1984). An ordinance of a home-rule county is valid in Illinois if it pertains to its government and affairs. *County of Cook v. John Sexton Contractors Co.*, 75 Ill. 2d 494, 508-09 (1979). An ordinance pertains to the government and affairs of home-rule unit where it relates to problems that are local in nature rather than State or national. *Illinois Restaurant Association*, 492 F. Supp. 2d at 895. The United States Supreme Court has recognized that states have traditional police power in relation to domestic animals. *Nicchia v. New York*, 254 U.S. 228, 230-31 (1920). It is axiomatic that a traditional police power regulation would pertain to the County's government and affairs.

Plaintiffs' reference to the Law is unavailing because that statute does not contain any limitation on local regulation of puppies, breeders, or pet shops. In fact, the entirety of the Illinois Animal Welfare Act ("Act"), in which the Law is contained, is devoid of any limitation on local regulation of animals. Thus, there is no direct conflict or pre-emption.

Importantly, even if the Act or Law contained a general limitation on local regulation, they would have to contain express statements that the legislature intended to limit a home-rule entities' power. 5 ILCS 70/7; *Palm v. 2800 Lake Shore Drive Condo Assoc.*,

2013 IL 110505, ¶32. The Act and Law are entirely devoid of any such express statements. The Ordinance is not pre-empted by state law.

A recent federal case confirms the local nature of the Ordinance and that it is within Cook County's home-rule powers. In that case, Chicago's ordinance that banned the sale of *foie gras* in local restaurants was upheld against a state pre-emption challenge when the District Court dismissed the plaintiffs' complaint. *Illinois Restaurant Association*, 492 F. Supp. 2d at 897 (despite its extra-territorial effects, the ordinance is a valid exercise of Chicago's home-rule powers because it is aimed at a sufficiently local problem). Here, the Ordinance addresses numerous local problems (*see supra.*, at 16-17). Accordingly, the Ordinance is within the County's home-rule powers and is not pre-empted by state law.

4. VAGUENESS (Rational Basis) (Count IV).

Plaintiffs incorrectly challenge the Ordinance based on their claim that it is vague in several ways. In paragraph 105, Plaintiffs assert that the applicability section of the Ordinance is vague and confusing because the phrase "ordinance of another governmental entity" could mean the State of Illinois or the United States of America.[8]

When Ch. 10, sec. 10-13(e) of the Ordinance refers to "ordinance," it plainly means a law passed by a municipality and not the State of Illinois or the United States. *See* Black's Law Dictionary, Deluxe Seventh Edition (West 1999), at p. 1125 ("**ordinance**"-"a municipal regulation"). "Municipal" is defined as "of or relating to a city, town, or local governmental unit." *Id.* at p. 1037. There is no confusion, vagueness, or inability of Plaintiffs to easily understand that section.

[8] The parenthetical in that section of the Ordinance referred to by Plaintiffs is plainly a reference to Art. VII, section 6(c) of the Illinois Constitution that holds that ordinances of municipalities control over ordinances of home-rule counties. Thus, the meaning of section 10-13(e) is plain and understandable.

In paragraph 105, Plaintiffs also assert that the definition section of the Ordinance is vague and confusing because the allowed animal sources are largely undefined, particularly "humane society." Plaintiffs' challenge to the definitions in the Ordinance ignores its plain language. "Rescue organization" is a specifically defined term. Furthermore, a fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning. *Perrin v. United States*, 444 U.S. 37, 42 (1979). The Illinois Supreme Court authorizes using dictionary definitions for terms not defined in a legislative act. *See People v. Gutman*, 2011 IL 110338, at ¶15. "Humane society" is defined as "a society for the prevention of cruelty to animals." Webster's Third International Dictionary, 1961. Both terms are contained in the same subsection of section 10-13 (section 10-13(a)(2)), giving any person of reasonable intelligence fair guidance that "humane societies" and "rescue organizations" are private sources of pets from which the Pet Shops can obtain animals under section 10-13(a)(2) of the Ordinance.

Further, the definition of "pet shop operator" is not ill-defined as Plaintiffs claim. By referring to 225 ILCS 605/2, the Ordinance points a person of reasonable intelligence to the definition of that term there, which is itself distinguished from "animal shelter" and "animal control facility" in the statute. While "animal control center" and "animal care facility" in the Ordinance are not defined terms, the ordinary, common meaning of "animal control" is "an office or department responsible for enforcing ordinances relating to the control, impoundment, and disposition of animals." Merriam-Webster.com, 2014. Thus an "animal control center" is a government-run source of animals from which the Pet Shops can legally obtain pets under section 10-13(a)(1) of the Ordinance. There is no confusion, vagueness,

or inability of Plaintiffs to easily understand the above definitions and determine that there are public and private sources from which they can lawfully obtain animals.

In paragraph 105, Plaintiffs further assert that the punishment section of the Ordinance is contradictory. Plaintiffs' challenge to the punishment section of the Ordinance also ignores its plain language. When section 10-3 refers to "any person violating any provision of this chapter," it means Chapter 10, *i.e.*, the entire Animal Control Ordinance. When section 10-3 later refers to "any person violating or failing to comply with Sec. 10-13 of the chapter," it means only section 10-13. There is no contradiction, vagueness, or inability of Plaintiffs to easily understand that distinction. The Ordinance is not vague, and Plaintiffs' Amended Complaint fails.

Case law also supports the dismissal of this Count. In *American Canine Foundation v. Sun*, 2007 U.S. Dist. Lexis 90004 (N.D. Cal. 2007) (unpublished), the court held that the Los Angeles County spay and neuter ordinance was not unconstitutionally vague because it set forth clear requirements for compliance with the ordinance and for the penalties for non-compliance. *Id.* at 31. "A party challenging the facial validity of an ordinance on vagueness grounds outside the domain of the First Amendment must demonstrate that the enactment is impermissibly vague in all of its applications." *Id.* at 29 (*citing Hotel and Motel Association of Oakland v. City of Oakland*, 344 F. 3d 959, 972 (9th Cir. 2003)). The instant Ordinance is not vague in any of its applications, let alone in all of them. More importantly, the requirements for compliance and non-compliance are easily discernible. Dismissal of the vagueness count is warranted.

5. CONTRACTS CLAUSE (Count V).

Plaintiffs finally challenge the Ordinance based on the alleged impairment of contracts. Amended Complaint, at par. 113. In fact, Plaintiffs claim the Ordinance will prohibit them from engaging in their core business model—the sale of pure and specialty breed animals. *Id.*, at par. 115. The Ordinance does not prohibit Plaintiffs from engaging in their core business model—it specifically allows them to purchase animals from any breeders, without limiting the type of animals such breeders possess. *See* Chapter 10, section 10-13(a)(3). Moreover, the Ordinance does not violate the Contracts Clause.

The right to contract is subject to such restraints as the state in exertion of its police power may reasonably put upon it. *American Canine Foundation v. Sun,* 2007 U.S. Dist. Lexis 90004, at 28 (*citing Advance-Rumely Thresher Co. v. Jackson*, 287 U.S. 283, 288 (1932)). It is axiomatic that the regulation of animals is the exercise of the state's traditional police power in relation to domestic animals. *Nicchia v. New York*, 254 U.S. 228, 230-31 (1920). In *Sun*, the ordinance did not bar the sale and purchase of spayed and neutered dogs (the instant Ordinance does not ban the sale of breed dogs), as plaintiffs therein had alleged, rather, it regulated them. 2007 U.S. Dist. Lexis 90004, at 28; *see* Chapter 10, section 10-13(a)(3). The ordinance therein, like the instant Ordinance, was enacted in part to increase public safety. *Sun*, 2007 U.S. Dist. Lexis 90004, at 28; *see* Chapter 10, section 10-1(1) and (2). Thus, even if the Ordinance "will impair Plaintiffs' current contractual relationships" (Amended Complaint, at par. 117), the regulation falls squarely within the County's police powers. *See Sun*, at 28. The court in *Sun* dismissed the count of the complaint based on violation of freedom of contract. *Id.* This Court should do likewise.

6. INJUNCTION (Count VI).

Count VI, for injunctive relief, is improper. An injunction is a remedy, and not a cause of action. *Noah v. Enesco Corp.*, 911 F. Supp. 305, 307 (N.D. Ill. 1995). Plainly, Plaintiffs may not maintain, let alone recover, in Count VI.

V. CONCLUSION.

Plaintiffs here have attempted to pull out all the stops to state a claim in their six-count Amended Complaint, including making conclusory and unsubstantiated claims and ignoring the plain language of the Ordinance, statutes, and regulations. Nevertheless, the Amended Complaint contains fatal pleading and legal defects that bar relief. For the foregoing reasons, the Amended Complaint should be dismissed with prejudice.

RESPECTFULLY SUBMITTED,

ANITA ALVAREZ
State's Attorney of Cook County, Illinois

By: */s/ Jayman A. Avery III*
Jayman A. Avery III
Kent S. Ray
Assistant State's Attorneys
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-7780

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MISSOURI PET BREEDERS ASSOCIATION, *et. al.*,	)	
Plaintiffs,	)	
v.	)	14 CV 6930
	)	The Honorable Matthew Kennelly
COUNTY OF COOK, *et. al.*,	)	
Defendants.	)	

APPENDIX

APPLICABLE LEGISLATIVE PROVISIONS:

1. Article VII, Section 6 of the Illinois Constitution.

(a) A County which has a chief executive officer elected by the electors of the county … are home rule units. … Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare; to license; to tax; and to incur debt.

***

(c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

2. Ch. 10, sec. 10-13 of the Ordinance.

(a) A pet shop operator may offer for sale only those dogs, cats or rabbits obtained from:
(1) An animal control center, animal care facility, kennel, pound or training facility operated by any subdivision of local, state or federal government; or
(2) A humane society or rescue organization;
(3) Animal obtained from breeders. No pet shop operator may offer for sale any dog, cat or rabbit obtained from a breeder unless the following requirements are met:

(i) The breeder holds a valid USDA class "A" license as defined by the Animal Welfare Act, as found in the Code of Federal Regulations, listing all site addresses where regulated animals are located; and
(ii) The breeder owns or possesses no more than five female dogs, cats or rabbits capable of reproducing in any 12-month period; and
(iii) No more than five female dogs, cats or rabbits capable of reproduction are housed at the site address where the retail animal was born or housed, including animals owned by persons other than the breeder; …

***

(e) *Applicability of this Section*. This Section shall apply to all areas within Cook County, Illinois, except those areas which are governed by an Ordinance of another governmental entity (which by law may not be superceded by this Section).

3. Ch. 10, sec. 10-1(1), (2), (4), and (5) of the Ordinance.

The purpose of this chapter is to provide harmonious relationships in the interaction between man and animals by:

(1)Protecting the citizens of Cook County from rabies by specifying such preventive and control measures as may be necessary;
(2)Protecting animals from improper use, abuse, neglect, inhumane treatment and health hazards, particularly rabies;

***

(4) Encouraging responsible pet ownership;
(5) Promoting community and consumer awareness of animal control and welfare;

***

4. Ch. 10, sec. 10-2 of the Ordinance.

Rescue organization means any not-for-profit organization that has tax exempt status under Section 501(c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue and placement of dogs, cats, and rabbits.

5. §225 ILCS 605/2 of the Illinois AWA.

"Pet shop operator" means any person who sells, offers to sell, exchange, or offers for adoption with or without charge or donation dogs, cats, birds, fish, reptiles, or other animals customarily obtained as pets in this State. …

***

"Animal control facility" means any facility operated by or under contract for the State, county, or any municipal corporation or political subdivision of the State for the purpose of impounding or harboring seized, stray, homeless, abandoned or unwanted dogs, cats, and other animals. …

"Animal shelter" means a facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other not-for-profit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals. …

***

6. §225 ILCS 605/3.15 of the Illinois AWA.

Disclosures for dogs and cats being sold to pet shops. (a) Prior to the time of sale, every pet shop operator must, to the best of his or her knowledge, provide to the customer the following information on any dog or cat being offered for sale:

***

(4) The name and business address of both the dog or cat breeder and the facility where the dog or cat was born. If the dog or cat breeder is located in the State, then the breeder's license number. If the dog or cat breeder also holds a license issued by the United States Department of Agriculture, the breeder's federal license number.

***

7. 7 U.S.C. §2131 of the AWA.

The Congress finds that animals and activities which are regulated under this Act are either in interstate or foreign commerce or substantially affect the commerce or free flow thereof, and that regulation of animals and activities as provided in this Act is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate commerce, in order—
(1) To insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;

(2) To assure the humane treatment of animals during transportation in commerce;

***

The Congress further finds that it is essential to regulate, as provided in this Act, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

8. 7 U.S.C. §2132(f) of the AWA.

***

(f) The term "dealer" means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes. Such term does not include a retail pet store (other than a retail pet store which sells any animals to a research facility, an exhibitor, or another dealer).

***

9. 7 U.S.C. §2133 of the AWA.

The Secretary shall issue licenses to dealers and exhibitors upon application therefor in such form and manner as he may prescribe and upon payment of such fee established pursuant to Section 23 of this Act: Provided, That no such license shall be issued until the dealer or exhibitor shall have demonstrated that his facilities comply with the standards promulgated by the Secretary pursuant to Section 13 of this Act: … The Secretary is further authorized to license, as dealers or exhibitors, persons who do not qualify as dealers or exhibitors within the meaning of this Act upon such persons' complying with the requirements specified above and agreeing, in writing, to comply with all the requirements of this Act and the regulations promulgated by the Secretary hereunder.

10. 7 U.S.C. §2134 of the AWA.

No dealer or exhibitor shall sell or offer to sell or transport or offer for transportation, in commerce, to any research facility or for exhibit or for use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer or exhibitor under this Act any animal, unless and until such dealer or exhibitor shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.

11. 7 U.S.C. §2143(a)(1) and (8) of the AWA.

(a) Promulgation of standards, rules, regulations, and orders; research facilities; State authority.
(1)The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors.

***

(8) Paragraph (1) shall not prohibit any State (or a political subdivision of such State) from promulgating standards in addition to those standards promulgated by the Secretary under paragraph (1).

12. 7 U.S.C. §2145(b) of the AWA.

(b) The Secretary is authorized to cooperate with the officials of the various States or political subdivisions thereof in carrying out the purposes of this Act, and any State, local, or municipal legislation or ordinance on the same subject.

13. 9 CFR 1.1.

Class "A" license (breeder) means a person subject to the licensing requirements under part 2 and meeting the definition of "dealer" (sec. 1.1), and whose business involving animals consists only of animals that are bred and raised on the premises in a closed or stable colony and those animals acquired for the sole purpose of maintaining or enhancing the breeding colony.

***

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section; any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

***

Retail pet store means a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domestic ferrets, domestic farm animals, birds, and coldblooded species. In addition to the persons that meet these criteria, retail pet stores also includes any person meeting the criteria in sec. 2.1(a)(3)(vii) of this chapter. Such definitions include—

(1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;
(2) Establishments or persons, except those that meet the criteria in sec. 2.1(a)(3)(vii), exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;
(3) Any establishment or person selling warmblooded animals (except birds, rats, and mice);
(4) Any establishment wholesaling any animals (except birds, rats, and mice); and
(5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

14. 9 CFR 2.1.

(a)(1) Any person operating or intending to operate as a dealer, exhibitor, or operator of an auction sale, except persons who are exempted from the licensing requirements under paragraph (a)(3) of this section, must have a valid license.

***

(3) The following persons are exempt from the licensing requirements under section 2 or section 3 of the Act:
(i) Retail pet stores as defined in part 1 of this subchapter;
(ii) Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of such animals during any calendar year and is not otherwise required to have a license;
(iii) Any person who maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells, at wholesale, only the offspring of these dogs, cats, and/or small exotic or wild mammals, which were born or raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. …;

***

(vii)Any person including, but not limited to, purebred dog or cat fanciers, who maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells, at retail, only the offspring of these dogs, cats, and/or small exotic or wild mammals, which were born or raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. …;
(viii)Any person who buys animals solely for his or her own use and enjoyment and does not sell or exhibit animals, and is not otherwise required to obtain a license. …;

***

(c) A license will be issued to any applicant, …, when:
(1) The applicant has met the requirements of this section and sec. 2.2 and 2.3; and
(2) The applicant has paid the application fee of $10 and the annual license fee indicated in section 2.6 to the appropriate Animal Care regional office for an initial license, … .

15. 9 CFR 2.3.

(a) Each applicant must demonstrate that his or her premises and any animals, facilities, vehicles, equipment, or other premises used or intended for use in the business comply with the regulations and standards set forth in parts 2 and 3 of this subchapter. Each applicant for an initial license must make his or her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection during business hours and at other times mutually agreeable to the applicant and APHIS, to ascertain the applicant's compliance with the standards and regulations.
(b) Each applicant for an initial license must be inspected by APHIS and demonstrate compliance with the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. … .

16. 9 CFR 2.150.

Attached as Exhibit A.

17. 9 CFR 2.151.

Attached as Exhibit B.