

IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA

IN RE: ___ DOGS SEIZED FROM)

_____ ON ____ (DATE))

,) _____

Defendants.)

**MOTION AUTHORIZING MARION COUNTY ANIMAL CONTROL TO DISPOSE OF
ANIMAL PURSUANT TO O.C.G.A. § 4-11-9.3(d)**

COMES NOW, Movant, pursuant to O.C.G.A. § 4-11-9.3(d), moves this Court for an order authorizing Marion County Animal Control to dispose of the animals that were impounded, which animals were an object or instrumentality of a crime as further set out in Movant's Brief in Support of Motion, Affidavit of Prosecuting Attorney giving consent, and affidavit of Animal Control Officer submitted simultaneously herewith. A listing of the animals that are the subject of this Motion is attached hereto as Exhibit A and made a part hereof.

By: _____

ATTORNEYS FOR MOVANT

**IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA**

IN RE: ___DOGS SEIZED FROM)

_____**ON ____ (DATE)**

,

Defendants.

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**BRIEF IN SUPPORT OF MOTION AUTHORIZING MARION COUNTY ANIMAL
CONTROL TO DISPOSE OF ANIMAL PURSUANT TO O.C.G.A. § 4-11-9.3(d)**

COMES NOW, Movant, and hereby files its Brief in Support of Motion Authorizing Marion County Animal Control to Dispose of Animal pursuant to O.C.G.A. § 4-11-9.3(d) as follows:

STATEMENT OF FACTS

Defendants Mary Smith, Michelle Smith, Bob Smith, and Jane Jones (hereinafter referred to collectively as "Defendants") are owners and/or operating/caretakers of a dog breeding operating in Marion County, Georgia, operating under the name of _____Kennel. The operation is located on approximately twenty-three (23) acres, divided into four tracts of land. Each of the Defendants maintains a home place in addition to the dog kennels on the property. The Plat attached to the search warrant is hereby referenced and incorporated herein.

The dog breeding operation had a kennel license from the State of Georgia.

On _____, the Georgia Department of Agriculture received a complaint from Tiffany Butler, a former employee of the kennel, who worked only a couple of days before quitting because of conditions at the kennel. The Department of Agriculture contacted Marion County Animal Control, the local agency with delegated power to enforce animal cruelty statutes. The Department of Agriculture cooperated with Marion County Animal Control in sending out investigators to the kennel. The Department of Agriculture has the right under the kennel license

to inspect the property. Marion County Animal Control, working with the Code Compliance office, obtained a search warrant for the property.

On the afternoon of _____, a combined group of the Department of Agriculture investigators, Marion County Animal Control, and Code Compliance officers, together with a licensed veterinarian, went to the property to investigate the conditions complained of by the former employee of the kennel. The group included among other personnel Laura Blanton, inspector for the Department, Kim Holmes, the Marion County Animal Control officers, Patti Realm, Code Compliance Chief Officer (post certified law enforcement officer), and Jim Price, Georgia licensed Doctor of Veterinary Medicine.

Upon entering the property and beginning a review of the dogs kenneled there, the investigators found deplorable conditions affecting almost all of the dogs on the property. A small group of dogs, identified as pit bulls, were not part of the breeding operation, were in adequate conditions with food and water, were not impounded as evidence, and have no bearing on this hearing. There were nineteen (19) dogs that were in extreme conditions and were owner surrendered. The balance is approximately 274 dogs (some puppies have been born since impoundment that are being kept with their mothers) and some have been euthanized because of their condition. Those were the dogs that were scattered in a number of places across the kennel, left without adequate shelter from rain and cold, most without clean food and potable water, many of the kennels only had dirt flooring which had degraded to a combination of mud, urine and feces, others were in bare wire cages without bedding or dirty and/or inadequate bedding. A significant number of dogs had feces or urine caked in their fur. One dead dog was in a kennel with two other live dogs, all three had visible open sores, visible skin conditions, and were emaciated.

Dr. Price, the DMV, reviewed as many dogs as possible making determinations on fifty-five (55) of the dogs that appeared to be in the worst conditions. Several were sent immediately for further veterinary care. The review ended when it was too dark to adequately examine any further animals. The investigative team returned the following day to continue examining the dogs. Additional dogs were sent out for veterinary care. The investigation continued over the next several days, more vets were brought in as it was impossible for one vet to get through the 274 dogs found on the premises. The vets continued to discover dogs that were in various stages of starvation or generally underweight, unclean conditions with long haired dogs with severely matted coats, caked with feces, dirt, and tangled so that normal bodily functions were impaired, skin diseases, open sores, broken bones in various stages of healing, including legs and jaws of the animals, some animals had decomposing flesh, none of the animals had received veterinary treatment, nor did they have adequate protection from the elements, and most had no access to food and water when first found, or if there was food, it was scattered on the ground in mud, urine and feces and moldy. The veterinarians certified that the dogs were in inhumane conditions and the object of animal cruelty. A copy of Dr. Evans report is attached hereto and made a part hereof.

Once the dogs had been examined, the most urgent cases transferred to veterinary hospitals, arrangements for better care and continuing supervision of the animals were made pending impoundment of the animals under O.C.G.A. Section 4-11-9.2. Each dog was catalogued and numbered, photographs taken, and medical evidence obtained. Once the necessary procedures were completed, the dogs were impounded on _____ and dogs were transferred to the approved humane associations, veterinary offices, or foster homes, as allowed under O.C.G.A. Section 4-11-9.3 (a), as appropriate for further care and treatment. The

transfers were completed in the early morning hours of _____. A listing of all the dogs impounded is attached hereto and made a part hereof.

The dogs are being boarded at great expense while the criminal charges are being pursued through the district attorney's office. Veterinary bills for treatment of the animals are substantial as well. One humane organization, boarding 85 of the impounded dogs, has invoiced fees and charges of \$30,000.00 to date (a copy of the invoice is attached hereto and made a part hereof.) Other agencies have not submitted invoices to date, but costs of care probably exceed \$60,000.00 to date and increase daily. The statutes provide that Defendants shall be liable for costs of care during impoundment.

The animals are evidence in criminal matters pending before this court or part of the investigation which is expected to lead to additional charges for which the defendants will be indicted at the next term of the grand jury, and which by consent of the defendants attorney, shall all be considered at one hearing under O.C.G.A. Section 4-11-9.3 (d).

CITATION OF AUTHORITY

The dogs in question were impounded after veterinary certification that they had been subjected to inhumane care and treatment under O.C.G.A. § 4-11-9.2. Any local animal control agency may impound animals after a veterinarian makes his or her determination. In this case, warrants were issued accusing Defendants of acts of animal cruelty under O.C.G.A. § 16-12-4, the Defendants were arrested and released on bond. Further charges will be brought by indictment at the next term of the grand jury.

Under the provisions of O.C.G.A. § 4-11-9.5 (c), if the animals are an object or instrumentality of a crime, they may not be returned to the owner or disposed of without the permission of the prosecuting attorney in the case. Furthermore, the provisions of the section

make all other provisions of O.C.G.A. § 4-11-9.5 inapplicable, including the civil hearing provisions under O.C. G.A. § 4-11-9.5 (b).

Due to the high cost of maintaining impounded animals that are evidence in the crime of animal cruelty, and also considering the best interest of the animals, which unlike the inanimate objects that usually serve as evidence in a case, it is best to dispose of animals prior to the criminal trial, and the law so provides for such disposition. Under O.C.G.A. § 4-11-9.3, the agency having custody of the animals that were seized as the object or instrumentality of a crime, with the consent of the prosecuting attorney, may apply to the court having jurisdiction over the case for disposition of the animals prior to the trial of the case.

The alleged criminal acts occurred at the farm in Marion County, Georgia where the kennel was located. The charges are felony and misdemeanor crimes of animal cruelty and aggravated animal cruelty. Jurisdiction of the related charges is therefore in the Superior Court of Marion County.

Accordingly, Marion County Animal Control respectfully petitions this Court to order the animals disposed of prior to trial and that the animals become the property of Marion County, Georgia to be released for adoption to permanent homes and that the animals shall not be returned to any or all of the Defendants.

This ____ day of March, 2008.

By:_____

IN RE: 274 DOGS SEIZED FROM)
 _____ ON ____ (DATE))
 ,)
)
 Defendants.)

This is to certify that I have this date served the within **MOTION AND BRIEF IN SUPPORT OF MOTION AUTHORIZING MARION COUNTY ANIMAL CONTROL TO DISPOSE OF ANIMAL PURSUANT TO O.C.G.A. § 4-11-9.3(d)** by depositing a copy via United States Mail in an envelope with sufficient postage affixed thereto, properly addressed to the following:

By:_____

**IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA**

IN RE: 274 DOGS SEIZED FROM

_____ **ON** _____ **(DATE)**

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Defendants.

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RULE NISI

The within and foregoing Motion and Brief in Support of Motion Authorizing Marion County Animal Control to Dispose of Animal pursuant to O.C.G.A. § 4-11-9.3(d) having been read and considered, the same is ordered filed.

Let the Defendants show cause before this Court at _____ o'clock, _____.m. on the _____ day of _____, 2008 at the Marion County Courthouse, Jefferson, Georgia, why the prayers of Movant should not be granted.

SO ORDERED, this ____ day of March, 2008.

DAVID MOTES, JUDGE
SUPERIOR COURT OF MARION COUNTY