

SARAH, KEELI, IVY, SHEBA, DARRELL,	§	IN THE DISTRICT COURT
HARPER, EMMA, RAIN, ULYSSES,	§	
HENRY MELVYN RICHARDSON,	§	
STEPHANY HARRIS, and KLAREE BOOSE,	§	
Plaintiffs,	§	73 RD JUDICIAL DISTRICT
	§	
v.	§	
	§	
PRIMARILY PRIMATES, INC.	§	
Defendant.	§	BEXAR COUNTY, TEXAS

AFFIDAVIT OF PATRICIA MERCER

STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE
	§	PRESENTS:
COUNTY OF BEXAR	§	

BEFORE me, the undersigned authority, on this day personally appeared, PATRICIA MERCER, known to me to be the person whose name is hereto subscribed who, being by me duly sworn, upon his oath says:

My name is PATRICIA MERCER. I am of sound mind, capable of making this Affidavit and am personally acquainted with the facts herein stated. I am over the age of eighteen (18) years. This Affidavit is based on my personal knowledge and the statements contained herein are all true and correct.

1. I am currently the President of the Houston Society for the Prevention of Cruelty to Animals (“HSPCA”). I have worked in the animal protection field for more than 26 years. The HSPCA was founded in 1924 and is Houston’s largest animal protection organization and animal shelter. The mission of the HSPCA is to promote commitment to and respect for all animals and to free them from suffering, abuse and exploitation. The HSPCA has an “open door”

policy, meaning we accept all animals who are in need including domestic, farm, wild, and exotic animals. We received and cared for approximately 35,000 animals in 2005. The HSPCA promotes respect for animals in a number of ways including adoption of homeless animals, humane education, and low cost spay-neuter services. The HSPCA employs 97 staff members including seven full-time cruelty investigators; our Cruelty Investigations & Rescue Department responded to over 8,500 reports of animal abuse, cruelty and neglect in 2005.

2. On August 16, 2006, I visited Primarily Primates, Inc. ("PPI") with Jorge Ortega, Houston SPCA Vice President for Shelter Services. We took video footage of many of the conditions we observed during our visit. This Affidavit is offered out of concern for the health and well-being of PPI's director, Wallace "Wally" Swett, with whom I have been acquainted for more than fifteen years, the approximately 800 animals who are confined at this facility.

3. On August 15, 2006, I phoned Wally Swett to let him know that I would be in San Antonio on August 16, 2006 and that I would like to stop by and tour the facility. His speech was slurred and I assume he may have been drinking. He said, "You bitch, I told you not to come on Wednesdays". He also asked if the Animal Planet crew that follows the Houston SPCA would be coming. I asked if he would like for them to be there and he said "Yeah, maybe we can make a sex video".

4. On August 16, 2006, Jorge Ortega and I arrived at PPI at approximately 12:30. One of the gates of the facility was open and Jorge walked through and found "Jeff", the only employee on the site at that time. Jeff offered to drive/have us follow him to Wally's house. Jorge and I waited outside the gate while Jeff went to the house. Jeff came back and stated that Wally said we "should come back tomorrow". We were able to get Wally on the phone and he agreed to let us in.

5. When I saw Wally for the first time in years, I was appalled. He was unkempt and was wearing a stained t-shirt. He was having mobility issues (I was told he broke his foot) and was walking with the aid of a walker. He walked toward the enclosure behind his house which contained four young chimpanzees. One of the chimps, Jackson, was reaching outside of the enclosure trying to grasp the leg of the walker Wally was using. I said "Wally, he's trying to grab the walker" and Wally simply stood there without reaction. The whole situation was very surreal. Wally was expressionless as the chimp proceeded to bend the leg off of the walker. Jorge and Jeff tried to grab the leg as the chimp pulled it into the cage. Wally said "Now he'll probably use it to beat the shit out of another one". Then Wally stood in the same place, rocking back and forth on a walker with three legs. I asked him if he had another one and he said that he had a wheel chair. His speech was slurred. He moved toward Jorge and put his face about an inch from Jorge's face and said "Do I know you? I've never seen you on T.V. before". Wally said that he has been in a "test case" political fight with P.E.T.A. over seven chimps from Ohio State University and that he was spending about \$10,000 per month on legal fees. He said he planned to fight to the end to keep the chimps from going to Chimp Haven. He said he felt it was political and his reputation was at stake. I told Wally that Jeff had offered to tour us through the facility and he agreed to allow that. We returned to our car and he hobbled back to the house with much difficulty on the broken walker.

6. PPI staff member "Jeff" took us on a tour of the facility and allowed access to all areas for which he has keys. He was the only staff member on duty at the time of our visit. He was extremely helpful and said that he had been employed by PPI for the past three months. A particular safety concern was that Jeff did not have a radio or working cell phone, and no way to call for assistance for himself or the animals there. I told Jeff that I had not seen Wally in years

asked him why Wally was using a walker. He said he had broken his foot but seemed to be moving around better. He said that another employee, James, pushes Wally through the facility every few weeks in his wheel chair and Wally is able to get down to the new construction in a truck. He said that he thinks "Wally drinks a lot".

7. During the course of the tour, we saw hundreds of animals. Most of the concrete floor cages, although antiquated, had been freshly sprayed down and food was present in many cages. During the course of the tour, we did see six of the seven O.S.U. chimpanzees. We were told that one chimpanzee, Sheba, was asleep in her box.

8. Of the chimpanzees that we saw, three were of particular concern, Oliver, Sarah, and Darryl. Oliver and Sarah were housed together. They were in the smallest, most poorly constructed chimp cage we saw. The floor of the cage was dirty. No toys or enrichment were visible. Sarah did not move out of the corner she was in. She was the most inactive of all of the chimps we saw. Oliver reached out to me wanting to stroke my hand. His nails were extremely long. Darryl was housed in a dark block building. The door was open and a fan was on but it was so hot inside the building that after ten minutes inside, I was drenched in sweat. When we got back to the car, the outside thermometer read 106 degrees Fahrenheit.

9. We spent approximately three hours at PPI. On the way back to Houston, I phoned Wally to thank him for allowing us to view PPI. I told him that Jeff had been helpful and appeared to be a dedicated, hard-working employee. Wally responded with "Yeah, but he won't let me pull on his balls". I said, "What did you say?" and he repeated the statement. I told him I had taken a wrong turn and had to go.

10. On Monday, August 21, 2006, Wally phoned me to find out what I thought about my visit. I told him I had concerns about some of the animals that I had seen and discussed a

number of them including Sarah, Darryl, Oliver and a male lion which is housed in a cage that cannot be entered and food has to be thrown over an approximately 12 foot tall fence. Heavy branches on the tree in the enclosure actually grow over the fence and to the ground outside the fence. The lion, which appears to have dental problems, could literally walk out of the enclosure with little effort if so inclined. The fact that it has not happened yet does not make it any safer.

11. There are very few employees at PPI. In addition to the large number of exotic animals, there are a large number of domestic animals on site, including horses, goats, cattle, guinea pigs, dogs, turkeys and pigeons. I told Wally that Houston SPCA would be willing to take those animals and place them into homes which could free up staff to spend more time on the exotic animals. He said "No, they are not any trouble and it really doesn't take any time to care for them". Wally asked me if I am married. I told him "yes". He said "Do you still do it?" I said "I am not even going to answer that question. It is so inappropriate".

12. On Tuesday, August 22, 2006, Wally phoned me. His speech was slurred. I asked him if he would please consider giving up the O.S.U. chimps since he was spending the limited funds of the organization on legal fees. He said it is about politics and reputation. I said, "Let me be blunt with you. I believe you have drinking problem. I don't think you are capable of taking care of yourself or the business of PPI. You need help. He said he knew that he did. He said the reason he looks the way he does right now is because of his diet and he then asked if I wanted to move in with him. I told him I did not. He asked me if I had talked to Charles Jackson and I told him that I had phoned Mr. Jackson. He asked me if I had written a report and I told him I had not. I confronted him about his repeated sexual comments and he said "Nobody gets my jokes".

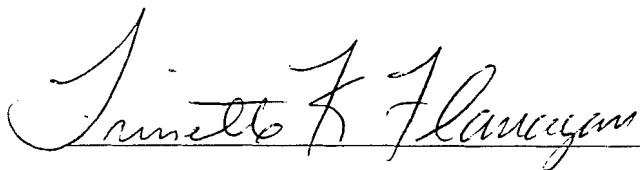
13. I am extremely concerned for the welfare of all involved. I believe that Wally Swett is no longer capable of making good decisions for himself or the animals at Primarily Primates. It is my opinion that Wally personally needs professional intervention and the organization needs intervention as well, in order to improve the future for the animals that have been entrusted to its care.

FURTHER AFFIANT SAYETH NOT.


AFFIANT

SUBSCRIBED AND SWORN to before me this 28th day of August, 2006 to
certify which witness my hand and official seal of office.




Trinette K. Flanagan

Notary Public, in and for the State of Texas

Printed Name: Trinette K. Flanagan