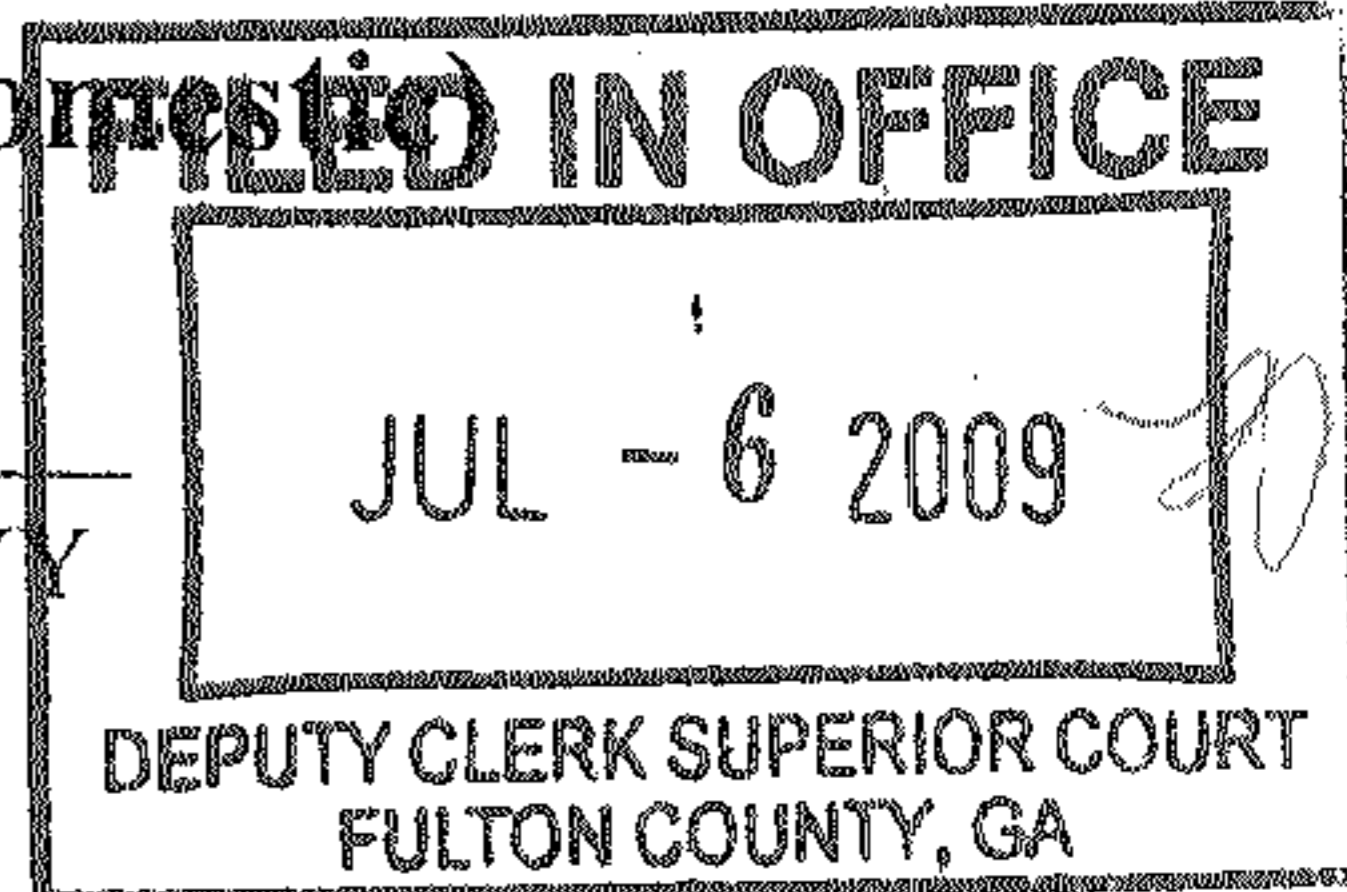


General Civil Case Filing Information Form (Non-Domestic)



Court
 Superior
 State

County Fulton

Date Filed _____
 MM-DD-YYYY

Docket # 2009cv17166g

Plaintiff(s)

Boyajian, Alfred M

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

Defendant(s)

Holcomb, Noel

Last First Middle I. Suffix Prefix Maiden

Nims, Todd N.

Last First Middle I. Suffix Prefix Maiden

The City of Atlanta, Georgia

Last First Middle I. Suffix Prefix Maiden

Last First Middle I. Suffix Prefix Maiden

No. of Plaintiffs 1

No. of Defendants 3

Plaintiff/Petitioner's Attorney **Pro Se**

McCord, Cameron M

Last First Middle I. Suffix

Bar # 143065

Check Primary Type (Check only ONE)

- Contract/Account
- Wills/Estate
- Real Property
- Dispossessory/Distress
- Personal Property
- Equity
- Habeas Corpus
- Appeals, Reviews
- Post Judgment Garnishment, Attachment, or Other Relief
- Non-Domestic Contempt
- Tort (If tort, fill in right column)
- Other General Civil Specify Constitutional
challenge to city ordinances and state action

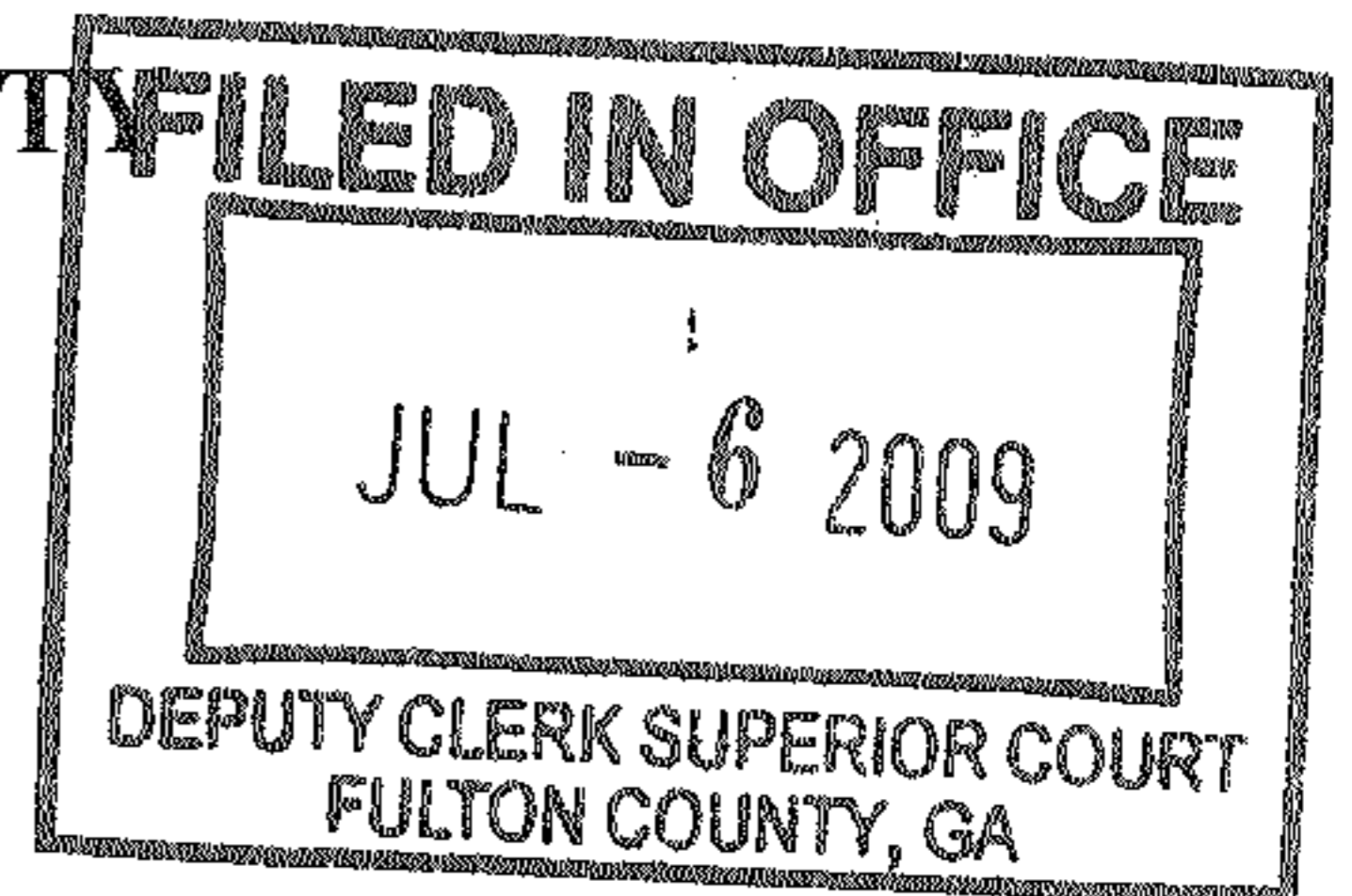
If Tort is Case Type:

(Check no more than TWO)

- Auto Accident
- Premises Liability
- Medical Malpractice
- Other Professional Negligence
- Product Liability
- Other Specify _____

Are Punitive Damages Pleaded? Yes No

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



ALFRED M. BOYAJIAN,

Plaintiff,

v.

NOEL HOLCOMB, in his official capacity
as Commissioner of the Georgia
Department of Natural Resources; TODD
N. NIMS, in his official capacity as Wildlife
Biologist for the special permit unit, Georgia
Wildlife Resources Division, Georgia
Department of Natural Resources; and the
CITY OF ATLANTA, GEORGIA,

Defendants.

CIVIL ACTION

FILE NO. _____

VERIFIED COMPLAINT

Alfred M. Boyajian ("Plaintiff") files this Complaint and in support thereof states as follows:

INTRODUCTION

1.

This is a civil rights action challenging the constitutionality of City of Atlanta Ordinances §§ 30-65, 30-72, and 16-04.004 and O.C.G.A. § 27-5-4(k)(4) on their faces and as applied. Plaintiff contends that these ordinances and statutes violate his rights under the Due Process Clause, Takings Clause, and the Bill of Attainder and Ex Post Facto Clauses of the 14th Amendment of the United States Constitution and his rights pursuant to the Constitution of the State of Georgia Art. I, Sec. I, Paras. I, II, III, VII and X.

JURISDICTION AND VENUE

2.

This action arises under the authority vested in this Court by 42 U.S.C. § 1983, 42 U.S.C. § 1985, 28 U.S.C. § 1331, 28 U.S.C. § 1343 and 28 U.S.C. § 1367, *Main v. Thiboutot*, 448 U.S. 1, 10-11 (1980) (“Section 1983 actions may be brought in state court”), O.C.G.A. §§ 9-4-2, 9-4-3, 9-5-1 and pursuant to the Georgia Constitution. Venue is proper in this Court.

PARTIES

3.

Plaintiff, Alfred M. Boyajian, (“Boyajian” or “Plaintiff”) is the owner of a brass manufacturing company and a citizen of City of Atlanta, Fulton County, Georgia. Plaintiff is also an advocate for exotic cats and has been raising exotic cats in the City of Atlanta since 1977.

4.

Defendant Noel Holcomb is the Commissioner of the Georgia Department of Natural Resources (“DNR”). He is being sued in his official capacity.

5.

Defendant Todd N. Nims is a wildlife biologist for the Special Permit Unit of the Georgia Wildlife Resources Division of DNR. He is being sued in his official capacity.

6.

Defendant City of Atlanta (“the City”) is a municipal corporation and a political subdivision of the State of Georgia.

FACTUAL ALLEGATIONS

7.

Since 1977 Plaintiff has been raising and breeding captive, bred and tame wild cats (the “Cats”) in City of Atlanta (“City”), Residential Zoning. Plaintiff raises and breeds the Cats as a personal hobby. These cats include Eurasian lynxes (*Lynx lynx*), caracals (*Caracal melanotis*), servals (*Leptailurus serval*), Canadian lynxes (*Lynx canadensis*), and bobcats (*Lynx rufus*). Plaintiff’s breeding intent is conservation which furthers the species captive gene pool. Plaintiff has no employees. Plaintiff expends his own money and resources to feed the Cats and to have a veterinarian take care of the Cats. The Cats typically produce only two or three offspring a year, however, it is impossible to predict if or when the species will produce a viable litter. Plaintiff sells these Cats to licensed entities outside of Georgia. Plaintiff has never made a profit from the sale of the Cats nor does Plaintiff breed to order or maintain a stock inventory.

8.

The Georgia Department of Natural Resources has issued Plaintiff a Wild Animal License pursuant to O.C.G.A. § 27-5-4 from 1977 through 2007 without question.

9.

From 1980 until 1994, Plaintiff lived at a single-family residence at 2996 Howell Mill Road, Atlanta, Georgia 30327, which was in R-2 zoning. Plaintiff obtained zoning approval of his site plan, a building permit, and a Certificate of Occupancy for a fenced kennel for the Cats at that location.

10.

In 1994, Plaintiff relocated 1.5 miles to a single-family residence at 3720 Paces Valley Road, Atlanta, Georgia 30327 (the "Property"). The residence is located in R-2 zoning. As part of the stipulations of Plaintiff's purchase of the Property and in order to house the Cats at the Property in compliance with USDA AWA standards, Plaintiff obtained zoning accessory use approval of his site plan and a building permit for eight-foot high perimeter and pen fences that was approved by the City in 1994.

11.

No City zoning ordinance prohibits possession of wild animals in R-2 zoning

12.

The Cats are hand raised tame by Plaintiff and are de-clawed and harmless. The Cats are not classified as inherently dangerous animals as defined by O.C.G.A. § 27-5-5.

13.

Plaintiff's fencing for the Cats is not visible from the street or neighboring properties. The fencing has no sign, lights or parking lot and produces no sound, smell, or effluence. Despite these facts, some of Plaintiff's neighbors do not like living near Plaintiff and the Cats.

14.

Upon information and belief some of Plaintiff's neighbors have repeatedly complained to the City and DNR, demanding that Plaintiff and his Cats be displaced.

15.

Despite Plaintiff's having lived at the Property and raising the Cats since 1994 without any change in circumstances concerning the Cats, on September 26, 2007, Mr. Jesse Evans and Mr. Harold Jackson, code enforcement officers for the City, issued Citation No. 1783887 against

Plaintiff for violation of the City of Atlanta Ordinance § 16-04.004 for commercial use of an accessory structure in R-2 zoning (the “First Citation”).

16.

While Mr. Evans was on the Property, he observed a fence with three or four of the Cats in it. The fence that Mr. Evans observed was a cage fence with the sides and the tops enclosed. Mr. Evans was aware that the fence on the Property had been permitted by the City. Plaintiff did not transact any sales or purchases of Cats on September 26, 2007.

17.

On December 13, 2007, W. D. Johnson, a business tax enforcement supervisor for the City of Atlanta, went to the Property and observed cages and Cats on the Property. Mr. Johnson did not observe any transactions or commercial activity at the Property on December 13, 2007.

18.

Mr. Johnson issued Citation No. 1660351 on December 20, 2007, against Plaintiff alleging a violation of the City of Atlanta Ordinance § 30-65 for operating a business without a business license (the “Second Citation”) (Collectively, the First Citation and Second Citation are referred to as “Citations”).

19.

For thirty two years, the City never required a business license for Plaintiff to raise Cats, as Plaintiff’s actions fell within City of Atlanta Ordinance § 30-72, allowing one to “engage in casual or isolated activity and commercial transactions” without a business license.

CITY OF ATLANTA ORDINANCES

THE BUSINESS LICENSE ORDINANCE AND EXCEPTION

20.

City of Atlanta Ordinance § 30-65 provides in part as follows:

- (a) All businesses operating within the jurisdiction of the city shall be registered with the business tax division unless exempted by this article or by state law. . . .

.

- (c) As set forth in section 30-69, there is imposed a penalty upon each person or other entity which fails to apply for and obtain an appropriate business registration and pay all required taxes and fees as provided in this article. Any person or other entity transacting or offering to transact business within the jurisdiction of the city without first having obtained such registration within the time required shall be subject to the payment of those fines, interest and penalties provided in section 30-69 in addition to the payment of all taxes, penalties and interest.

21.

City of Atlanta Ordinance § 30-72 contains this malleable, vague and overbroad exception to § 30-65:

Nothing contained in this article shall be interpreted as to require any person who may engage in casual or isolated activity and commercial transactions involving personal assets and not the principal occupation of the individual to obtain a business tax registration and pay a tax therefor.

THE ACCESSORY STRUCTURE ORDINANCE

22.

City of Atlanta Ordinance § 16-04.004 provides:

Uses and structures which are customarily incidental and subordinate to permitted principal uses and structures are permitted. These include but are not limited to the following, subject to limitations and requirements set forth herein or elsewhere in this part:

- (1) Greenhouses, garden sheds, private garages and similar structures.
- (2) Barns for keeping of horses, provided that no such barn shall be within 50 feet of any lot line.
- (3) Guest houses, servant quarters, or lodging facilities for caretakers or watchmen.
- (4) Swimming pools, tennis courts and similar facilities.
- (5) Home occupation, subject to limitations set forth in section 16-29.001(17).
- (6) Structures necessary for active construction projects.
- (7) Devices for the generation of energy, such as solar panels, wind generators and similar devices.
- (8) Amateur radio service antenna structures 70 feet or less in height. Amateur radio service antenna towers over 70 feet in height shall be by special use permit and comply with the requirements of 16-25.002(3)h, except that subsection h(ii) and subsection h(iv)(d) shall not be applicable to such applications.

Except in the case of home occupation, no accessory use shall be of a commercial nature. No accessory building shall be constructed until construction of the principal building has actually begun, and no accessory building shall be used or occupied until the principal building is completed and in use.

THE TRIAL

CITY OF ATLANTA ORDINANCE § 16-04.004

23.

The Citations came before the Municipal Court of the City of Atlanta for trial on December 20, 2007.

24.

Regardless of the fact that there is no ordinance stating so, and despite the City's prior position, the City officials testified that housing and breeding of exotic cats is not permitted in R-2 zoning.

CITY OF ATLANTA ORDINANCE § 30-65

25.

At the trial, Defendant Todd Nims, testified that DNR had been issuing the wild animal licenses to Plaintiff since at least 1994.

26.

Nims further testified that if a business license was not required by the City, DNR would not require Plaintiff to hold such a license as a condition of issuing a wild animal license. Nims also testified that there are no other wild animal license holders in the City of Atlanta, other than Zoo Atlanta. Nims testified that Plaintiff did not make more than two or three requests to export cats per year.

27.

Mr. Johnson testified if there had not been a zoning violation, the business code citation would not have been issued.

28.

At the conclusion of the Municipal Court trial, judgment was entered against Plaintiff. Such judgment is currently being appealed to the Superior Court of Fulton County.

29.

The Municipal Court sentenced Plaintiff to a \$1,000.00 fine and further ordered removal of the Cats within thirty days. This sentence has been suspended pending the appeal.

30.

Plaintiff desires to continue to keep and house the Cats at the Property.

31.

Plaintiff is unsure of his legal rights with respect to City of Atlanta Ordinances §§30-65, 30-72, and 16-04.004 and is in need of declaratory relief from the Court.

GEORGIA DNR THREATENS TO REVOKE WILD ANIMAL LICENSE

32.

In relevant part, O.C.G.A. § 27-5-4 states:

- (k) Wild animal licenses shall not be issued unless the following conditions are met:
 - (1) The applicant must be at least 18 years of age;
 - (2) Applicants requesting a license for mammals must obtain a license from the Animal and Plant Health Inspection Service of the United States Department of Agriculture or provide written documentation that the applicant is exempt from such requirements;
 - (3) Applicants must submit documentation verifying that the proposed construction of facilities and the holding of wild animals is not prohibited by county or municipal ordinances;
 - (4) The applicant must obtain required business licenses; and
 - (5) Facilities for holding or exhibiting wild animals must be completely separated from a residence and meet specifications for humane handling, care, and confinement as provided in Code Section 27-5-6.

33.

Plaintiff has been issued a Wild Animal License from the Georgia Department of Natural Resources for the past thirty-two years.

34.

Plaintiff has lived at the Property with the same fence since 1994.

35.

For the past thirty-two years, Plaintiff has never been required by the City of Atlanta to have a business license.

36.

Contrary to the past thirty-two years, the City of Atlanta has now taken the position that Plaintiff is required to have a business license. As set forth above, there has yet to be a final decision as to whether the City of Atlanta can legally require Plaintiff to obtain a business license. However, any such decision would be made without adequate guidance and in the unbridled discretion of the City because its business license ordinance is vague and/or overbroad.

37.

Despite the fact that the City has not previously required a business license and may not require one currently, and despite the fact that DNR has issued Plaintiff Wild Animal Licenses since 1977 without incident and without any material change in Plaintiff's circumstances, DNR has refused to renew Plaintiff's Wild Animal License for failing to have a City of Atlanta business license.

38.

This denial is arbitrary and capricious and a violation of Plaintiffs substantive due process rights.

CLAIMS FOR RELIEF

39

Plaintiff states the following claims pursuant to 42 U.S.C. § 1983:

COUNT I
CITY OF ATLANTA ORDINANCE §§ 30 – 65 AND 30-72
ARE VAGUE, OVERBROAD AND UNENFORCEABLE

40.

Plaintiff re-alleges and incorporates by reference herein the allegations set forth in the foregoing paragraphs.

41.

A basic principle of due process is that an enactment is void for vagueness if its prohibitions are not clearly defined. A law is unconstitutionally vague if persons of common intelligence must guess at its meaning, or if law enforcement lacks clear guidance for enforcement. City of Atlanta Ordinance § 30-72 sets forth an exception to the requirement for a business license in the City of Atlanta if a person is engaged in “casual or isolated activity and commercial transactions involving personal assets which are not the principal occupation of the individual.” The terms “casual and isolated activity” and “principal occupation” are unclear and are not defined in the ordinance or any city regulation.

42.

Plaintiff understands these terms in a manner not consistent with the City’s current interpretation, and City officials have created their own personal meanings for these terms.

43.

City of Atlanta Ordinance §§ 30-65 and 30-72 are overbroad, unduly vague, and delegate unbridled discretion to defendants in violation of the due process protections of the United States Constitution and Georgia Constitution. Because DNR now premises its licensing on the need for a business license under these vague city ordinances, DNR’s approval process also is based upon vague and overbroad standards.

COUNT II
CITY OF ATLANTA ORDINANCE § 16-04.004
IS VAGUE, OVERBROAD AND UNENFORCEABLE

44.

Plaintiff re-alleges and incorporates by reference herein the allegations set forth in the foregoing paragraphs.

45.

A basic principle of due process is that an enactment is void for vagueness if its prohibitions are not clearly defined. A law is unconstitutionally vague if persons of common intelligence must guess at its meaning, or if law enforcement lack clear guidance for enforcement.

46.

City of Atlanta Ordinance § 16-04.004 sets forth the ways in which accessory structures may be used but states that “no accessory use shall be of a commercial nature”.

47.

The Plaintiff understands “commercial nature” in a manner not consistent with the City’s current interpretation. “Commercial nature” is not defined in any City ordinance, State statute or regulation, and City officials have created their own personal meanings of these terms.

48.

City of Atlanta Ordinance § 16-04.004 is overbroad, unduly vague, and delegates unbridled discretion to defendants in violation of the due process protections of the United States Constitution and Georgia Constitution.

COUNT III
VIOLATION OF SUBSTANTIVE DUE PROCESS RIGHTS BY DNR

49.

Plaintiff re-alleges and incorporates by reference herein the allegations set forth in the foregoing paragraphs.

50.

DNR has proposed to deny renewal of Plaintiff's Wild Animal License due to Plaintiff's failure to have a business license from the City.

51.

In proposing to deny Plaintiff's license, DNR necessarily takes the position that Plaintiff is required to have a business license under City of Atlanta Ordinance § 30-65 and that the exception within City of Atlanta Ordinance §30-72 does not apply to Plaintiff.

52.

DNR therefore takes the position that in the City of Atlanta, a business license is a "required business license" under O.C.G.A. § 27-5-4(k).

53.

Because DNR is basing its proposed denial of Plaintiff's Wild Animal License of City of Atlanta Ordinances §§ 30-65 and 30-72, and because those ordinances are unconstitutionally vague, DNR's proposed denial of Plaintiff's Wild Animal License is a violation of Plaintiff's substantive due process rights under the United States and Georgia Constitutions.

COUNT IV
UNCONSTITUTIONAL TAKING OF PROPERTY

54.

Plaintiff re-alleges and incorporates by reference herein the allegations set forth in the foregoing paragraphs.

55.

Georgia courts have long held as almost sacred the concept of individual property rights. The State may not dictate control and limit the use of private property without compensating the owners of that property. *State Highway Dept. v. Branch*, 222 Ga. 770, 152 S.E.2d 372 (1966).

56.

Plaintiff's interest in his Wild Animal License, and the full use and enjoyment of his property with his Cats, are cognizable property interests that he has enjoyed for 32 years.

57.

DNR's arbitrary and capricious withholding of Plaintiff's routinely granted Wild Animal License is a taking of vested property in violations of the United States Constitution and Georgia Constitution.

COUNT V
VIOLATION OF SUBSTANTIVE DUE PROCESS
BY DNR AND CITY OF ATLANTA OFFICIALS

58.

Plaintiff re-alleges and incorporates by reference herein the allegations set forth in the foregoing paragraphs.

59.

The substantive component of due process prevents government officials from abusing their power or employing it as an instrument of oppression.

60.

Despite his 26-year history, the City prosecuted Plaintiff for violation of city ordinances of which the City knew that Plaintiff was not in violation.

61.

DNR arbitrarily denied Plaintiff's Wild Animal License after granting it to him for 26 consecutive years.

62.

Defendants' above-described actions are arbitrary, capricious, and irrational and violate Plaintiff's substantive due process rights protected by the United States Constitution and Georgia Constitution.

COUNT VI
BILL OF ATTAINDER/EX POST FACTO

63.

Plaintiff re-alleges and incorporates by reference herein the allegations set forth in the foregoing paragraphs.

64.

Defendants have changed their respective licensing requirements, which subject Plaintiff to criminal punishment, 26 years after Plaintiff first brought Cats onto his properties.

65.

Defendants' retroactive interpretation and criminal punishment violate the Bill of Attainder and Ex Post Facto Clause of the United States Constitution and Georgia Constitution.

COUNT VI
EQUITABLE ESTOPPEL, LACHES AND WAIVER

66.

Plaintiff re-alleges and incorporates by reference herein the allegations set forth in the foregoing paragraphs.

67.

The City allowed Plaintiff to raise his Cats for 26 years without interference.

68.

DNR granted and renewed Plaintiff's Wild Animal License for years without incident..

69.

Plaintiff reasonably and detrimentally relied on Defendants' actions described above.

70.

Defendants are precluded from changing their positions by prosecuting Plaintiff for alleged ordinance violations or denying Plaintiff's Wild Animal License by equitable principles of estoppel, laches and waiver.

PRAYER FOR RELIEF

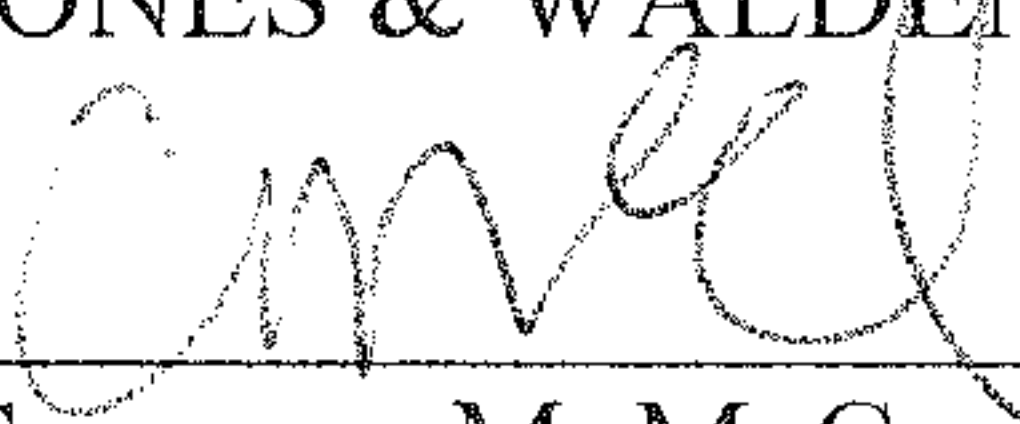
WHEREFORE, Plaintiff respectfully prays that this Court:

- 1) Issue a declaratory judgment that the statute and regulations in question violate the rights secured to the Plaintiff by the United States Constitution;
- 2) Issue a declaratory judgment that the statute and regulations in question violate the

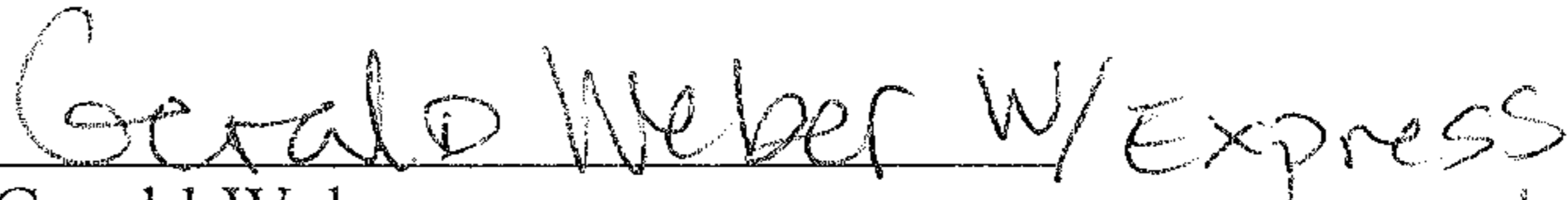
- rights secured to the Plaintiff by the Georgia Constitution;
- 3) Issue an injunction against enforcement of the statute and regulations in question;
 - 4) Grant reasonable attorneys' fees and costs as may be deemed appropriate and as authorized by the provision of 42 U.S.C. § 1988 and state law;
 - 5) Award Plaintiff actual, nominal, and compensatory damages against the City of Atlanta for its policies, practices and enforcement thereof; and
 - 6) Grant Plaintiff such other general and equitable relief as the court may deem just and appropriate.

Respectfully submitted this 6th day of July, 2009

JONES & WALDEN, LLC


Cameron M. McCord
Georgia Bar No. 143065
Paul Owens
Georgia Bar No. 632130
Staci L. Close
Georgia Bar No. 129340
21 Eighth St, N.E.
Atlanta, Georgia 30309
(404) 564-9300
Fax (404) 564-9301
Attorneys for Plaintiff

THE LAW OFFICES OF GERALD WEBER


Gerald Weber
Georgia Bar No. 744878
Post Office Box 5391
Atlanta, Georgia 31107
(404) 522-0507
Attorneys for Plaintiff

permission by CMM

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ALFRED M. BOYAJIAN,

Plaintiff,

v.

NOEL HOLCOMB, in his official capacity
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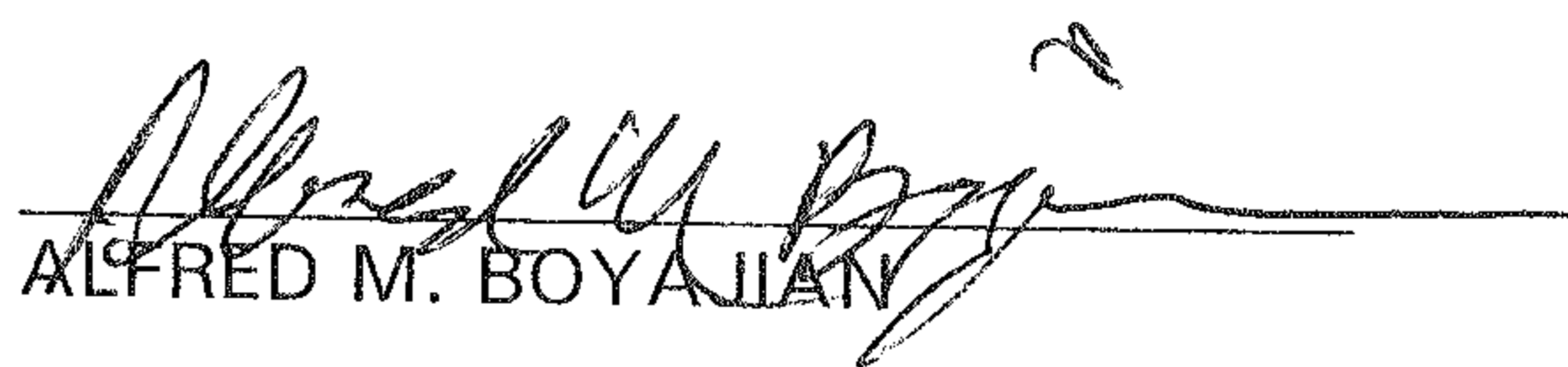
CIVIL ACTION

FILE NO. _____

VERIFICATION

COMES NOW Alfred M. Boyajian under penalty of perjury, and states that
the facts and allegations contained in the "VERIFIED COMPLAINT" are true and
correct.

This 6th day of July, 2009.


ALFRED M. BOYAJIAN

Sworn to and subscribed before me
this _____ day of _____, 2009.

Notary Public _____
My Commission Expires: 7-9-2010

