

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

:SS

COUNTY OF ZIEBACH)

FOURTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )  
Plaintiff, )

vs. )

ORDER FOR IMPOUNDMENT

KAREN SUSSMAN AND THE )  
INTERNATIONAL SOCIETY FOR )  
THE PROTECTION OF MUSTANGS )  
AND BURROS, )  
Defendant. )

\* \* \* \* \*

This matter having com on before this Court upon the Joint Motion from the Dewey County States Attorney, Steven Aberle, and the Ziebach County States Attorney, Cheryl Laurenz-Bogue; the State appearing by and through Steven Aberle and Cheryl Laurenz-Bogue; the Defendants appearing by its President, Karen Sussman, individually and in her official capacity as President of the ISMPB; a Stipulation for voluntary impoundment of all mustangs, burros and other horses belonging to the Defendants having been filed herein; the parties having waived further notice in these proceedings and having voluntarily agreed to the immediate impoundment of all mustangs, burros and other horses located on the property located in Dewey and Ziebach Counties currently under the control of Defendant; the Court having reviewed the Stipulation on file herein with attached WELFARE INVESTIGATION REPORT of Dr. Marc Hammrich, DMV, of the South Dakota Animal Industry Board, dated September 15, 2016, and the court finding good cause for the immediate impoundment of all mustangs, burros and horses belonging to Defendant, does hereby make and enter the following Order.

It is hereby Ordered that all live mustangs, burros and horses owned by Defendant, ISMPB and Karen Sussman, located in Dewey and Ziebach Counties, shall be immediately impounded and properly cared for by the Dewey County and Ziebach County Sheriffs or their designees pursuant to SDCL 40-1-5.

That the Dewey County and Ziebach County Sheriffs shall purchase sufficient feed for said animals and shall employ any and all persons and equipment they determine necessary for the care for said animals consistent with the Stipulation on file herein.

That all expenses of such impoundment and care shall remain a lien upon said animals pursuant to SDCL 40-1 to be paid before said animals can be lawfully recovered.

That the Stipulation on file herein, dated October 7, 2016, is approved in its entirety and all the terms and conditions contained therein and time frames set forth therein are made part of this Order by reference.

That all enforcement actions agreed to by the Parties in said Stipulation are approved as part of this Order.

① That this Order is shall not be considered to be an Order evicting Defendant for the premises under its control or from ~~assisting Defendant from~~ viewing said animals or assisting the State Veterinarian in sorting said animals or providing supplemental care, feed or shelter to said animals in addition to the care, feed and shelter provided by the Sheriffs for Dewey and Ziebach Counties.

Dated this 11 day of October, 2016.

By the Court,

  
\_\_\_\_\_  
Judge

Attest:

  
\_\_\_\_\_  
Clerk



**FILED**

OCT 11 2016

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By \_\_\_\_\_

STATE OF SOUTH DAKOTA )  
 )  
 ) ss.  
 )  
COUNTY OF ZIEBACH )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

<p>STATE OF SOUTH DAKOTA Plaintiff,</p> <p>v.</p> <p>KAREN SUSSMAN AND THE INTERNATIONAL SOCIETY FOR THE PROTECTION OF MUSTANGS AND BURROS, Defendants.</p>	<p>CERTIFICATE OF SERVICE</p>
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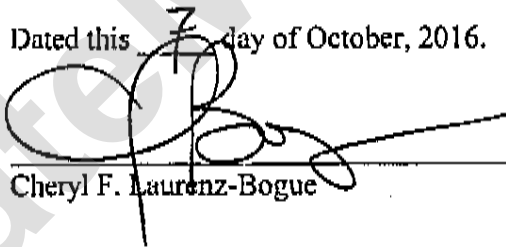
I, the undersigned counsel, hereby certifies and states that I served a true and complete copy upon the Defendants at their addresses of record, by depositing the same in the US Mail, 1<sup>st</sup> class postage prepaid, on the below listed date and the email address as listed:

Karen Sussman

International Society for the Protection  
of Mustangs and Burros

and at their email address:

Dated this 7 day of October, 2016.

  
Cheryl F. Laurenz-Bogue

**FILED**

OCT 11 2016

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By \_\_\_\_\_

STATE OF SOUTH DAKOTA )  
 )  
COUNTY OF ZIEBACH )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

<p>STATE OF SOUTH DAKOTA Plaintiff,</p> <p>v.</p> <p>KAREN SUSSMAN AND THE INTERNATIONAL SOCIETY FOR THE PROTECTION OF MUSTANGS AND BURROS, Defendants.</p>	<p>JOINT MOTION FOR VOLUNTARY IMPOUNDMENT 67 CRE 16700016</p>
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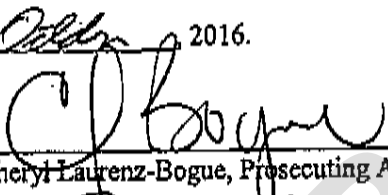
Comes now, the State of South Dakota, by and through Steven Aberle, Dewey County States Attorney and Cheryl Laurenz-Bogue, Ziebach County States Attorney, and based upon the Written Stipulation of the State and the Defendants as filed and pursuant to the provisions of SDCL Chapter 40-1 and administrative rules promulgated in connection therewith, moves the Court for an Order as follows:


1. Authorizing and directing the Dewey County and Ziebach County Sheriffs or their designees to immediately impound 600-800 head of horses owned by the Defendant Karen Sussman and the International Society for the Protection of Mustangs and Burros, and to hold said animals for a period of at least two weeks or until such time as either a comprehensive management plan is established or until a hearing can be held in this matter;
2. Authorizing and directing the Dewey County and Ziebach County Sheriffs or their designees, pursuant to the ordered impoundment and SDCL 40-1-5, to purchase sufficient feed for said animals and to employ any and all persons and equipment the Dewey

County or Ziebach County Sheriffs or their designees determine to be necessary to property care for said animals; and

3. Providing that this matter be brought on for hearing on motion of any of the parties.

Dated this 7<sup>th</sup> day of October, 2016.

  
Cheryl Laurenz-Bogue, Prosecuting Attorney

  
Steven Aberle, Prosecuting Attorney

**FILED**

OCT 11 2016

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By \_\_\_\_\_

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

:SS

COUNTY OF ZIEBACH)

FOURTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )  
Plaintiff, )

vs. )

STIPULATION

KAREN SUSSMAN AND THE )  
INTERNATIONAL SOCIETY FOR )  
THE PROTECTION OF MUSTANGS )  
AND BURROS, )  
Defendant. )

\* \* \* \* \*

This Stipulation is entered into this 7<sup>th</sup> day of October, 2016, by and between Dewey County and Ziebach County, hereinafter referred to as the "Plaintiffs" or "Counties", and the International Society for the Protection of Mustangs and Burros, hereinafter referred to as the "Defendant" or "ISPMB", witnesseth:

RECITALS

Dewey County and Ziebach County are duly organized Counties located in North-central, South Dakota. That Steven Aberle is the duly elected and acting States Attorney for Dewey County and Cheryl Laurenz-Bogue is the Duly elected and acting States Attorney for Ziebach County.

The ISPMB is a non-profit corporation dedicated to the preservation of Mustangs, Burros and horses with a corporate office located in Dewey County, South Dakota, and which maintains several herds of mustangs, burros and horses in the adjoining Counties. That Karen Sussman is the President of the ISPMB and has had the opportunity to consult with legal counsel for the ISPMB.

That the number of mustangs, burros and horses located in the counties is in excess of 500.

That there have been times during the months of July, August and September, 2016, when the ISPMB has been unable to and has failed to provide sufficient feed or care generally considered to be standard and accepted for said animals' health

and well-being consistent with the species, breed, physical condition and type of said animals, in violation of SDCL 40-1-1 to SDCL 40-1-40. Attached hereto and incorporated by reference is the ANIMAL WELFARE INVESTIGATION REPORT of Dr. Marc Hammrich, DVM, of the South Dakota Animal Industry Board, dated September 15, 2016.

That pursuant to Chapter 40-1 of the South Dakota Code, the ISPMB hereby stipulates to the voluntary impoundment of its entire mustang, burro and horse herds by the Counties effective October 11, 2016, without further notice or proceeding, which are specifically waived by the Counties and the ISPMB.

That it is further stipulated and agreed by the parties that all of the terms and conditions of this stipulation shall be approved in an Order for Impoundment by this Court in these proceedings.

#### LOCATION FOR IMPOUNDMENT AND VENUE

That the parties have agreed that it will be more efficient for the consolidated impoundment of said animals under the combined management and control of the Counties rather than as separate impoundments in the adjoining jurisdictions. Further, that said impoundment shall be conducted at the ISPMB's current ranch locations in Dewey and Ziebach Counties.

That the parties further stipulate and agree that all proceedings in this matter shall be venued in Circuit Court in Ziebach County.

#### IMMEDIATE INSPECTION AND CARE

Upon the entry of the Order for Impoundment pursuant to this stipulation, all animals covered by the Order shall be inspected and evaluated by a Veterinarian from the Animal Industry Board assigned to complete the inspection and evaluation. This inspection and evaluation is for the purpose of dividing the animals into three separate categories.

The first category shall be those animals which are deemed by the veterinarian to be in a physical condition such that the animals should be capable of surviving the upcoming winter without any extraordinary care or treatment without suffering if they are provided such feed and supplements as are customarily provided for such animal's health and well-being consistent with

the species, breed and type of animal. These animals shall be kept and maintained in their respective herds pursuant to Chapter 40-1 of the South Dakota Code.

The second category shall be animals that are deemed by the veterinarian to be in a physical condition such that the animals should reasonably be provided additional feed, supplements or care so as to bring said animals back to a physical condition that they are capable of surviving the upcoming winter without suffering. These animals shall be separated from their respective herds for the purpose of receiving additional feed, supplements or care that may allow said animals to be returned to their respective herds or offered for sale or adoption.

The third category shall be animals that are deemed by the veterinarian to be in a physical condition that they are unlikely to survive the upcoming winter without suffering, even with additional feed, supplements or care, due to their age, injuries, sickness, or other physical conditions. These animals shall be removed from their respective herds to be euthanized in a humane manner consistent with the guidelines of the American Veterinary Medical Association.

#### RETURN OF ANIMALS TO ISPMB OR OTHER DISPOSITION OF ANIMALS

It is understood between the parties that the ISPMB may seek the return of some or all of the animals to be impounded under the conditions set forth below.

If the ISPMB seeks the return of any or all of the animals to be impounded, it shall complete a comprehensive management plan by no later than October 21, 2016, to include the following:

1. A comprehensive financial plan for a period of eighteen months commencing November 1, 2016, setting forth projected income available for feeding, care and maintenance and detailed expenses for all aspects of the feeding, care and maintenance of the animals the ISPMB desires to have returned to its care, maintenance and control.
2. A detailed summary of the type and amount of feed and supplements and source for the feed and supplements the ISPMB can reasonably expect to be required throughout its operations during the eighteen months.



3. A detailed summary of the manner in which the feed and supplements will be delivered to the animals.

4. A comprehensive veterinary plan for the provision of medical care to the animals for sickness, injury and general maintenance of herd health.

5. A description of all structures and facilities available for protection of the animals from the elements where the animals will be located throughout each year and a specific explanation as to how said structures and facilities will be sufficient to provide adequate protection from the elements throughout the entire year.

6. A specific end of life plan for identifying animals that are in a physical condition such that they are likely to suffer due to age, injuries, sickness or other physical condition and how said animals will be humanely euthanized and disposed of.

This plan must be approved by the South Dakota Animal Industry Board and the States Attorneys of the Counties. In the event of a disagreement as to the adequacy of said plan, the adequacy of the plan shall be determined by the Court.

The return of some or all animals to the ISPMB shall be conditioned upon proof of adequate funds and/or feed on hand to meet all financial obligations reasonably anticipated for the eighteen-month time period commencing November 1, 2016. Financial obligations shall also include complete reimbursement to the Counties for any and all expenses incurred or related to the impoundment of the animals of the ISPMB or these proceedings.

Proof of adequate funds and/or feed shall not include grants that have not been approved, potential donations that have not been received or any condition or contingency that may result in the lack of sufficient funds and/or feed to carry out the operations of the ISPMB in the counties. Such proof of adequate funds and/or feed must be provided to the States Attorneys for the Counties by no later than November 11, 2016.

As a further condition of the return of any or all of the animals to the ISPMB, all the funds shall be subject to being monitored by the Counties, including access to all banking and financial records relating to the implementation of the comprehensive management plan. Such funds shall be kept in an

account belonging to the ISPMB, but will also require the signature of a person designated by the Counties for disbursements or withdrawal of funds by the ISPMB.

#### DEFAULT PROTECTIONS

The parties to this agreement know, understand and acknowledge that winter conditions in South Dakota can be extremely harsh and difficult for animals in North-central South Dakota, beginning as early as November and December. Further, that the Counties do not have the expertise, manpower facilities or resources for long-term care and management of a herd of mustangs, burros and horses during prolonged winter conditions. Therefore, the parties agree as follows:

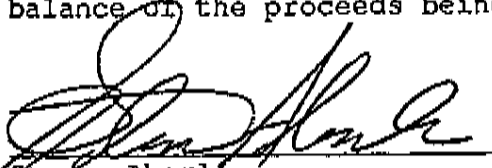
That if the ISPMB has not completed an approved comprehensive management plan and provided proof of adequate funds and/or feed on hand, as provided above, by November 11, 2016, the following actions will be approved by the Court without further proceedings or hearings.

First, upon payment to the Counties of all expenses relating to impoundment, to the extent the ISPMB has provided proof of sufficient funds and/or feed on hand for eighteen months and has an approved management plan, care for and control of mustangs, burros and horses will be returned to the ISPMB. In the event there are insufficient funds and/or feed on hand or there are deficiencies in the ISPMB's approved management plan, a number of mustangs, burros and horses for which there are sufficient funds and/or feed on hand for eighteen months and for which there is an approved management plan shall be returned to the ISPMB for care and control. To the extent that only part of the herd will be returned to the ISPMB, the ISPMB will be allowed to designate which herd(s), bloodline(s), or mustangs, burros or horses will be returned to the care, custody and control of the ISPMB.

Next, upon payment to the counties of all expenses relating to impoundment, to the extent that there are insufficient funds and/feed on hand for eighteen months or an approved management plan is not available for certain animals, there will be time allowed for adoption or transfer of said mustangs, burros and horses by other preservation organizations or individuals that have sufficient resources for preservation of said animals. Due to the relatively short time being provided for adoption between November 11, 2016, and December 1, 2016, it will be necessary

for the ISPMB to plan ahead for adoption in the event that some or all of the animals impounded may not be returned. Nothing contained in this agreement or the Order for Impoundment shall prohibit the ISMPB from adopting out mustangs, burros and horses to suitable parties to reduce the size of its herd during the course of the impoundment. Any adoption of more than twenty animals or combined adoptions of more than one-third of the herd must be agreed to by the counties.

Finally, any mustangs, burros or horses not returned to the ISPMB or adopted or transferred by December 1, 2016, shall be sold at public auction at a time and place designated by the Counties, with the proceeds from the sale being paid first to the counties to cover the expenses of impoundment, and then the balance of the proceeds being paid to the ISPMB.

  
Steven Aberle  
Dewey County State's Attorney  
PO Box 236  
Timber Lake, SD 57656

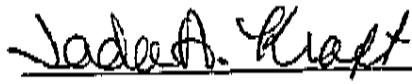
STATE OF SOUTH DAKOTA)

:SS

COUNTY OF DEWEY )

On this the 7<sup>th</sup> day of October, 2016, before me, the undersigned officer, personally appeared Steven Aberle, Dewey County State's Attorney, and he acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 2-1-21





Cheryl Laurenz-Bogue  
Ziebach County State's Attorney  
Ziebach County Courthouse  
Dupree, SD 57623

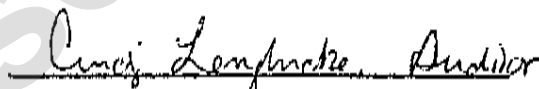
STATE OF SOUTH DAKOTA)

: SS

COUNTY OF ZIEBACH)

On this the 7th day of October, 2016, before me, the undersigned officer, personally appeared Cheryl Laurenz-Bogue, County State's Attorney, and she acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota



My Commission Expires: N/A

**FILED**

OCT 11 2016

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By \_\_\_\_\_

Karen Sussman  
Karen Sussman

ISPMB  
By: Karen Sussman

Its: President  
President

STATE OF SOUTH DAKOTA)

:SS

COUNTY OF ZIEBACH)

On this the 14 day of October, 2016, before me, the undersigned officer, personally appeared Karen Sussman, known to me or satisfactorily proven to be the person whose name is subscribed to the above and foregoing stipulation in her individual capacity and in her capacity as President of the ISPMB and acknowledged that she had the authority to execute the above and foregoing stipulation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Cindi Longbrake, Auditor  
Notary Public, South Dakota



**FILED**

OCT 11 2016

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
CIRCUIT CLERK OF COURT



**SD ANIMAL INDUSTRY BOARD**

411 South Fort Street  
Pierre, South Dakota 57501-4503  
Phone: (605) 773-3321  
Fax: (605) 773-5459

**ANIMAL WELFARE INVESTIGATION REPORT**

Case # 20160908

Date of Complaint: 9/8/2016 Complaint Rec'd By: Reenders Time Rec'd: 1:27pm

Complaint Filed By: Name: \_\_\_\_\_  
Address: PO Box 492, Dupree, SD 57623  
Phone Number: \_\_\_\_\_

Accused Party: Name: Karen Sussman (ISPMB)  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

Location: About 7 miles east of Dupree south side of Hwy 212  
Species: Equine

Nature of Complaint: Inadequate feed. Horses have had no hay for 1 month and many are thin.

Assigned To: AIB Agent Name: Dr. Marc Hammrich

Date & Time Assigned: 9/8/2016 Phone Number: \_\_\_\_\_

County Sheriff: Name Dewey - Les Mayor Phone Number: \_\_\_\_\_

Findings & Actions Taken:

9/14/16 Sheriff Mayor and I, Dr. Marc Hammrich, arrived at approximately 11:00 am for an unannounced inspection of the facilities. We immediately contacted Karen Sussman at her residence and informed her of the complaint of inadequate feed and no hay at the facility. Ms. Sussman acknowledged that they were having problems with donations and were struggling, but she said that the horses were getting fed. Karen agreed to show us around the premises.

Large group east of house - 150 + head in a drylot pen. Immediately apparent was the lack of feed in the pen and the majority of the horses nosing through the dried manure looking for remaining hay to eat from the last feeding which was scant to non-existent. Several horses had excessively long hooves in need of trimming. A quick survey of this group showed a number of very thin and thin animals (Body Condition Score 2/3) that were in need of additional care. (Using the Heineke Body Condition Score scale, horses are scored from 1 to 9 with a score of 1 being emaciated and a score of 9 being morbidly obese.) One very thin, weak foal had a difficult time standing. Karen said that

**FILED**

OCT 11 2016

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By \_\_\_\_\_

the foal had been grafted onto another mare but she agreed that it needed additional care soon. Ms. Sussman pointed out that last year's manure had been removed from the pens since my last visit in March. Another concern for this group is that the numbers in this "herd" continue to grow by natural breeding but space is limited and is not being adjusted accordingly.

"Katnip" group north of road - this similar sized group of horses was also without feed and many appeared very hungry as well searching the ground for feed and in some cases eating manure. Also observed were a number of thin/very thin horses in the group. Many of this year's foals have rough hair coats and appear thin and poor-doing. Several horses again were identified with long hooves in need of trimming. The pasture ground they are kept in is near black from overgrazing and lack of rain. Drinking water is adequate. The tree line in the pasture appears mostly dead from overuse of the area and provides minimal shelter from the elements.

"White Sands" group south of the buildings - reportedly a larger group of horses (approx. 200) kept in a small pasture. On inspection, the horses were eating on approximately 2 large round bales of alfalfa/grass hay that had been rolled out for them this morning. Many more animals in this group are thin/very thin with 4 identified as emaciated (BCS 1) on the walk through. The horses were crowding the water tank which does not appear to be of sufficient size or working condition to handle the demand for peak usage for the group.

"Gila" group a couple miles south of premises - the grass in this pasture had been grazed down severely and was also home to a very large prairie dog town. No supplemental feed was present and the horses were constantly moving in search of grass. The body condition of the horses in this group was better than the previous groups but still had several in the 2/3 range. One decomposed adult horse carcass was observed as well as one adult male with a penile injury that had not received adequate veterinary care. Karen said that they normally began supplementing this herd around Sept. 1st, but this had not been started yet. Also observed was a burial pit that contained 25 + carcasses. These were in various stages of decomposition reportedly accumulating over the last several years with some newer carcasses present (4-5 hd). Proper carcass disposal methods were not being followed and Ms. Sussman was advised of this.

Also observed during the inspection were several smaller groups of horses (5-20 hd) that had been sorted from the other herds in the past because of injuries, social problems, and/or for adoption purposes. These groups had adequate feed, water, and shelter. Some contained thinner horses that had been sorted for extra feeding. Several also had long hooves that needed attention. A hospital pen was maintained in the barn with horses receiving grain and extra shelter.

Overall, a large number of horses were observed in a short period of time and it was impossible to get an exact number and body condition of each individual animal on this visit. However, the overall condition of the herd has declined significantly since my last visit in March. Many healthy, well-conditioned animals observed in March are now in the very thin to thin category, with most of those being present in the "White Sands" herd. It appears that overall 10% or more of the observed horses in the larger herds are body condition score 1-3 (emaciated to thin) and are at risk for not surviving the winter season as currently managed. Only 2 large round extra bales of feed were present upon arrival. Karen had procured enough feed for the day's needs but she reported at that point, she did not have funds to purchase tomorrow's feed let alone future needs. She was confident that funds would be available for tomorrow's hay. Based on the decline of body condition of many in the herd, it appears that inadequate feed was available

frequently in the recent past. Thin horses were not being pulled from the herds in sufficient numbers for needed extra care and supplementation.

According to SDCL 40-1-2.3, neglect is defined as the failure to provide food, water, protection from the elements, adequate sanitation, adequate facilities or care generally considered to be standard and accepted for an animal's health and well being ... Many criteria of neglect have been identified. As reported earlier, adequate feed does not appear to have been available in the past and assurances for the future are in doubt. A prudent owner would put in hay reserves in anticipation of the winter season, but funds apparently are not available to do this at this time. Weather events can and do occur frequently in the early winter months which would prevent all feed delivery options and that could result in a critical situation and jeopardize the well-being of the entire herd. Hay procurement needs to be completed immediately. Many animals are not receiving adequate hoof care. Ownership does not appear to have the means, money, labor, and facilities to support and manage a population of animals this size and does not appear to have adequate plans to assure the future of this herd. Based on my findings as outlined in this report, it is my determination that animal neglect is present at this facility.

Before leaving the site, Sheriff Mayor agreed to stop back daily at the facility to confirm that feed was available for the horses until further arrangements were made.

- Neglect
- Inhumane
- Adequate

Signature: Marc A. Hammrich, DVM

Date: 9/15/16

FOR SDAIB OFFICE USE ONLY:

Date Case Closed: \_\_\_\_\_