

1 MICHAEL ROTSTEN, SBN 45861
16133 Ventura Boulevard
2 Suite 700
Encino, CA 91436-2431
3 818)789-0256

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5 Attorney for Petitioner,
STEPHEN WILLIAMS
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

11	STEPHEN WILLIAMS,)	CASE NO.
12	Petitioner,)	
13	v.)	PETITION FOR WRIT OF
14)	ADMINISTRATIVE MANDAMUS;
15	ORANGE COUNTY ANIMAL CONTROL)	TEMPORARY RESTRAINING ORDER;
16	Respondent.)	PRELIMINARY AND PERMANENT
17)	INJUNCTION
18)	Code Civ. Proc. §1094.5

19 PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS

20 To The Above Court:

21 Petitioner, STEPHEN WILLIAMS, petition this Court for a Writ
22 of Mandate under Code of Civil Procedure Section 1094.5, directed
23 to Respondent ORANGE COUNTY ANIMAL CONTROL, and also seek
24 attorney fees pursuant to Government Code Section 800, and by
25 this verified petition allege as follows:

26 1. Petitioner, at all times mentioned in this petition, was
27 a resident of the City of Yorba Linda, County of Orange,
28 California, and has been and is the owner of a Bullmastiff dog

1 "Boo" (hereinafter "Boo").

2 2. At all times mentioned in this petition, Respondent,
3 ORANGE COUNTY ANIMAL CONTROL (hereinafter "OCAC") has been and is
4 now the agency charged with administering the provisions of
5 Article 6 Sections 4-1-23 and 4-1-95 of the Orange County
6 Codified Ordinance. (A true copy of the County Code Sections are
7 attached hereto as Exhibit "1".)

8 3. On or about December 30, 1995, a bite report involving
9 Boo was filed with Respondent, claiming a bite took place on
10 December 26, 1995.

11 4. On or about January 12, 1996, OCAC sent Petitioner a
12 notice advising him of their summary decision that Boo was
13 vicious and ordered that the dog be destroyed.

14 5. On or about January 26, 1996 a hearing was begun before
15 Judy Maitlen, Director of OCAC, in the County of Orange, at the
16 Administrative Offices of OCAC.

17 6. At said hearing, OCAC presented no complaining witness,
18 no witnesses, and introduced no evidence.

19 7. Prior to the hearing OCAC the Petitioner had been
20 presented certain materials, including three purported medical
21 reports. None of said reports were certified records of any
22 doctor or medical facility. And none of the reports confirmed
23 that the complaining witness's injuries were dog bites.

24 8. At the hearing, Petitioner testified that there has
25 never been any problems with Boo biting in the past. That on one
26 previous occasion complainants Labrador Retriever came upon
27 Petitioner's yard and got into a dog fight with Boo. Thereafter,
28 Boo barks at the complainant, Zack, and his family when they walk

1 the dog by his fence. That on date of the incident, none of the
2 witnesses testified that they Boo biting the complainant. That he
3 saw the complainant on the ground, pinned by Boo, and commanded
4 Boo off. At that time, Boo retrieved and went about the yard.
5 Further, Petitioner offered photographs to show that there are
6 several objects in the area where the incident occurred which
7 could have caused Zack's injuries upon being knocked down by Boo.

8 9. At the hearing Petitioner's son, Justin Williams
9 testified that the Zack was afraid of Boo, because Boo barked at
10 him whenever he walked his dog past their fence. Further, that
11 both Zack's parents and his parents told the Zack to stay out of
12 the backyard, because they knew Zack was afraid of Boo. That
13 Justin and his cousin was walking into the house through the open
14 garage, but that Zack was supposed to go through the front door,
15 because the entranceway through the garage opens to a patio and
16 the backyard, and he was not supposed to go into that area.
17 However, when Justin looked back, he saw the Zack coming from the
18 garage going into the patio area and saw Boo jump upon the Zack.
19 He testified that he saw the entire incident, saw Zack fall down
20 and did not see the dog bite him. That Zack was invited over to
21 play video games inside of the house and went in the backyard
22 where the incident occurred on his own accord.

23 10. At the hearing, Petitioner presented the testimony of
24 Sue Myles, an Animal Behaviorist. Ms. Myles testified that she
25 was familiar with the breed of Bullmastiff and of their
26 propensities. That this breed of dog was bred to pin down
27 intruders until their masters arrived, but not for the purpose of
28 attacking to inflict injury. That if this dog was attacking to

1 inflict injury, due to the dog's size and strength, Petitioner
2 would not have been able to retrieve him as easily as he did.
3 She testified that she was aware of the contentions alleged in
4 the case, she reviewed videotape of Boo's behavior, and
5 personally handled and worked with the Boo. She testified that
6 even if the injuries were dog bites, this type of reaction would
7 be predictable for any dog if there was an overreaction to the
8 dog's approach. Additionally, she reviewed photographs of the
9 alleged bite and could not state definitively that these injuries
10 were in fact dog bites. Her expert opinion was that Boo was not
11 a "dangerous" or "vicious" dog. She added that she thought the
12 dog was such a great dog, she would like to have it herself. (A
13 true copy of her Report and Curriculum Vitae and a description of
14 the breed of Bullmastiff are attached hereto as Exhibits "2" and
15 "3".)

16 11. At the hearing Petitioner presented the testimony of
17 Steven Dunbar, D.V.M. Dr. Dunbar testified that he has been
18 Boo's treating veterinarian for the dog's entire life and that he
19 has seen the dog no less than 23 times. He testified that he
20 never had to muzzle Boo, and that he has never had any problems
21 with Boo. Further, he stated that any dog has the propensity to
22 bite, given the circumstances of someone overreacting, and not be
23 dangerous. His opinion was that Boo was not a danger or a
24 threat.

25 12. Petitioner presented over twenty (20) character letters
26 from persons who have interacted with Boo, in support of the fact
27 that Boo is not vicious.

28 13. However, on or about February 8, 1996, OCAC sent their

1 opinion that Boo is "vicious" and ordered that Boo be destroyed
2 on February 15, 1996 at 8:00 a.m. (A true copy of the Order is
3 attached hereto as Exhibit "4".)

4 14. On February 14, 1996, Petitioner filed this Writ of
5 Administrative Mandate, Temporary Restraining Order, Preliminary
6 and Permanent Injunction.

7 15. Respondent's order, Exhibit 4, is invalid under Code of
8 Civil Procedure Section 1094.5 for the following reasons:

9 a. The Respondent failed to proceed in the manner required
10 by law in conducting Administrative Hearings and in violation of
11 Government Code section 11513(c), thereby depriving Petitioner of
12 Procedural Due Process.

13 b. The Respondent acted without Due Process of law.
14 Respondent committed a prejudicial abuse of discretion, in that
15 Respondent's decision was rendered without making any findings of
16 fact or law. There was insufficient evidence to determine that
17 Boo is a vicious dog. In striking contradiction, there was clear
18 evidence that Boo should not be determined as "vicious" pursuant
19 to Article 6, section 4-1-23(5), Orange County Code. Moreover,
20 there was no evidence to determine that Boo should be destroyed.

21 c. The Respondent found that Boo was "vicious" and ordered
22 him destroyed pursuant to Orange County Code, Article 6, sections
23 4-1-23 and 4-1-95. The Respondent does not have the authority to
24 order Boo killed under those provisions, as said provisions
25 conflict with and are preempted by the State's definition on this
26 subject matter as contained in Food and Agriculture Code Sections
27 31645, as well as lack standards, per se, to justify the
28 destruction of Boo.

1 d. The Respondent acted under Article 6, sections 4-1-23
2 and 4-1-95 of the Orange County Code, which ordinances are, as
3 applied to this case, unconstitutionally vague, uncertain and
4 allows for arbitrary, capricious and unreasonable government
5 conduct. The definition of "attack" or has not been designated
6 by any ordinance or regulation.

7 16. Notwithstanding Petitioner's objection, Respondent
8 intends on killing Boo on Thursday, February 15, 1996, at 8:00
9 a.m. and unless restrained by this court, will proceed with the
10 destruction thereof.

11 17. Pending is a claim against Petitioner for damages from
12 the herein incident. Such claim is in dispute and will in all
13 probability shortly proceed to litigation. Petitioner is a
14 person beneficially interested in the issuance of the Writ of
15 Administrative Mandamus, to preserve and prevent destruction of
16 evidence, for the impending case and to preserve his pet's life
17 from wrongful destruction.

18 18. Petitioner has performed all conditions precedent to
19 the filing of this petition.

20 19. Petitioner does not have a plain, speedy, and adequate
21 remedy in the ordinary course of law. The Orange County
22 Ordinances do not provide for any further remedies.

23 20. If Respondent does not preserve and is allowed to
24 destroy evidence, Petitioner will be irreparably injured in that
25 his (and his family's) right to the ownership and companionship
26 of their pet as well as any chance to defend himself in the civil
27 suit, will be destroyed. Furthermore, imposition of a stay is
28 not against the public interest in that Boo has been impounded

1 and is currently held in general population by Orange County
2 Animal Control, and has been since December, 1995.

3 21. Petitioner is personally obligated to pay his attorney
4 for attorney services to prosecute this action. Petitioner is
5 obligated to pay \$150.00 per hour plus costs. Petitioner is
6 entitled to recover attorneys' fees as provided in Government
7 Code section 800 if he prevails in the within action, on the
8 ground that Respondent's order was the result of arbitrary and
9 capricious.

10 WHEREFORE, Petitioner prays as follows:

11 1. That the Court issue a Peremptory Writ commanding
12 Respondent to preserve, maintain and not destroy the evidence, to
13 wit, the dog Boo, or show cause why it should not do so, and
14 thereafter issue a peremptory writ commanding respondent to
15 preserve, maintain, and not destroy the evidence, to wit, the
16 dog, for use in the above referenced civil claim;

17 2. For issuance of a Temporary Restraining Order,
18 Preliminary Injunction, and Permanent Injunction Restraining and
19 enjoining Respondent from destroying Petitioner's dog and
20 maintain the dog in good health;

21 3. That Petitioner recover his costs in this action,
22 including attorney fees pursuant to Government Code section 800;

23 4. For such other and further relief that the Court deems
24 just and proper.

25 Dated: February _____, 1996

26 _____
MICHAEL ROTSTEN
Attorney for Petitioner

