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**FILING FEE EXEMPT
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**Electronically FILED by
Superior Court of California,
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9/23/2024 6:12 PM
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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES – NORTH CENTRAL JUDICIAL DISTRICT

9
10 NELSON GRANDE and SYLVIA FRANO,) Case No.: 24STCP02675
11)
12) Petitioners,) **RESPONDENT CITY OF BURBANK’S**
13) v.) **BRIEF IN OPPOSITION TO PETITION**
14)) **FOR WRIT OF MANDATE**
15) CITY OF BURBANK and DOES 1 to 50,) *[Filed concurrently with Declaration of*
16) Inclusive,) *Rodolfo Aguado III]*
17) Respondents.) Assigned to the Hon. Stephen I. Goorvitch
18)) Stanley Mosk Courthouse, Department 82
19)) **HEARING**
20)) Date: TBD
21)) Time: TBD
22)) Res ID:
23)) Petition Filed: August 21, 2024

20 Respondent City of Burbank (“City”) hereby submits its Brief In Opposition To Petition
21 For Writ Of Mandate that was filed by Petitioners Nelson Grande and Sylvia Franco
22 (“Petitioners”).

23 **I. INTRODUCTION**

24 Petitioners’ Petition For Writ Of Mandate To Appeal The Order Of Administrative
25 Hearing (“Petition”) requests relief that is not permitted by law and must be denied. Pursuant to
26 Burbank Municipal Code (“BMC”) section 5-1-1605 and Food and Agriculture Code (“Food and
27 Ag. Code”) section 31622, after an administrative hearing to determine whether a dog is vicious,
28

1 an owner may appeal the administrative decision to the Superior Court and the Superior Court
2 may conduct a *de novo* review. The resulting decision by the Superior Court is final and
3 conclusive. BMC § 5-1-1605(C); Food and Ag. Code § 31624.

4 As an alternative to Petitioner’s improper request that this Court determine whether there
5 was an abuse of discretion and whether euthanasia is the only remedy available, the City
6 proposes that the Court conduct a *de novo* review as set forth in section 31622 and make a
7 determination that Petitioners’ dog, “Conan”, is vicious and must be surrendered to the City of
8 Burbank Animal Shelter within 30 days.

9 Additionally, the City requests that the Court set a hearing to make a determination
10 within ten working days of September 18, 2024 (the date that Respondent was first provided with
11 Petitioner’s filings), as prescribed by BMC section 5-1-1605(B) and Food and Ag. Code sections
12 31622(b) and 31621.

13 II. STATEMENT OF FACTS

14 A. Factual Background.

15 On January 14, 2024 at approximately 4:15 p.m., the Burbank Police Department
16 (“BPD”) contacted the City of Burbank Animal Shelter (“Animal Shelter”) and requested the
17 assistance of an Animal Control Officer (“ACO”) to document a dog bite incident that occurred
18 in the alleyway near [REDACTED], Burbank, California. Declaration of Rodolfo
19 Aguado III (“Aguado Decl.”), Ex. A (Declaration of Stacie Wood-Levin) (hereinafter simply
20 referred to as the “Wood-Levin Decl.”), ¶ 3. ACO Donald Capes was dispatched to the location.
21 *Ibid.* By the time ACO Capes reached the location, the victim of the dog bite incident, Deborah
22 Drissi, had already been transported to Providence St. Joseph Medical Center in Burbank. *Ibid.*
23 ACO Capes interviewed the owners of the dog involved in the incident, Sylvia Franco and
24 Nelson Grande. Franco and Grande informed ACO Capes that their dog was a gray five-year-old
25 male Pitbull/Labrador mix named “Conan” that was not registered in the City, but did have a
26 current rabies vaccine. *Ibid.* Franco confirmed that while she was talking to Drissi in the
27 alleyway, “Conan” came out of the gate at the back of the residence and bit Drissi’s arm. *Ibid.*

1 Franco also confirmed that she was not able to get “Conan” to release Drissi’s arm and that she
2 was the person who called 911. *Ibid.*

3 Based on the information Franco provided to ACO Capes, ACO Capes issued a written
4 warning to Franco for violation of Burbank Municipal Code sections 5-1-1001(a) Control of
5 Animal, 5-1-1102 Animal Causing Hazard, 5-1-507 Failure to Register Dog(s), 5-1-510 Failure
6 To Show Proof Of Current Rabies Vaccination, and 5-1-703 Shelters Must Be Secure. *Id.* at ¶ 4.

7 Later on January 14, 2024, ACO Capes spoke with Drissi after she received medical
8 treatment. *Id.* at ¶ 5. Drissi informed ACO Capes that as a result of the dog bites, she received
9 twenty-eight sutures, was referred to a specialist to examine nerve damage she had suffered, and
10 was unable to use her right hand. *Id.* at ¶ 5. Drissi added that neither Franco nor Grande
11 immediately attempted to help her, that “Conan” bit her arm for approximately three minutes,
12 and that neither Franco nor Grande were able to get “Conan” to release his bite on her arm. *Id.* at
13 ¶ 5.

14 ACO Capes’ investigation also revealed that the Animal Shelter’s records showed that in
15 August 2009, another dog that Franco owned at the time, “Guera” a Boxer mix, was involved in
16 a dog bit incident. *Id.* at ¶ 6.

17 As part of the investigation into the dog bite incident, the Animal Shelter received a copy
18 of the BPD Incident Report concerning the incident. *Id.* at ¶ 7. According to the BPD Incident
19 Report that was provided to the Animal Shelter, on January 14, 2024, BPD Officer Garner
20 responded to 1014 N. Pass Avenue regarding a dog bite investigation. *Id.* at ¶ 7. Per the Incident
21 Report, when Officer Garner interviewed Franco, she told him that she was talking to Drissi
22 when “Conan” approached Drissi, sniffed her, then suddenly bit her arm. Franco admitted that
23 neither her nor her husband could get “Conan” to release his hold on Drissi for a number of
24 minutes. *Id.* at ¶ 7. Officer Garner also reported that he interviewed Drissi at St. Joseph Medical
25 Center and that Drissi stated the attack by “Conan” was unprovoked and that “Conan” is always
26 barking and aggressive when she walks through that alley. *Id.* at ¶ 7.

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1 **B. Procedural History**

2 On or around July 2, 2024, Senior Animal Control Officer Stacie Wood-Levin submitted
3 a petition to Superintendent of the Animal Shelter, Brenda Castaneda, through her designee,
4 DataTicket, requesting that: 1) “Conan” be designated as vicious, that Franco be ordered to
5 surrender “Conan” to be euthanized, and 2) that Franco be prohibited from owning, possessing,
6 controlling, or having any custody of an animal for up to three years. Aguado Decl., ¶ 2; Wood-
7 Levin Decl. *generally*.

8 On the same date, July 2, 2024, the City served a Notice of Administrative Hearing to
9 Franco via U.S. Mail pursuant to BMC section 5-1-1603(G). Aguado Decl., ¶ 3 and Ex. B. The
10 Administrative Hearing was set for July 16, 2024 pursuant to BMC section 5-1-1603(C). *Id.*

11 On July 16, 2024, an Administrative Hearing was held to determine whether “Conan”
12 was vicious. Aguado Decl., ¶ 4 and Ex. C. The Hearing Officer, Brian Podolsky, heard testimony
13 from Petitioners, Sr. ACO Wood-Levin, and Drissi. Aguado Decl., Ex. C at pp. 2-3.

14 On July 18, 2024, the Hearing Officer issued an Administrative Hearing Decision and
15 Order (“Decision”) that ordered “Conan” to be relinquished to the Animal Shelter to be
16 euthanized and prohibited Petitioners from owning, possessing, controlling, or having any
17 custody of an animal for three years. Aguado Decl., Ex. C at p. 12.

18 On August 13, 2024, the Animal Shelter contacted Franco to arrange for the surrender of
19 “Conan”. At that time, the Animal Shelter was informed that the Superintendent’s designee,
20 DataTicket, had not provided notice of the Decision. Aguado Decl., ¶ 6. The Superintendent of
21 the Animal Shelter then sent a copy of the Decision to Petitioners via email. Aguado Decl., ¶ 6.

22 On August 14, 2024, Franco emailed the Animal Shelter and informed the
23 Superintendent, Castaneda, that she would appeal the Decision. Aguado Decl., ¶ 7.

24 On the same date, August 14, the Superintendent of the Animal Shelter then sent a copy
25 of the Decision to Petitioners via U.S. Mail, as required by BMC section 15-1-1603(G). Aguado
26 Decl., ¶ 8.

27 On September 9, 2024, Petitioners left a Proof of Service with the City Clerk. Aguado
28 Decl., ¶ 9.

1 On September 17, 2024, counsel for the City called counsel who were working with
2 Petitioners and who's firm had left the Proof of Service, and requested copies of Petitioners'
3 moving papers. Aguado Decl., ¶ 10.

4 On September 18, 2024, the City received copies of Petitioners' Petition. Aguado Decl., ¶
5 11.

6 III. LEGAL STANDARD

7 After an administrative hearing to determine whether a dog is vicious, an owner may
8 appeal the resulting administrative decision by filing an appeal with the Superior Court within
9 five days of receipt of the notice of the decision. BMC § 15-1-1605(A); *see* Food and Ag. Code §
10 31622(a). A hearing for the appeal shall be set within five and ten working days after service of
11 notice. BMC § 15-1-1605(B); *see* Food and Ag. Code sections 31622(b) and 31621. The court
12 hearing the appeal shall conduct a hearing *de novo* and make a determination as to whether the
13 dog is vicious based upon the evidence presented. BMC § 15-1-1605(B); *see* Food and Ag. Code
14 section 31622(b). The court may admit relevant evidence, limit discovery, and shorten the time
15 to produce records or witnesses. BMC § 15-1-1605(B); *see* Food and Ag. Code section 31622(b).
16 "The issue shall be decided upon the preponderance of the evidence." BMC § 5-1-1605(B); *see*
17 Food and Ag. Code section 31622(b).

18 A vicious dog is defined as one that, in an unprovoked aggressive manner, causes severe
19 injury to a human. BMC § 5-1-1602(B)(1); *see* Food and Ag. Code section 31603(a). "Severe
20 injury" is specifically defined in the context of a dog attack as an injury that results in muscle
21 tears or disfiguring lacerations, requires multiple sutures, or requires corrective or cosmetic
22 surgery. BMC § 5-1-1602(C); *see* Food and Ag. Code section 31604. Upon a determination that
23 a dog is vicious, the determining party may order the dog to be destroyed if it constitutes a
24 "significant threat to the public health, safety, and welfare." BMC § 5-1-1603(E)(4); *see* Food
25 and Ag. Code section 31645(a). The determining party may also make an order prohibiting the
26 dog's owner from "owning, possessing, controlling, or having custody of any animal for a period
27 of up to three years, when it is found, after proceedings set forth in this article, that ownership or
28

1 possession of an animal by that person would create a significant threat to the public health,
2 safety, and welfare.” BMC § 5-1-1603(E)(5); *see* Food and Ag. Code section 31646.

3 IV. ARGUMENT

4 A. Petitioners’ Petition Requests Relief That Is Not Permitted By Law.

5 The Burbank Municipal Code and state law permit the owner of a dog to appeal a
6 determination that a dog is vicious to the Superior Court for a *de novo* review. BMC § 15-1-
7 1605(B); *see* Food and Ag. Code section 31622(b). Petitioners seek a hearing to determine
8 whether it was an abuse of discretion to determine that their dog, “Conan” was vicious, and
9 whether euthanasia is only remedy available to adequately protect the public from their dog.
10 These remedies are not provided for in law and would apply incorrect standards to Petitioners’
11 appeal. Consequently, the relief Petitioners’ seek must be denied.

12 B. In The Alternative, The Court Should Conduct A *De Novo* Review And Make A 13 Determination That “Conan” Is Vicious And Must Be Euthanized, And That 14 Petitioners Should Be Prohibited From Owning Other Animals.

15 As explained above, an appeal of the City’s administrative process to determine whether a
16 dog is vicious entails a *de novo* review. The City proposes that this Court undertake such a
17 review and make a determination that Petitioners’ dog, “Conan”, is vicious and must be
18 euthanized.

19 The evidence clearly indicates that “Conan” is vicious within the definition set forth by
20 the Burbank Municipal Code and state law because, on January 14, 2024, he engaged in an
21 aggressive unprovoked attack on Drissi that resulted in significant lacerations, muscle tears, and
22 nerve damage. Wood-Levin Decl. at ¶¶ 3 and 5 and Ex. 4 (photos of Drissi’s injuries). The
23 injuries to Drissi were so severe that she required twenty-eight sutures and continues to suffer
24 nerve damage that prevents her from using her right hand. Wood-Levin Decl. at ¶ 5; Aguado
25 Decl., Ex. C at pp. 2-3. At the hearing, Petitioners admitted that the attack was, in fact,
26 unprovoked and that they were unable to get “Conan” to release his grip on Drissi’s arm for at
27 least three minutes. Aguado Decl., Ex. C at pp. 2-3. It is simply incontrovertible that “Conan” is
28 vicious within the meaning of the law.

1 The evidence also indicates that “Conan” would create a significant threat to the public
2 health, safety, and welfare if he is not euthanized. Petitioners’ admission that they did not secure
3 “Conan” immediately prior to the attack, and more distressingly, could not get him to release his
4 hold during the attack, indicate that “Conan” cannot be controlled or safely kept by Petitioners.
5 Aguado Decl., Ex. C at pp. 2-3. Unfortunately, “Conan” must be euthanized to ensure the safety
6 of the public.


7 Petitioners’ admitted repeated failures to control their dogs also warrants an order
8 prohibiting Petitioners from owning, possessing, controlling, or having any custody of an animal
9 for up to three years. The City’s records indicate that in 2009, Petitioners were the subject of a
10 different dog bite investigation involving a different dog. Wood-Levin Decl. at ¶ 6. Grande
11 confirmed that incident during in his testimony on July 16, 2024. Aguado Decl., Ex. C at p. 3. As
12 such, the City asserts that permitting Petitioners to own, possess, control, or have custody of
13 another animal would constitute a significant threat to the public health, safety, and welfare, and
14 must be prohibited as well.

15 **V. CONCLUSION**

16 Based on the foregoing, the City respectfully requests that the Court make an order:
17 designating “Conan” as vicious, requiring Petitioners to relinquish “Conan” to the Animal
18 Shelter within 30 days to be euthanized, and prohibiting Petitioners from owning, possessing,
19 controlling, or having any custody of an animal for three years.

20
21 DATED: September 23, 2024

22 Respectfully submitted,
23 City Attorney’s Office of the City of Burbank

24 By: 
25 _____
26 Rodolfo Aguado III
27 Assistant City Attorney
28 Attorney for Defendant
CITY OF BURBANK

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 years old and not a party to this action. My business address is 275 E. Olive Avenue, Burbank,
California 91502.

5 On September 23, 2024, I served the foregoing document described as:

- 6 1. RESPONDENT CITY OF BURBANK’S BRIEF IN OPPOSITION TO PETITION FOR
- 7 WRIT OF MANDATE, and
- 8 2. DECLARATION OF RODOLFO AGUADO IN SUPPORT OF RESPONDENT CITY
- 9 OF BURBANK’S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDATE

10 on the interested parties in this action as follows:

11 **[SEE ATTACHED SERVICE LIST]**

12 () **BY MAIL:** by placing () the original (x) a true copy of the document(s) listed above in
13 a sealed envelope(s) to the persons at the addresses listed in the attached Service List. I
14 deposited such envelope(s) in the mail at Burbank, California. The envelop(s) was/were
15 mailed with postage thereon fully prepaid. I am readily familiar with the firm’s practice
16 of collection and processing correspondence for mailing. Under that practice it would be
deposited with the U.S. Postal Service on that same day with postage thereon fully
prepaid at Burbank, California in the ordinary course of business. I am aware that on
motion of party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one (1) day after the date of deposit for mailing in affidavit.

17 (X) **BY OVERNIGHT MAIL:** by delivering the document(s) listed above in a sealed
18 envelope(s) designated by the express service carrier, with fees for delivery by the next
19 business day paid or provided for, addressed as per the attached Service List, to a facility
regularly maintained by the express service carrier or to an authorized courier or driver
authorized by the express service carrier to receive documents.

20 () **BY ELECTRONIC SERVICE:** by e-mailing the document(s) listed above to the parties
21 in this action using the email addresses identified on the attached Service List.

22 I certify and declare under penalty of perjury under the laws of the State of California that
23 the foregoing is true and correct. Executed on September 23, 2024, at Burbank, California.

24 
25 _____
26 Rodolfo Aguado III

**PROOF OF SERVICE
SERVICE LIST**

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Petitioners in Pro Per