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TOWN OF YUCCA VALLEY  
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7

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
JOSHUA TREE DISTRICT

JUN 27 2012

By Melissa Stewart  
Dep. Clerk

8 SUPERIOR COURT OF CALIFORNIA  
9 SAN BERNARDINO COUNTY, JOSHUA TREE COURTHOUSE  
10 UNLIMITED CIVIL JURISDICTION

11 JAMES LOVELL, the guardian of Dakota and ) Case No. CIVMS1200185  
Blaze, )  
12 ) Assigned for All Purposes To:  
Petitioner, ) Judge: Hon. Frank Gafkowski  
13 ) Dept: M4  
vs. )  
14 ) Filing Fees Exempt, Per Gov't Code § 6103  
TOWN OF YUCCA VALLEY, )  
15 ) NOTICE OF MOTION AND MOTION  
Respondent. ) TO DENY WRIT OF MANDATE;  
16 ) MEMORANDUM OF POINTS AND  
17 ) AUTHORITIES THEREOF  
18 ) [Filed concurrently with: Request for  
Judicial Notice]  
19 ) Date: July 20, 2012  
20 ) Time: 10:00 a.m.  
21 ) Dept: M4  
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NOTICE OF MOTION AND MOTION TO DENY WRIT OF MANDATE

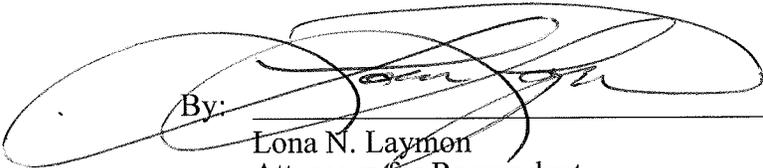
1 TO PETITIONER, IN PRO PER:

2 PLEASE TAKE NOTICE that on July 20, 2012, at 10:00 a.m., or as soon as thereafter as  
3 the matter may be heard, in Department M4 of the above-entitled court, Respondent Town of  
4 Yucca Valley will move this Court for an order denying the Petition for Writ of Administrative  
5 Mandamus & Traditional Writ filed by Petitioner James Lovell. This Motion is brought pursuant  
6 to California Code of Civil Procedure sections 1094 and 1094.5, upon the grounds that the writ of  
7 mandate sought by Petitioner cannot be granted as a matter of law and evidentiary standards of  
8 review applicable to the Administrative Record. Code of Civil Procedure section 1094 permits a  
9 writ to "be determined by the court by noticed motion of any party," whereby Respondent Town  
10 brings this Motion.

11 This Motion is based upon this Notice, the attached Memorandum of Points and  
12 Authorities, the Request for Judicial Notice ("RJN") filed herewith, and the Administrative  
13 Recorded lodged with this Court, and upon such further written and oral argument as evidence as  
14 may be submitted on or before the date of the hearing.

15 Dated: June 27, 2012

ALESHIRE & WYNDER, LLP  
LONA N. LAYMON  
CHRISTY MARIE LOPEZ

17  
18 By:  \_\_\_\_\_

Lona N. Laymon  
Attorneys for Respondent  
TOWN OF YUCCA VALLEY

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1 **I. INTRODUCTION**

2 By this Motion, Respondent Town of Yucca Valley ("Town" or "Respondent") requests this  
3 Court to deny the Petition for Writ of Administrative Mandamus & Traditional Writ ("Petition")  
4 sought by Petitioner James Lovell ("Petitioner"). This Motion is brought pursuant to Code of Civil  
5 Procedure section 1094, which permits a writ to "be determined by the court by noticed motion of  
6 any party." (Emph. added.) Even though Respondent is bringing the current motion, Petitioner  
7 maintains the burden of proof on all issues.

8 On February 8, 2012, Petitioner's two dogs rushed from his home and viciously attacked an  
9 83 year-old woman, knocking her to the ground and leaving her with multiple injuries—the victim  
10 suffered bruises and gashes along her arms and hips where she was knocked to the ground and  
11 puncture wounds where she was bitten at least six times along her legs. Petitioner's dogs were  
12 impounded and Petitioner was swiftly notified of an administrative hearing to determine whether  
13 the dogs qualified as "potentially dangerous" pursuant to the Town's Municipal Code. The animals  
14 remain in impound.

15 On February 28, 2012, an administrative hearing was held in which photographs and  
16 testimonial accounts demonstrating the unprovoked nature of the dog attack and the severity of the  
17 victim's injuries were presented to an administrative hearing officer. Petitioner was present in the  
18 company of several witnesses on his behalf and testimony was heard from all sides. After the  
19 hearing, the hearing officer rendered his decision, finding Petitioner's dogs to be "potentially  
20 dangerous" and imposing a number of conditions that had to be satisfied by Petitioner before the  
21 dogs could be returned to him. Petitioner has never met the conditions imposed by the  
22 administrative order and the dogs remain in impound to date.

23 Petitioner's attempt to completely ignore the bodily injury caused by his dogs—and his  
24 mischaracterization of the attack as "loving, playful" dogs merely "greeting an elderly woman"—  
25 equates to a flagrant misrepresentation of the record. (Petition, ¶¶ 1, 2.) The Administrative  
26 Record (herein cited as "YV" followed by page/line references) provides ample evidence  
27 supporting the hearing officer's decision to declare the dogs as "potentially dangerous" and  
28 demonstrates that the Town proceeded at all times in the manner required by law.

1 **II. FACTUAL BACKGROUND**

2 The Petition for Writ of Mandate asks this Court to overturn the Town’s February 28, 2012,  
3 administrative decision declaring as “potentially dangerous” Petitioner’s two dogs, “Dakota” and  
4 “Blaze”, pursuant to the Yucca Valley Municipal Chapter 10.02. (RJN, Item 1.)

5 **A. Procedural History.**

6 On February 8, 2012, Town Animal Control Services received a report of a dog bite  
7 incident at 7444 La Honda, Yucca Valley. (YV pp. 21 to 22.) Upon arrival, Animal Control  
8 discovered that 83 year-old Evelyn Chester had been bitten and knocked to the ground by Dakota  
9 and Blaze. (YV pp. 21 to 22, and pp. 39-42.) Petitioner identified himself as the dogs’ owner.  
10 (YV p. 42 lines 13-19 [page/lines citations hereinafter as “YV p. 42/13-19”].) Animal Control  
11 Officers interviewed witnesses, including Petitioner and the victim, (YV p. 40/6 to p. 44/14),  
12 quarantined the dogs for possible disease and impounded them (YV pp. 23-24), and later  
13 photographed the victim’s injuries (YV pp. 1-3, 7-19, and p. 42/13-19).

14 On February 14, 2012, Animal Control Officer Kim Casey visited Petitioner’s home to  
15 notify him that the Town was considering whether his dogs qualified as “potentially dangerous”  
16 under the Municipal Code; Officer Casey also provided Petitioner a copy of the Town’s Animal  
17 Regulations. (YV p. 44/15-22 and p. 25.) As part of her continuing investigation, Ms. Casey  
18 interviewed two additional eyewitnesses to the attack on Ms. Chester and took written statements  
19 from them. (YV 45/10-20.)

20 On February 16, 2012, at the conclusion of her investigation, Ms. Casey determined if was  
21 necessary to formally request a “potentially dangerous” dog hearing. (YV p. 26.) Written notice  
22 setting the Administrative Hearing was provided to Petitioner on February 17, 2012, with delivery  
23 both by personal delivery and certified mail. (YV pp. 27, 28, 29.)

24 The Administrative Hearing on February 28, 2012, was presided over by an independent  
25 hearing officer Mark S. Mahoney, who commenced the proceedings by identifying and swearing in  
26 the witnesses. (YV p. 35.) The victim, Ms. Chester, provided direct testimony describing the  
27 attack and her resulting injuries, including the state of fear and anxiety the incident has caused her.  
28 (YV p. 48/13 to p. 54/21.) Further direct eyewitness testimony of the attack was provided by

1 Shiry1 Mandeville. (YV p. 54/23 to p. 59/5.) Three written statements from eyewitnesses who saw  
2 the attack were provided. (YV pp. 30, 31, 32.) Finally, the Town presented several photographs of  
3 Ms. Chester’s injuries, which photographs were taken both on the day of the attack and then in  
4 more detail, approximately a week later. (YV pp. 1-3 and pp. 7-19, respectively [with pp. 17-19  
5 showing punctures through the victim’s clothing as a result of the dogs].)

6 Petitioner was present throughout the hearing and accompanied by several of his supporters.  
7 (YV p. 35/24 to p. 37/24.) Of these supporters, one submitted a written statement (YV p. 37/7-14  
8 and p. 33.) and one testified on behalf of Petitioner (YV p. 67/1 to p. 68/10). None of Petitioner’s  
9 supporters were actually present when Ms. Chester was attacked. Petitioner himself provided his  
10 own lengthy testimony. (YV p. 59/9 to p. 70/13.) In sum, Petitioner was provided a full  
11 opportunity to examine and question evidence and present evidence on his own behalf.

12 On March 6, 2012, the independent Hearing Officer, Judge Mahoney issued his Findings  
13 and Decision (the “Administrative Order”), finding that Dakota and Blazer qualified as “potentially  
14 dangerous” dogs. (YV pp. 79 to 82.) Public safety was the fundamental edict guiding the Hearing  
15 Officer’s factual findings and conclusions. Key factual findings were:

- 16 • That Ms. Chester did not provoke the dogs, rather both dogs came at her “from  
17 behind” to engage in a concerted attack against her.
- 18 • That Ms. Chester was “knocked down from behind and was bitten on her hips,  
19 buttocks, and ankles” with the dogs “on top of the victim, who was lying down.”
- 20 • That third parties had to intervene to “get the two dogs off the victim.”
- 21 • That the incident required Ms. Chester to receive “medical treatment” and left her  
22 bloodied with bite marks, punctures, bruises and continuing “emotional effects.”
- 23 • That the dogs exhibited “territorial behavior” and were repeatedly “running off  
24 leash” in the neighborhood.
- 25 • That a “human tragedy was narrowly averted.”

26 (YV pp. 79 to 80.)

27 Notwithstanding these powerful factual findings, the Administrative Order did *not* require  
28 euthanasia of Petitioner’s dogs—instead the determination simply imposed *conditions* that

1 Petitioner needed to meet before the dogs could be returned to him.<sup>1</sup> (YV pp. 80 to 82.) The  
2 conditions were related to public safety and legal compliance issues, such as:

- 3 • The dogs must be securely fenced and locked in a secure yard when unattended.
- 4 • When off-property, the dogs must be leashed and under control.
- 5 • The dog-owner must have the dogs covered by a policy of insurance.
- 6 • Licensing, registration, micro-chipping and other legal compliance for the dogs.
- 7 • Payment of “all expenses incurred by the Town of Yucca Valley, including fees for  
8 boarding, registration, and the micro-chip or tattooed markings.”

9 (YV pp. 80 to 82.) These conditions are consistent with the requirements of Municipal Code  
10 Section 10.02.120(b), which imposes specific conditions upon the keeping and ownership of a dog  
11 determined to be “potentially dangerous”. (RJN Item 1, § 10.02.120(b).) In fact, the conditions  
12 imposed by the Administrative Order mirror the requirements of Municipal Code  
13 Section 10.02.120(b). (*Id.*) With respect to the payment of Town expenses, the Municipal Code  
14 specifically provides that when a dog is determined “potentially dangerous” the owner “shall be  
15 personally liable and shall pay to the Town of Yucca Valley all administrative costs as set by  
16 resolution of the town council, in addition to impounding costs, boarding costs and/or other related  
17 costs incurred.” (RJN Item 1, § 10.02.120(h).)

18 **B. Evidence of The “Potentially Dangerous” Nature of Petitioner’s Dogs.**

19 In relevant part, the Town’s Municipal Code defines a “potentially dangerous” dog as:

20 POTENTIALLY DANGEROUS DOG: Any dog, except a trained  
21 dog assisting a peace officer engaged in law enforcement duties,  
which demonstrates *any or all* of the following behavior:

22 . . . B. *Any dog which, when unprovoked, bites a person causing a*  
23 *less than substantial physical injury as defined in this chapter. . .*

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24 <sup>1</sup> There is a distinction between “potentially dangerous” dogs and “vicious” dogs. Vicious dogs  
25 are generally those that inflict “substantial physical injury” (RJN Item 1, § 10.02.010(aa)) and are  
26 subject to euthanasia (RJN Item 1, § 10.02.120(c) and (d)). Although Ms. Chester’s injuries in this  
27 case may have been substantial enough to warrant declaring Petitioner’s animals as “vicious” dogs,  
28 the Town took the more lenient course of seeking a “potentially dangerous” designation. Thus,  
Petitioner’s dogs are not contemplated for euthanasia unless Mr. Lovell fails to meet the conditions  
imposed upon the release and keeping of “potentially dangerous” dogs. (*See* RJN Item 1,  
§§ 10.02.120(h).)

1 D. *Any dog which, when unprovoked has killed another animal off*  
2 *the property of the owner or keeper of the dog.*

3 E. *A dog that creates a danger or constitutes a menace to the public's*  
4 *health and safety due to its training or the inherent nature of the dog.*  
(RJN Item 1, § 10.02.010(r), emphasis added.)

5 The Hearing Officer's findings and substantial evidence before him support the conclusion that  
6 both Petitioner's dogs meet the italicized criteria listed above.

7 ***1. Petitioner's Dogs Undisputedly Attacked And Bit Ms. Chester Without Any***  
8 ***Provocation Whatsoever—In Fact, They Chased Her Down.***

9 The attack on Ms. Chester was not just unprovoked—it was vicious. Ms. Chester testified  
10 that she was merely “taking a walk” when “the two” dogs *both* came after her from down the street.  
11 (YV p. 48/23 to p. 49/10.) Ms. Chester “tried to get away from them” as they “came at” her.  
12 (YV p. 53/10-20.) Despite Ms. Chester's attempt to escape, she testified, “one of the dogs got in  
13 back of me and threw me to the ground. And I tried to protect my head from hitting the pavement.”  
14 (YV p. 49/4-10.) Even on the ground, Ms. Chester “had to protect [her] head” and could only yell  
15 for help. (YV p. 53/10-20.) Eyewitness Shiryl Mandeville corroborated that she saw Petitioner's  
16 dogs “jumping up” on their victim and then “running around her barking and barking.”  
17 (YV p. 55/12-24.) An anonymous eyewitness account further corroborates the participation of *both*  
18 dogs in the attack:

19 I personally witnessed “Blaze” and “Dakota” attack an elderly  
20 neighbor woman Evelyn, knocking her to the ground. As she  
21 screamed in terror they continued to circle her yipping and nipping at  
her. (YV p. 32.)

22 Notably, Petitioner himself admitted in his testimony that Dakota “jumped out” of his truck (YV  
23 p. 60/19-21) and Blaze also “took off” from the garage (YV p. 59/17-21) — both dogs chasing  
24 down the road after Ms. Chester. Therefore, the evidence that Petitioner's dogs chased-down their  
25 victim without any provocation is entirely undisputed.

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1                   4.     ***Ample Evidence Demonstrated That Petitioner’s Dogs Menace The***  
2                                   ***Public’s Health And Safety Due To Their Training Or Inherent Nature.***

3                   In addition to the undisputed attack upon Ms. Chester, the Administrative Record contains  
4 much evidence demonstrating that Petitioner’s dogs create a danger due to their training, their  
5 inherent nature, or a combination of both. Evidence from direct witnesses demonstrated that:

- 6                   • The attack on Ms. Chester “was not the first time this has happen [sic] it has  
7                                   happen [sic] 5 or 6 times with other people.” (YV p. 31.)
- 8                   • One witness statement said, “I have witnessed similar incidents on no less than three  
9                                   prior occasions.” (YV p. 32.)
- 10                  • Eyewitness Mandeville stated, “I have seen those dogs several times not on a leash  
11                               and out – outside in the front. And they’re running after maybe a little animal or  
12                               something once in a while, um, several times, meaning more than 10 or 11 times not  
13                               on leash over quite a while of time.” (YV p. 58/10-15.)

14                  Animal Control Officer Kim Casey offered her expert opinion that Petitioner unwittingly  
15 “trained” his dogs to encourage aggressive and territorial behavior; notably, Officer Casey’s  
16 opinion was supported by direct observations of the dogs:

17                   He [Petitioner] added that he took both dogs across the road to  
18                               exercise them off leash in the area of the abandoned golf course  
19                               almost every day. He stated that the dogs chased rabbits and other  
20                               animals (YV 43/13-18) . . . .

21                   By his own admission, [Petitioner] has allowed his dogs to run loose  
22                               in the area on a regular basis. The behavior observed by both dogs,  
23                               which was reported by witnesses and has been observed directly by  
24                               shelter staff during the period the dogs have been confined, is  
25                               consistent with territorial behavior. That behavior does pose a  
26                               potential for the animals to injure people or other animals. (YV  
27                               p. 45/21 to p. 46/3.) . . .

28                  In his administrative testimony, Petitioner actually admitted several times that Blazer has a  
nature of biting, and has even bitten Petitioner on multiple occasions. (See, e.g., YV p. 60/9-14,  
p. 60/23, and p. 65/6-20.) Petitioner’s other witnesses/supporters confirmed that Blaze will “nip  
you a little bit. And that’s his nature.” (p. 67/18-22.)

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1 Even though Petitioner and his witnesses generally alleged Dakota to be a “good” and even  
2 “tremendous” dog (YV p. 68/4-6), their testimony amounts to little more than generalized opinions  
3 about the animal’s character. At no time did Petitioner or any of his witnesses offer direct evidence  
4 to refute the testimony of other witnesses who observed territorial, aggressive behaviors in both  
5 dogs. As Officer Casey summarized in her testimony:

6 My opinion is that the behavior that was described by the victim and  
7 the witnesses and the behavior that has been witnessed in the shelter  
8 environment, which is primarily, um, cage aggression towards other  
9 animals, those behaviors are all fairly consistent with territorial  
behavior. The fact that [Petitioner] has allowed the dogs to run loose  
in the area around his property [only] increases the area that they  
might find, uh, themselves to be protective over. (YV p. 68/14-23.)

10 **III. STANDARDS OF REVIEW**

11 **A. The “Abuse of Discretion” Test Applies With Substantial Deference Given to**  
12 **the Town’s Administrative Order.**

13 Administrative mandate tests a decision for *abuse of discretion*, defining this as (1) the  
14 agency not proceeding in the manner required by law, (2) the decision not being supported by its  
15 findings or (3) its findings not being supported by substantial evidence. (Code Civ. Proc.  
16 § 1094.5(b)-(c); *Harris v. Civil Service Com.* (1998) 65 Cal. App. 4<sup>th</sup> 1365, 1364.) The judicial  
17 review of any findings “requires a deferential view of the record” in favor of administrative  
18 findings. (*Harris, supra*, 65 Cal.App.4<sup>th</sup> at 1364.)

19 With respect to reviewing the evidence, the Administrative Record is tested against the  
20 deferential standard of whether the findings are supported by “substantial evidence in light of the  
21 whole record.” (Civ. Proc. § 1094.5(c), *emph. added*; *Breakzone Billiards v. City of Torrance*  
22 (2000) 81 Cal. App. 4<sup>th</sup> 1205, 1223-24.) The court does *not* exercise its independent judgment or  
23 undertake a de novo review of the Administrative Record—rather the “court is bound to disregard  
24 all evidence contrary to that received in support of the findings of the board.” (*Sultan Turkish*  
25 *Bath, Inc. v. Board of Police Comm’rs* (1959) 169 Cal.App.2d 188, 193.) Under this standard, “the  
26 ‘court does not have a right to judge of the intrinsic value the evidence nor to weigh it. The power  
27 of the court is confined to determining whether there was substantial evidence before the board to

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1 support its findings.’” (Sultan Turkish Bath, supra, at 193, quoting Odden v. County Foresters etc.  
2 Board (1951) 108 Cal.App.2d 48, 49, emph. added.)

3 Under the substantial evidence test, courts do not reweigh the  
4 evidence. They determine whether there is any evidence (or any  
5 reasonable inferences which can be deduced from the evidence),  
6 whether contradicted or uncontradicted, which, when viewed in the  
7 light most favorable to an administrative order or decision[,] will  
8 support the administrative ... findings of fact. Administrative ...  
9 findings are presumed to be supported by the record; and orders [and]  
10 decisions ... are presumed to be correct. Persons challenging them  
11 have the burden of showing that they are not supported or correct.  
12 [Citations.]”

13 (Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga (2009) 175 Cal.App.4<sup>th</sup> 1306,  
14 1328-29, quoting, Antelope Valley Press v. Poizner (2008) 162 Cal.App.4<sup>th</sup> 839, 849, fn. 11, emph.  
15 added.)

16 **B. Petitioner Bears Both the Burden of Proof and the Burden of Persuasion.**

17 Although Petitioner is the party seeking writ of mandate, Respondent brings this Motion  
18 pursuant to section 1094, which permits a writ of mandate to "be determined by the court by  
19 noticed motion of any party for a judgment on the peremptory writ."<sup>2</sup> (Emph. added.)  
20 Notwithstanding that Respondent has brought this Motion to deny the Petition, Petitioner retains  
21 the burden of proof in this case. The California Supreme Court has clearly held that an  
22 administrative agency does not bear the burden of proving that its Administrative Order was  
23 proper. (Fukuda v. City of Angels (1999) 20 Cal.4<sup>th</sup> 805, 817 ["the party challenging the  
24 Administrative Order bears the burden of convincing the court that the administrative findings are  
25 contrary to time weight of the evidence." Furthermore, Petitioner bears the burden of both  
26 production and persuasion. (Id. at 820-821.)

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29 <sup>2</sup> In addition, Respondent has chosen to bring this Motion and file the Administrative Record  
30 directly with the Court in order to expedite these proceedings. Petitioner’s dogs remain in impound,  
31 thus making the expedited conclusion of this matter of great interest to both the Town (who  
32 continues to incur costs for keeping the animals) and Petitioner.

1 Against Petitioner’s burden of proof is the legal presumption that the Town performed its  
2 duties lawfully, and that the Administrative Order is supported by findings and evidence. (Evid.  
3 Code § 644; *Chamberlain v. Ventura County Civil Service Comm.* (1977) 69 Cal.App.3d 363, 371.)

4 **IV. THE ADMINISTRATIVE ORDER DESIGNATING PETITIONER’S DOGS AS**  
5 **“POTENTIALLY DANGEROUS” IS SUPPORTED BY SUBSTANTIAL**  
6 **EVIDENCE.**

7 The Town’s Administrative Order must be upheld on the evidence by this Court if there is  
8 any evidence (or any reasonable inferences which can be deduced from the evidence), whether  
9 contradicted or uncontradicted, which will support the administrative findings of fact when viewed  
10 in the light most favorable to the administrative decision. (*Habitat Trust for Wildlife, Inc. v. City of*  
*Rancho Cucamonga, supra.*)

11 Part II.B. of this Motion presents copious evidence justifying the finding that Petitioner’s  
12 dogs must be designated as “potentially dangerous” animals. The witness testimony, written  
13 statements, and photographs showing that Ms. Chester was attacked without provocation, and that  
14 she was substantially injured by Petitioner’s dogs, is not refuted anywhere in the Administrative  
15 Record. This undisputed attack *alone* qualifies the dogs as potentially dangerous under that  
16 provision of the Town Code defining as “potentially dangerous” any dog that commits an  
17 unprovoked bite. (RJN Item 1, § 10.02.010(r).) The Administrative Order is further bolstered by  
18 the uncontroverted evidence of the dogs’ propensity to hunt and kill game throughout the  
19 neighborhood; this unprovoked killing of other animals is yet another independent ground for  
20 declaring the dogs as “potentially dangerous” under the Code. (*Id.*)

21 Finally, witness statements testifying that Petitioner’s dogs engaged in multiple events of  
22 aggression, and Officer Casey’s opinions about their aggressive territoriality, show that Petitioner’s  
23 dogs create a danger or constitute a menace to the public's health and safety due to their training or  
24 inherent nature. This fulfills yet another independent ground for a “potentially dangerous”  
25 designation under the Town’s Animal Control Code. (RJN Item 1, § 10.02.010(r).) Indeed, the  
26 manner in which Petitioner’s dogs attacked Ms. Chester suggest that they were attempting to  
27 “hamstring” her in the same way a hunting dog would hamstring running prey—a behavior likely  
28 exacerbated by Petitioner encouraging his dogs to run long distances and “hunt” small game. This

1 is certainly a reasonable inference from the evidence of the dogs' running approach at Ms. Chester  
2 from behind, and the resulting bites aimed at her legs and ankles.

3 In sum, the Hearing Officer was presented with more-than substantial evidence from  
4 multiple witness statements, including those of Petitioner himself, demonstrating that both Dakota  
5 and Blazer (i) viciously attacked and wounded Ms. Chester without provocation, (ii) have  
6 repeatedly been observed acting aggressively with other people and animals, (ii) are encouraged by  
7 Petitioner to actively exercise territorial and aggressive behavior by running at-large and hunting  
8 small animals throughout the neighborhood, and (iv) accordingly, fit into a behavior pattern of  
9 concerted, territorial, aggression.

10 By contrast, the Administrative Record presents virtually no direct evidence to refute either  
11 an attack upon Ms. Chester or the aggressive behavior of Petitioner's dogs. At the Administrative  
12 Hearing, Petitioner and witnesses on his behalf offered little more than vague generalities and  
13 "character testimony" about the "good nature" of Petitioner's dogs—especially Dakota. However,  
14 "vague generalities [do] not constitute substantial evidence. . ." (*Emeryville Redevelopment*  
15 *Agency v. Harcros Pigments, Inc.* (2002) 101 Cal.App.4<sup>th</sup> 1083, 1113.) In any case, the applicable  
16 standard of review restricts this Court from re-weighing the evidence and credibility of witnesses  
17 so long as some reasonable modicum of evidence supports the Administrative Order. As  
18 demonstrated by the summary of evidence at Part II.B. above, the Administrative Record surpasses  
19 that threshold considerably.

20 A. **Substantial Evidence Supports The Finding/Conclusion That Each Of**  
21 **Petitioner's Dogs Independently Qualify As "Potentially Dangerous."**

22 Petitioner's administrative testimony reveals a clear favoritism for Dakota over Blazer. In  
23 fact, Petitioner's administrative testimony plainly admits that Blazer bit Ms. Chester. (YV  
24 p. 60/15-21.) However, Petitioner insisted that Dakota did not, or does not, bite. (YV p. 65/6-22.)  
25 Notwithstanding this allegation, it is unclear from the Record whether Petitioner even saw how his  
26 dogs initiated their attack upon Ms. Chester. (YV p. 59/18-24 [indicating that dogs ran-off and  
27 Petitioner "didn't even know it" until he "heard this noise"; Petitioner arrived at the scene only  
28 ///

1 after the victim was already “standing up.”]; p. 64/17-20 [“I don’t know if she [Ms. Chester] went  
2 down before I got there and then stood back up or what.”].)

3 Petitioner’s conjecture about which of his dogs may have bitten Ms. Chester simply cannot  
4 overcome the weight of substantial evidence supporting the finding that *both* dogs were engaged in  
5 attacking and biting their victim. Every eyewitness to the attack, described *both* dogs attacking and  
6 biting at Ms. Chester:

- 7 • The victim herself described the attack in the plural, as “*they* bit me”. (YV  
8 pp. 49/417). Throughout her testimony, Ms. Chester consistently refers to “they” to  
9 indicate that both dogs were involved in her injuries. Moreover, the fact that *both*  
10 dogs were involved can be reasonably deduced from the fact that Ms. Chester  
11 suffered *six bites* in such a short timeframe. (YV p. 51/7-15.)
- 12 • Sheryl Mandeville saw “two dogs” jumping upon Ms. Chester. (YV p. 55/12-14.)
- 13 • The anonymous written statement attests to a witness seeing “Blazer’ and  
14 ‘Dakota’” both attack Ms. Chester, and that “As she screamed in terror *they*  
15 continued to circle her yipping *and nipping* at her.” (YV p. 32.)
- 16 • Witness Tim Woodard also identified the “two dogs” as the attackers. (YV p. 31.)

17 Thus, the vast majority of witnesses corroborated Ms. Chester’s testimony that Petitioner’s dogs  
18 attacked and bit her in concert. Furthermore, it is uncontroverted that *both* dogs partook in hunting  
19 and killing small animals throughout the neighborhood, which in itself is an independent basis for  
20 finding each dog to be “potentially dangerous” under the Town Code.

21 The cumulative evidence from the Administrative Record goes even farther to establish  
22 *each* dog as potentially dangerous. Even assuming *arguendo* that Dakota did not bite Ms. Chester,  
23 the Hearing Officer had substantial evidence before him to reasonably deduce that Dakota  
24 independently creates a danger to the public's health and safety due to their training or inherent  
25 nature. (RJN Item 1, § 10.02.010(r).) Even without biting Ms. Chester, Dakota was obviously a  
26 instigator of, or participant in, the attack. It was uncontroverted that Dakota, as well as Blaze,  
27 hunts small animals. Multiple witnesses, including Officer Casey, all attested to the fact that

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1 Dakota displays at least an equal amount of territorialism as Blazer and, at a minimum, the dogs  
2 consistently display their aggression in concert.

3 Substantial evidence points to Dakota being just as aggressive as Blazer. Aside from  
4 Petitioner's apparent favoritism toward Dakota, the dogs share no relevant distinction in character  
5 or behavior.

6 **V. THE TOWN ALWAYS PROCEEDED IN THE MANNER REQUIRED BY LAW.**

7 Whether an administrative agency proceeded in the manner required by law depends on the  
8 propriety of the agency's decision-making procedures. For example, a petitioner might  
9 demonstrate that the agency exceeded its jurisdiction, or that the agency acted in contravention of  
10 its own charter. (*E.g., Jackson v. City of Los Angeles* (1999) 69 Cal.App.4<sup>th</sup> 769.) Specific  
11 requirements for due process vary depending on the situation under consideration and the interests  
12 involved. (*Binkley v. City of Long Beach* (1993) 16 Cal.App.4<sup>th</sup> 1795, 1807.) "[P]rocedural due  
13 process in an administrative setting requires notice of the proposed action; the reasons therefor; a  
14 copy of the charges and materials on which the action is based; and the right to respond to the  
15 authority initially imposing the discipline 'before a reasonably impartial, noninvolved reviewer'."  
16 (*Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 581, citations omitted.)

17 As described in Part II.A. above, the Administrative Hearing on Petitioner's dogs proceeded  
18 in accord with the Town's Animal Code Chapter 10.02. (RJN Item 1.) Petitioner was noticed of  
19 the Hearing well in advance (verbally and in writing), he was informed on multiple occasions of  
20 the reasons for the hearing, provided a copy of the Town's Animal Control Codes, and invited to  
21 submit written statements or live witness testimony at the hearing. At the hearing itself, Petitioner  
22 testified at length on his own behalf and he offered testimony and written statements from other  
23 witnesses supporting him. (*See, Part II.A., infra.*) It should also be noted that the Hearing Officer  
24 invited *all* of Petitioner's supporters to speak as a witness on behalf of Petitioner. (YV  
25 p. 68/13-25.) Only one did. Although the Hearing Officer emphasized the importance of direct,  
26 eyewitness testimony, and discouraged pure hearsay, the Hearing Officer still encouraged all

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1 potential witnesses to speak. (*Id.*) Under these circumstances, it is clear that Petitioner was  
2 afforded the basic elements of procedural due process.<sup>3</sup>

3 **A. The Conditions Imposed Upon The Release Of Petitioner’s Dogs Accord With**  
4 **Town Codes And State Laws Governing Potentially Dangerous Dogs. This**  
5 **Includes The Requirement That Petitioner Pay All Town Costs.**

6 Per section 10.02.120(h) of the Town’s Code, the Petitioner is responsible for  
7 administrative costs in addition to all impounding costs, boarding costs and/or other related costs  
8 incurred. This provision is supported by California Food and Agriculture Code § 31625 (RJN Item  
9 3), which requires that the “owner or keeper of the dog shall be liable to the city or county where  
10 the dog is impounded for the costs and expenses of keeping the dog if the dog is later adjudicated  
11 potentially dangerous or vicious.” Accordingly, Petitioner is obligated under the Town’s Code,  
12 State Code and the Administrative Order to reimburse the Town for the costs incurred to date.

13 **B. To Date, Petitioner Has Failed To Comply With The Conditions For Keeping**  
14 **Potentially Dangerous Dogs.**

15 Petitioner has failed to comply with the required conditions for keeping potentially  
16 dangerous dogs. The Town’s Code and the Administrative Order both require that owners of  
17 potentially dangerous dogs take the following actions: (i) license the dogs, (ii) micro-chip or tattoo  
18 the dogs, (iii) obtain insurance in the amount of \$100,000. (YV p. 80 to p. 81; RJN Item 1,  
19 § 10.02.120(b).) As discussed above, the Administrative Order and Town Code further require the  
20 owner of potentially dangerous dogs to pay all outstanding administrative costs. (RJN Item 1,  
21 § 10.02.120(h).) Petitioner has not paid any costs incurred and there has been no compliance with  
22 the identification and insurance requirements.

23 Additionally, the Town’s Code, the State Code and the Administrative Order require the  
24 dogs to be kept in a secured, fenced area. (RJN Item 1, § 10.02.120(b)(3); RJN, Item 3, California  
25 Food and Agriculture Code § 31642.) To date, Petitioner’s property continues to lack appropriate  
26 and permitted fencing. The Administrative Record depicts the status of Petitioner’s property and

27 <sup>3</sup> Petitioner may argue he was not afforded due process because one of his witnesses was unable  
28 to attend the hearing due to being ill. This point, however, is inapposite: any witness “unable to  
attend” the hearing was invited to submit a written statement in lieu of live testimony. (YV p. 27.)

1 fencing. (YV 0085-0093.) Without proper fencing, potentially dangerous dogs will continue to run  
2 at large and pose a threat to the surrounding community.

3 **VI. THE ONLY POSSIBLE REMEDY AVAILABLE TO PETITIONER UNDER HIS**  
4 **CCP § 1094.5 CAUSES OF ACTION IS REHEARING.**

5 Even assuming *arguendo* that the Court agrees with Petitioner on the merits of his  
6 CCP § 1094.5 claims, the only available remedy to Petitioner is a rehearing. Per § 1094.5(f) the  
7 Court is vested with the authority to order the Town to reconsider the case “in light of the court’s  
8 opinion and judgment.” Thus, the only appropriate remedy under Petitioner’s CCP§ 1094.5 claims  
9 is remand of the case back to the agency for rehearing at the administrative level—and, the Court  
10 cannot dictate how the agency will exercise its discretion in rehearing the matter:

11 The court shall enter judgment either commanding respondent to set aside  
12 the order or decision, or denying the writ. Where the judgment commands  
13 that the order or decision be set aside, *it may order the reconsideration of*  
14 *the case in light of the court's opinion and judgment and may order*  
*respondent to take such further action as is specially enjoined upon it by*  
*law, but the judgment shall not limit or control in any way the discretion*  
*legally vested in the respondent.*

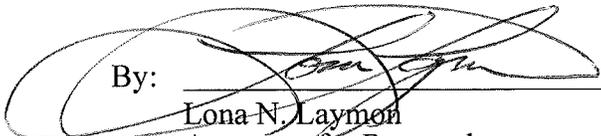
15 (CCP § 1094.5(f), *emph. added; see also, Vollstedt v. City of Stockton* (1990) 220 Cal.App.3d 265,  
16 277; *English v. City of Long Beach* (1950) 35 Cal.2d 155, 159; *La Prade v. Department of Water &*  
17 *Power* (1945) 27 Cal.2d 47, 53 [“If a hearing has been denied or the evidence is insufficient to  
18 sustain the action of the board, and it is still possible for the board to hold a hearing or exercise its  
19 discretion, then the matter should be remanded to the board for further consideration rather than  
20 having a trial de novo in the superior court and requiring that court to exercise independent  
21 judgment on the facts which should be determined by the board.”].)

22 **VII. CONCLUSION**

23 For the foregoing reasons, the Petition must be denied on all CCP § 1094.5 grounds.

24 Dated: June 27, 2012

ALESHIRE & WYNDER, LLP  
LONA N. LAYMON  
CHRISTY MARIE LOPEZ

25  
26  
27 By: 

Lona N. Laymon  
Attorneys for Respondent  
TOWN OF YUCCA VALLEY

1 **PROOF OF SERVICE**

2  
3 I am employed in the County of Orange, State of California. I am over the age of 18 and  
4 not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700,  
Irvine, CA 92612.

5 On June 27, 2012, I served the within document(s) described as:

6 **NOTICE OF MOTION AND MOTION TO DENY WRIT OF MANDATE;  
7 MEMORANDUM OF POINTS AND AUTHORITIES THEREOF**

8 on the interested parties in this action as stated on the attached mailing list.

9  (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope  
10 addressed as set forth above. I placed each such envelope for collection and mailing following  
11 ordinary business practices. I am readily familiar with this Firm's practice for collection and  
12 processing of correspondence for mailing. Under that practice, the correspondence would be  
deposited with the United States Postal Service on that same day, with postage thereon fully  
prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the  
party served, service is presumed invalid if postal cancellation date or postage meter date is more  
than one day after date of deposit for mailing in affidavit.

13  (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained  
14 by Norco Overnight (formly known as Overnight Express), an express service carrier, or delivered to  
15 a courier or driver authorized by said express service carrier to receive documents, a true copy of  
the foregoing document(s) in a sealed envelope or package designated by the express service  
carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

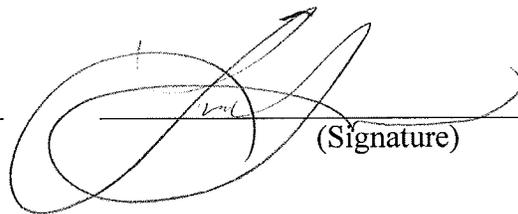
16  (BY FAX) By transmitting a true copy of the foregoing document(s) via facsimile  
17 transmission from this Firm's sending facsimile machine, whose telephone number is (949) 223-  
18 1180, to each interested party at the facsimile machine telephone number(s) set forth above. Said  
19 transmission(s) were completed on the aforesaid date at the time stated on the transmission record  
20 issued by this Firm's sending facsimile machine. Each such transmission was reported as complete  
and without error and a transmission report was properly issued by this Firm's sending facsimile  
machine for each interested party served. A true copy of each transmission report is attached to the  
office copy of this proof of service and will be provided upon request.

21  (BY PERSONAL SERVICE) I caused to be delivered a true copy of the foregoing  
document(s) in a sealed envelope by hand to the offices of the above addressee(s).

22 Executed on June 27, 2012, at Irvine, California.

23 I declare under penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct.

25 \_\_\_\_\_  
26 Linda Yarvis  
(Type or print name)

27 \_\_\_\_\_  
28   
(Signature)

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**SERVICE LIST**

**JAMES LOVELL V. TOWN OF YUCCA VALLEY**

Case No. CIVMS1200185

Joshua Tree Courthouse San Bernardino County

James R. Lovell  
7444 La Honda Way  
Yucca Valley, CA 92284

**760/362-3446**

**Petitioner In Pro Per**