SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive Santa Ana, CA 92702	
SHORT TITLE: Hueg vs. OC Animal Care	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: **30-2022-01282419-CU-WM-CJC**

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 02/15/23 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 2/15/23. Following standard court practice the mailing will occur at Sacramento, California on 2/16/23.

COUNTY COUNSEL, COUNTY OF ORAGE
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Clerk of the Court, by: D Nunez , Deputy

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Clerk of the Court, by: D Nunez , Deputy

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 02/15/2023 TIME: 12:06:00 PM DEPT: C31

JUDICIAL OFFICER PRESIDING: Martha K. Gooding
CLERK: D. Nunez
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT:

CASE NO: **30-2022-01282419-CU-WM-CJC** CASE INIT.DATE: 09/21/2022
CASE TITLE: **Hueg vs. OC Animal Care**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 73952671

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

Motion for Preliminary Injunction

Before the Court is a Motion by Petitioners Elizabeth Hueg, SAFE Rescue Team, Cats in Need of Human Care and Romina Yamashiro (collectively, "Petitioners") for a Preliminary Injunction against Respondent OC Animal Care ("OCAC") and OC Community Resources (collectively, "Respondents" or the "Shelter").

The Motion initially was filed as an Ex Parte Application for a TRO and OSC re Preliminary Injunction (ROA #57). By Minute Order dated 11/4/2022 (ROA # 80), the Court denied the TRO and set an OSC re Preliminary Injunction for hearing on 2/6/2023. The Court allowed Petitioners to file a Supplemental Brief in support of their Motion and also gave Respondents an opportunity to file a Supplemental Opposition, to be followed by a reply brief from Petitioners.

Petitioners filed their Supplemental Brief in support of Motion for Preliminary Injunction on 12/9/2022 ("Supp.Br." or "Supplemental Brief") (ROA #85), and approximately one month later – while the Motion was still pending – they filed a First Amended Verified Petition for Writ of Mandate/Complaint for Declaratory and Injunctive Relief ("Am.Pet."). ROA #110.

The Relief Requested by Petitioners on this Motion

Petitioners' Supplemental Brief narrows the relief Petitioners seek on this Motion for Preliminary Injunction. As noted in the Supplemental Brief – and as Petitioners' counsel emphasized at the February 6, 2023 hearing on the Motion – Petitioners now seek *only* "to enjoin Respondents from violating" the following six statutes:

- Civil Code sections 1834 and 1846(b);
- Food & Agriculture Code ("Food & Agric. Code") sections 31108(b)(1) and 31752(c)(1);

• Food & Agric. Code sections 17005 and 17006.

Supp.Br. at 7 n. 2.

In addition, Petitioners ask the Court to invoke its "equitable power" to enforce its decrees by appointing what they call a veterinarian "compliance monitor." Supp.Br. at 12:5-6, 7:3.

Thus, Petitioners now ask for an order "(1) [e]njoining Respondents from further violating the [six] animal welfare statutes at issue; and (2) [a]ppointing a veterinarian monitor to supervise compliance with the [six] statutory mandates." Supp.Br. at 7:1-3.

As Petitioners explained in their Ex Parte Application for Temporary Restraining Order and OSC re Preliminary Injunction ("TRO/PI App.") (ROA #57, filed 10/31/2022), Petitioners ask the Court to appoint such a monitor "to oversee that OCAC complies with state law when making the decision to euthanize an animal, [and] complies with the Court's Order" and to "report findings with respect to OCAC's compliance" to the Court. (TRO/PI App. at ii:16-18.)

The case cited by Petitioners to support this request – *Dawson v. East Side Union High School District* (1994) 28 Cal.App.4th 998 – noted that after entry of a judgment permanently enjoining a school district from requiring students to watch certain programming that contained advertisements, "[a] monitor might properly be appointed" by a trial court for the purpose "of observing and reporting events *after* the judgment so that the court might be advised, in the exercise of its retained jurisdiction, of any need which might arise *in the future* to interpret or to enforce the terms of the judgment." (*Id*. at 1045 (emphases in original).) The *Dawson* court "emphasize[d]," however, "that the record before us reflects no need to appoint such a monitor at this point, and that the trial court should not exercise its retained power unless and until such a need is demonstrated." (*Id.* at 1045-46.) Thus, *Dawson* does not support the pre-trial relief Petitioners now seek.

Moreover, Petitioners appear to envision a far more expansive and intrusive role for their proposed monitor. At the hearing on the Motion, the Court expressed concern that entering an injunction requiring the Shelter to "follow the law" would (1) likely result in repeated requests by Petitioners for an OSC Re Contempt every time Petitioners believed the Shelter's conduct – including the care or medical treatment given to a specific animal or a decision to euthanize a particular animal – was not sufficient or appropriate; and (2) effectively require this Court to manage the Shelter. Petitioners' counsel disclaimed any such intention and suggested that, by installing the requested monitor to ensure compliance with the statutes at issue, there will be no need for further proceedings (including contempt proceedings) to enforce any order that might be entered by the Court, because the monitor will ensure the Shelter acts in accordance with what the monitor perceives to be the law.

Thus, if the Court correctly understood Petitioners' argument, it appears Petitioners envision the monitor would not simply perform a reporting function to the Court, but rather would be granted decision-making authority over the care and treatment of all animals at the Shelter, subject to some form of unspecified oversight by the Court.

For all the reasons set forth below, the Court DENIES Petitioners' Motion in its entirety. Because the Court has concluded a Preliminary Injunction is not warranted, Petitioners' request for appointment of a monitor – whether Petitioners intend the monitor to simply report perceived "violations" to the Court or to actually wield decision-making authority at the Shelter – is also DENIED.

Petitioners' First Amended Verified Petition for Writ of Mandate/Complaint for Declaratory and Injunctive Relief.

Before delving further into the specifics of the Motion, the Court summarizes the allegations of

Petitioners' Amended Petition.

The Amended Petition seeks the following relief:

By this Amended Petition and Complaint, Petitioners ask this Court to order Respondents to cease and desist from further violation of law and to promptly begin performing their mandatory legal duties to the animals entrusted to their care and to the public at large. In addition, Petitioners seek the Court to order respondents to cease waste of taxpayers' monies which prevent public access to impounded animals and cause harm to animals and rescue groups without any reciprocal benefit to the animals or the public. Petitioners also seek an order compelling the County and its administrators to comply with the California Public Records Act in response to requests for records made by residents of this State.

Am.Pet. ¶1.

The Amended Petition asserts four causes of action. The First Cause of Action is for a writ of mandate under Code of Civil Procedure ("CCP") section 1085. Am.Pet. ¶¶ 24-31. It seeks a writ of mandamus requiring Petitioners to comply with its statutory duties, including (1) providing necessary and prompt veterinary care; (2) providing shelter and nutrition; (3) treating animals kindly; (4) accepting and holding stray cats for the statutorily-required period for owner redemption or adoption; (5) staying euthanasia of any animal on request for release of that animal by a nonprofit rescue or adoption organization; (6) keeping accurate records on each animal taken in, medically treated, or impounded; (7) adopting out and providing treatment for unadoptable animals that may become adoptable with reasonable efforts, rather than euthanizing them; and (8) spaying or neutering all animals prior to their release from the Shelter. In addition, the first cause of action seeks appointment of a monitor to oversee Respondents' compliance and report back to the Court. *Id.*, Prayer for Relief at 23.

The Second Cause of Action is for Injunctive Relief, specifically, an injunction restraining Respondents from continuing to illegally expend and/or waste public funds in the manner alleged in the Amended Petition. See Am.Pet. ¶¶ 42-45. In the Prayer for Relief, Petitioners seek an Order compelling Respondents (1) to cease restricting public access to the Shelter and to allow the public access into the Shelter to view animals for owner redemption or adoption; (2) to allocate and spend taxpayer monies on a "TNR program" to help control over-population; (3) to allow and spend a greater percentage of the shelter budget on programs, services, and supplies for the benefit of the impounded animals; (4) to properly use shelter facilities and capabilities to perform the designated function of the animal shelter, to wit, providing required care and housing for the animals and facilitating adoptions. *Id.,* Prayer for Relief at 23.

The Third Cause of Action is for violation of the California Public Records Act ("CPRA") and the Constitution. Am.Pet. ¶¶ 46-74. It seeks an order directing Respondents to "produce forthwith" all documents requested by Petitioner Romina Yamashiro and to "timely produce all documents in response to a request for records made pursuant to" the CPRA. *Id.,* Prayer for Relief at 24.

The Fourth Cause of Action is for declaratory and injunctive relief. It seeks an order compelling Respondents to "comply with the law" in the operation of the Shelter and, in addition, asks the Court to appoint an independent third-party monitor to "oversee compliance and report findings back to this Court." Am.Pet. ¶ 77-78 and Prayer for Relief at 24.

Evidentiary Objections and Requests for Judicial Notice

In connection with the Motion, the parties filed a number of requests for judicial notice and evidentiary objections. Before turning to the merits of the Motion, the Court rules on these requests and objections as follows:

Requests for Judicial Notice

Petitioner's Requests for Judicial Notice: The Court denies Petitioners' request for judicial notice in support of the moving papers. None of these documents are relevant based on the allegations of the Petition, which puts at issue post-2020 conduct, a change of administration at the OCAC, post-Covid protocols, and specific incidents of alleged negligent/improper care of animals that took place in 2022.

Petitioners also ask the Court, in their Reply papers, to judicially notice the January 30, 2015, Minute Order of the Superior Court of California, County of Orange, Hon. David Chaffee, ROA No. 53, in *Sharon Logan v. Orange County Animal Care, et al.,* Orange County Superior Court Case No. 30-2014-00736691. Petitioners argue the prior minute order operates as collateral estoppel on issues of mandatory versus discretionary duties.

This request for judicial notice also is denied. First, this request was made for the first time on Reply. *(See Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537 ["[t]he general rule of motion practice . . . is that new evidence is not permitted with reply papers"]; *see also, American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453 ["Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument."]; *Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010*; see also, Kaichen's Metal Mart, Inc. v. Ferro Cast Co.* (1995) 33 Cal.App.4th 8, 17).

Second, in any case, Petitioner's argument that Judge Chaffee's ruling on a demurrer in 2015 constitutes collateral estoppel is without merit.

Respondents' Request for Judicial Notice: The Court denies Respondents' request for judicial notice in support of the Opposition papers. The documents are not judicially noticeable.

Evidentiary Objections

The Court sustains Petitioners' Objection No. 1 (kennel staff schedule), No. 2 (email re animal inventories) and No. 3 (Shelter animal counts) on relevance grounds. The staffing levels at the Shelter at any given time – or the number of animals in the Shelter at any given time – are not necessary or relevant to the Court's determination of this Motion.

The Court overrules all other evidentiary objections asserted by Petitioners and Respondents.

The Court notes that many of the objections are asserted to large, undifferentiated swaths of declaration testimony (and in some cases to the entirety of a declaration). If any portion of the objected-to testimony is admissible, the objection is properly overruled.

Petitioners' objection to a California Attorney General Opinion is not a proper evidentiary objection.

The Court overrules objections to the admissibility of written Shelter policies, but notes they are not among the six specific statutes that form the basis of Petitioners' narrowed Motion; thus, they are not necessary or relevant to the Court's determination of this Motion.

Finally, the Court will not consider new evidence on Reply, other than testimony that is responsive to opposition evidence.

The Legal Standards Governing Injunctive Relief

Under CCP section 526(a)(3), an injunction may be granted "[w]hen it appears, during the litigation, that

a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual." CCP Section 526(a)(4) provides an injunction can be issued when pecuniary compensation for the claimed wrong would not afford adequate relief.

The purpose of CCP section 526(a)(3) is to preserve the status quo pending litigation. (*See, Stockton v. Newman* (1957) 148 Cal.App.2d 558, 563.)

A preliminary injunction is a provisional remedy intended to cover the interval that will elapse before entry of a final decree. (*Department of Fair Employment and Housing v. Superior Court of Kern County* (2020) 54 Cal.App.5th 356.) The granting of a preliminary injunction is an extraordinary power, which must be exercised with caution. (*City of Tiburon v. Northwestern Pac. R. Co.* (1970) 4 Cal.App.3d 160, 179.)

The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy but is simply a determination that, balancing the equities of the parties – that is, the harm to each party – the defendant should or should not be restrained from exercising the right claimed. (*West Coast Constr. Co. v. Oceano Sanitary Dist*. (1971) 17 Cal.App.3d 693.)

In ruling on a request for preliminary injunction, the trial court exercises it discretion and considers (1) the likelihood plaintiff will prevail on the merits of the case at trial and (2) the harm to be suffered by the plaintiff if the injunction does not issue, as compared to the harm to be suffered by the defendant it if does. (*Take Me Home Rescue v. Luri* (2012) 208 Cal.App.4th 1342, 1350 (citation omitted).) The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. (*Id*.)

Thus, for an injunction to issue, the moving party must first establish a likelihood of prevailing on the merits. (*See, San Francisco Newspaper Printing Co., Inc. v. Superior Court* (1985) 170 Cal.App.3d 438, 442.) This is customarily done by affidavits or declarations, although a verified complaint and other discovery can be considered. (*See, Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 527.)

In *Butt v. State of California* (1992) 4 Cal.4th 668, the Supreme Court addressed the elements for issuance of an injunction, stating: "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." (*Id*., at 678.) Nevertheless, "[a] trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. (Citation omitted.)" (*Id.; see also Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999.)

The Legal Standards Governing Writ Relief

A party seeking writ relief under section 1085 must show three things:

(1) There is no other plain, speedy, and adequate remedy in the ordinary course of law (CCP § 1086);

(2) The respondent has a clear, present, and ministerial duty to act in a particular way (CCP § 1085(a); and

(3) The petitioner has a clear, present, and beneficial right to the performance of that duty (CCP § 1086; *Senior & Disability Action v Weber* (2021) 62 Cal.App.5th 357, 364.)

Ordinarily, a writ of mandate may be issued only to persons who are "beneficially interested." CCP § 1086. The courts have recognized an exception to this general rule, however, when the question involves a public right and the object of the mandate is to obtain enforcement of a public duty. In such a

case, the petitioner need not show any legal or special interest in the result, because it is sufficient that the petitioner is interested as a citizen in having the laws executed and the duty in question enforced. *(Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, 170 n.5; *National Asian American Coalition v. Newsom* (2019) 33 Cal.App.5th 993, 1009; *Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control Dist*. (2015) 235 Cal.App.4th 957, 962–963.)

The Court concludes Petitioners have standing to seek this relief.

Where a statute or ordinance clearly defines the *specific* duties or course of conduct a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion for purposes of a writ of mandate. (*Morris v. Harper* (2001) 94 Cal. App.4th 52; *Ellena v Department of Ins*. (2014) 230 Cal.App.4th 198, 205.)

However, when a statute does not mandate a *specific* course of action that an agency must take to carry out its obligations under the statute, this suggests the course of action is within the agency's discretion. Discretion is the authority conferred on public officials to act according to the dictates of their own judgment. (*Physicians Committee for Responsible Medicine v. Los Angeles Unified School Dist*. (2019) 43 Cal.App.5th 175, 185). A judge may not issue a writ of mandate to control the respondent's exercise of discretion, but only to ensure that the respondent's ministerial duties have been fulfilled. (*Collins v. Thurmond* (2019) 39 Cal.App.5th 323, 361; *Citizens for Odor Nuisance Abatement v City of San Diego* (2017) 8 Cal.App.5th 350, 365–366.) In other words, a judge may not issue a writ of mandate to compel the agency to exercise its discretion to act in a specific way. (*Center for Biological Diversity v. Dept. of Conserv.* (2018) 26 Cal.App.5th 161, 172–176; *Marquez v. State Dep't of Health Care Servs.* (2015) 240 Cal.App.4th 87, 118–119.)

“Mandate may not issue to compel action unless it is shown the duty to do the thing asked for is plain and *unmixed with discretionary power or the exercise of judgment*.” (*California High-Speed Rail Auth. V. Superior Court* (2014) 228 Cal.App.4th 676, 715 (emphasis in original; internal quotation and citation omitted).)

The Statutes On Which Petitioners Rely

As noted above, Petitioners advised the Court in their Supplemental Brief – and reiterated at the hearing – that they are relying on only six statutes as the basis for the requested preliminary injunction.

The six statutes Petitioners ask this Court to enjoin Respondents from violating are as follows:

Civil Code section **1834** provides:

A depositary of living animals shall provide the animals with necessary and prompt veterinary care, nutrition, and shelter, and treat them kindly. Any depositary that fails to perform these duties may be liable for civil damages as provided by law.

Civil Code section **1846(b)** provides in relevant part:

A gratuitous depositary of a living animal shall provide the animal with necessary and prompt veterinary care, adequate nutrition and water, and shelter, and shall treat it humanely.

Food & Agriculture Code section **31108(b)(1)** provides, in relevant part:

Except as provided in Section 17006, any stray dog that is impounded pursuant to this division shall, before the euthanasia of that animal, be released to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organization if requested by the organization before

the scheduled euthanasia of that animal. The public or private shelter may enter into cooperative agreements with any animal rescue or adoption organization.

Food & Agriculture Code section **31752(c)(1)** provides:

Except as provided in Section 17006, any stray cat that is impounded pursuant to this division shall, before the euthanasia of that animal, be released to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organization if requested by the organization before the scheduled euthanasia of that animal. . . . The public or private shelter may enter into cooperative agreements with any animal rescue or adoption organization.

Food & Agriculture Code section **17005** provides:

(a) It is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is likely to adversely affect the animal's health in the future.
(b) It is the policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts. This subdivision, by itself, shall not be the basis of liability for damages regarding euthanasia.

Finally, Food & Agriculture section **17006** provides:

Animals that are irremediably suffering from a serious illness or severe injury shall not be held for owner redemption or adoption. Except as provided in subdivision (b) of Section 31108 and subdivision (c) of Section 31752, newborn animals that need maternal care and have been impounded without their mothers may be euthanized without being held for owner redemption or adoption.

Based on this statutory authority, Petitioners ask the Court to enter an injunction “doing one, modest thing: Ordering Respondents to refrain from violating” these “mandatory California statutes.” Supp.Br. at 6:2-5.

The Merits of Petitioners’ Request for Injunctive Relief

The Court concludes Petitioners are not entitled to a preliminary injunction because they have not shown they are likely to prevail on their claim for writ of mandate to compel Respondents to comply with these statutes.

The first step in analyzing a traditional mandamus case is to interpret the applicable statute to see if it imposes a duty on the respondent. (See *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 657-661.) If so, the next step is to determine whether the duty is ministerial or discretionary. (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1186 (action’s classification as ministerial or discretionary is crucial to the ultimate question of whether mandamus is appropriate).)

Whether a statute imposes a mandatory duty is a question of statutory interpretation for the court. *Physicians Committee for Responsible Medicine v. Los Angeles Unified School Dist.* (2019) 43 Cal.App.5th 175, 185.

An act is ministerial if a public officer is required to perform it in a prescribed manner in obedience to legal authority and without regard to the officer’s own judgment or opinion concerning the propriety of the

act. (*Lockyer v. City & County of San Francisco* (2004) 33 Cal.4th 1055, 1082; *Physicians Committee*, 43 Cal.App.5th at 185.) "A statute is deemed to impose a mandatory duty on a public official only if the statute affirmatively imposes the duty and provides implementing guidelines." (*Id.* at 185 (quotation and citation omitted).)

Discretion, however, is the power conferred on public officials to act officially according to the dictates of their own judgment. (*Physicians Committee,* 43 Cal.App.5th at 185 (mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in *some* manner); *California High-Speed Rail*, 228 Cal.App.4th at 707 ("A writ is not to be used to control the exercise of discretion, but to ensure that ministerial duties have been fulfilled.").)

Civil Code sections 1834 and 1846(b) both provide that a depositary of living animals "shall" provide animals in its care with "necessary and prompt veterinary care, nutrition, and shelter" and treat them "kindly" and "humanely." Respondents do not dispute the Shelter is a depositary within the meaning of these statutes.

Accepting for these purposes that these statutes impose a mandatory duty on the Shelter, it is nevertheless apparent that the duty to take these actions is *necessarily* heavily mixed "with discretionary power or the exercise of judgment." (See *California High-Speed Rail,* 228 Cal.App.4th at 715.)

Determining what is "necessary" veterinary care for any particular animal's circumstances and what amounts to "kind" and "humane" treatment clearly requires discretionary choices and the exercise of judgment. Despite the obligatory language in these two statutes, the Shelter has discretion to decide which of the numerous potential courses of action it will take in rendering veterinary care and in caring for the animals entrusted to it in a kind and humane manner.

Food & Agriculture Code sections 31108(b)(1) and 31752(c)(1) provide that, except as provided in section 17006 (which provides that certain animals shall not – or need not – be held for owner redemption or adoption) any stray dog or stray cat impounded "*shall*, before the euthanasia of that animal, be leased to a nonprofit . . . animal rescue or adoption organization *if requested by the organization before the scheduled euthanasia* of that animal." (Emphases added).

This statutory language does impose a mandatory duty on the Shelter not to euthanize an animal if a nonprofit has, before the scheduled euthanasia date, requested that the specific animal be released to it. But Petitioners have presented no evidence showing the Shelter ignores this duty. There is no credible evidence before the Court that the Shelter has euthanized a specific dog or cat after receiving a timely request from a rescue or adoption organization to release that particular animal to it.

With respect to the dog referred to as "Max," there is no evidence the Boise Bully Breed Rescue had requested that Max be released to them – only that the Rescue had expressed an interest in the dog and asked for more information about him. And with respect to the dog "Charleston," the evidence shows that a scheduled euthanasia was called off when the Shelter Community Outreach office was told the Boise Bully Breed Rescue had agreed to take him. See Bickers Decl. ¶ 15. Thus, Petitioners have not shown that a preliminary injunction is necessary to prevent on-going – or even threatened – violations of this requirement.

Although both statutes provide that a public shelter "*may* enter into cooperative agreements with any animal rescue or adoption organization" (emphasis added), they impose no mandatory duty on the Shelter to do so. Thus, that statutory language provides no basis for mandamus relief or the requested injunction.

Food & Agriculture Code section 17005 articulates two statements of California state "policy." It recites the "policy of the state that no adoptable animal should be euthanized if it can be adopted into a

suitable home" and that "no treatable animal should be euthanized."

Broad statements of policy without any implementing guidelines or specific details about how the policies are to be implemented do not amount to a mandatory duty subject to mandamus relief.

Even assuming broad statements of "policy" such as these impose a mandatory duty on local governmental entities to take *some* steps to effectuate the policy, it is clear section 17005 does not specify what those steps must be. The statute does not define specific duties or a specific course of conduct the Shelter (or any other governing body) must take to effectuate the stated policies.

Indeed, the remainder of the statutory language of section 17005 underscores just how much discretion and judgement are, of necessity, required to carry out the stated policy. For example: "Adoptable animals" are defined as animals eight weeks or older that "have manifested no sign of a *behavioral or temperamental defect* that *could pose* a health or safety risk or otherwise make the animal *unsuitable* for placement as a pet" and that have "manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is *likely* to adversely affect the animal's health in the future." (All emphases added.)

It is clear that making these determinations – about whether an animal has manifested a sign of a behavioral or temperamental defect, whether such a defect "*could"* pose a health or safety risk, whether such a defect "*could"* otherwise make an animal "*unsuitable*" to be placed as a pet, whether an animal has manifested signs of disease or a condition that is "*likely*" to affect the animal's health in the future – all require discretionary choices and the exercise of judgement by Shelter staff. That Petitioners (or their veterinary expert or the shelter volunteers who submitted declarations) might or would have made different judgements or reached different conclusions about particular animals does not warrant mandamus relief. Compare, for example, Petitioners' argument that a euthanized dog, "Angel," was a "poster child" for adoptability with Respondents' testimony that Angel exhibited behaviors that "could impact public safety," including "animal aggression, dislike of a specific gender, an inability to be handled by anyone, unsocial with people." Declaration of Monica Schmidt ¶¶ 34, 35.

Likewise, the determination whether an animal is treatable involves discretionary choices and the exercise of judgement. Whether an animal is – or is not – "treatable" may well be the subject of differing opinions by different veterinarians. (The Court notes that even the veterinarians who submitted declarations here, one for Petitioners and the other for Respondents, could not agree on the whether the standard of care in a shelter context differs from the standard of care in a private veterinary setting.) Section 17005 states that a "treatable" animal "include[s]" one that is not adoptable but "*could become* adoptable with *reasonable* efforts." But what amounts to "reasonable efforts" – and the determination whether an animal "could become" adoptable with such efforts – are all matters in which judgement and discretion are inherent.

Finally, determinations under Section 17006 regarding whether an animal is "irremediably suffering from a serious illness or severe injury" are likewise subject to judgement and discretion.

The pervasive role of judgement and discretion in the Shelter's provision of services to animals in its care is underscored by the conflicting declarations submitted by the parties. Petitioners submit a number of declarations they contend show, e.g., that animals were not given proper medical treatment, were wrongly deemed to be "unadoptable," or were wrongly found to have exhibited some kind of behavioral or temperament defects that made the Shelter conclude the animal was unsuitable for adoption. For their part, Respondents provided controverting declarations – from Dr. Carissa Jones, the OCAC Chief Veterinarian, and Monica Schmidt, OCAC Assistant Director – that contradict or refute Petitioners' arguments and factual assertions.

In sum, Petitioners' complaints largely boil down to disagreements with Respondents about the proper

way to run the Shelter and disagreements about decisions made by Shelter staff with respect to particular animals. In effect, Petitioners ask the Court to substitute its decisions and judgement (and/or the judgement of Petitioners' proposed monitor) about how to properly care for and treat animals in the Shelter – including which animals are treatable or adoptable, or which animals should be euthanized – for the judgments and decisions made by Respondents' current staff. This Court is not empowered or equipped to make those determinations.

Because the Court concludes a preliminary injunction is not appropriate, it follows that appointment of a monitor to run or oversee the running of the Shelter is neither necessary nor appropriate. Nothing in Petitioners' papers or evidence warrants this Court effectively putting itself in the position of running the Shelter and making day-to-day decisions about the care of the scores of animals in its custody. See *Monterey Coastkeeper v. Central Coast Regional Water Quality Control Bd*. (2022) 76 Cal.App.5th 1, 18-22 ("Traditional mandamus in this case would make the trial court the effective overseer of the State Board and the regional water boards, making the court one of the most, if not the most, powerful entities in setting water policy. The causes of action here cannot support such a result.")

The Motion is denied in its entirety.

Clerk shall give notice.