



S.F. CITY ATTORNEY • ANIMAL CARE & CONTROL

NEWS RELEASE

FOR IMMEDIATE RELEASE
CONTACTS:

FRIDAY, JAN. 11, 2013

- Rebecca Katz, Animal Care & Control Director Work (415) 554-6364
Cell (415) 515-1653
 - Matt Dorsey, City Attorney Spokesman Work (415) 554-4662
Cell (415) 640-6288
-

Charlie Lives

Embattled pit bull's euthanization sentence is commuted, as owner agrees to surrender custody for placement in qualified sanctuary

SAN FRANCISCO (Jan. 11, 2013)—City Attorney Dennis Herrera and San Francisco Animal Care and Control Director Rebecca Katz this evening announced a settlement agreement to spare the life of Charlie, an American Staffordshire Terrier pit bull sentenced to be humanely euthanized following a vicious and unprovoked attack on a United States Park Police officer and his horse at Crissy Field on August 6.

Charlie's sentence was ordered as the result of an Aug. 23 San Francisco Police Department Vicious and Dangerous Dog Hearing, an administrative evidence-gathering procedure codified in local law to balance the due process rights of dog guardians with serious public safety concerns involving dangerous and mistreated animals. But the sentence has been stayed since August, when Charlie's owner and an animal advocacy law firm first sued the City to vacate the order.

With Charlie in the custody of Animal Care and Control since the August attack, the procedurally circuitous legal battle—moving from San Francisco Superior Court, to the California Court of Appeal, to the U.S. District Court, and back to Superior Court—has played out against the backdrop of an unprecedented social media firestorm. David Gizzarelli, the pit bull's owner, collected more than 113,000 online signatures and an as-yet undetermined amount in online donations to save Charlie—even as animal advocates became increasingly divided over whether Gizzarelli had exercised responsible guardianship.

City officials including Herrera, Katz, and Supervisor David Campos all publicly advocated for a resolution that would both save Charlie and address the dog's extremely dangerous behavioral issues and aggressive prey drive. But efforts to negotiate Charlie's placement with a qualified animal sanctuary equipped to assume custody and undertake behavioral rehabilitation have been stymied by Gizzarelli himself, who for weeks refused to surrender custody of Charlie. Ironically, though San Francisco would have full authority to euthanize Charlie once the judicial stay were lifted, city officials would be legally prohibited from designating a new custodian for Charlie without his owner's express consent. Gizzarelli's seeming insistence that he would sacrifice Charlie's life over legal principle sharply turned

[MORE]

the tide of opinion among animal protection advocates and the *San Francisco Examiner* editorial board in recent days.

“I know all of us who serve the City of Saint Francis are gratified to finally reach a fair and humane resolution that offers Charlie a chance at redemption while also protecting public safety,” said Herrera. “Animal Care and Control Director Rebecca Katz and her staff deserve great credit for their leadership and hard work to reach this settlement agreement. Kudos, also, to San Francisco Police Officer John Denny. He fulfilled a vital public safety obligation as the Vicious and Dangerous Dog Hearing officer, and this outcome would not have been possible without his experience, thoughtfulness and flexibility.”

“Like so many cases involving vicious and dangerous dog attacks, this case centered around questions about the owner as much as it did about Charlie—and I think this case highlights the importance of responsible guardianship,” said Animal Care and Control Director Rebecca Katz. “In the City of Saint Francis, we treat companion animals as family members, and must do everything in our power to protect them as well as our community at large. I’m gratified that this resolution meets ACC’s dual mission of animal welfare and public protection.”

Following lengthy court-ordered negotiations that stretched late into Thursday evening, an outline of mutually acceptable settlement provisions emerged Friday morning. Under terms of the agreement signed this afternoon:

- Gizzarelli has relinquished ownership of Charlie to San Francisco Animal Care and Control, which agrees to not proceed with the euthanization order of Charlie.
- San Francisco Animal Care and Control will place Charlie with a qualified third-party rehabilitation center or sanctuary, which will retain full authority to determine a course of humane treatment for Charlie.
- Gizzarelli will be provided quarterly updates as to Charlie’s health and happiness, but will not contact Charlie’s future guardians directly or indirectly.
- Gizzarelli will dismiss his litigation against the City, and both Gizzarelli and the City agree to mutual releases from civil liability.
- The U.S. District Court will retain jurisdiction for the limited purpose of apportioning costs between the parties, which will be subject to Gizzarelli’s ability to pay, and based on disclosures of his online and other fundraising to fund his case. A hearing for that purpose will be held before Magistrate Judge Nat Cousins on April 12, 2013.

According to the findings of the Aug. 23 Vicious and Dangerous Dog Hearing, Gizzarelli had been running Charlie off-leash—and without a collar—at Crissy Field on the afternoon of Friday, August 6, when the dog caught sight of a United States Park Police horse named Stoney, which was being ridden by Officer Eric Evans. Charlie bolted for the horse, in defiance of Gizzarelli’s vocal commands. Without a dog collar or harness for Gizzarelli to assert physical control, Charlie first attempted to bite Officer Evans on the leg, and failing that proceeded to bite the horse’s left front leg. Evans, who was thrown from the horse and knocked unconscious in the initial attack, suffered a concussion and shoulder injury. Charlie then pursued Stoney, launching a series of attacks over the course of a harrowing 1.6-mile chase that would cause severe bite wounds and bleeding gashes to the horse’s legs, thighs and stomach.

1 John F. Mounier Jr. (SBN 48377)
2 www.TheAnimalProtector.com
3 John@TheAnimalProtector.com
4 APS ANIMAL PROTECTION ATTORNEYS
5 SAN FRANCISCO BAY AREA
6 John.Mounier@att.net
7 35 Miller Avenue, Suite 206
8 Mill Valley, CA 94941

9 Attorneys for Charlie & David

10 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
11 CALIFORNIA

12 David Gizzarelli, Guardian of Charlie

13 Plaintiff,

14 vs.

15 City and County of San Francisco;
16 Animal Care and Control; Rebecca
17 Katz, Esq.; Vicious and Dangerous Dog
18 Unit of the San Francisco Police
19 Department; John Denny

20 Defendants.

Case No. C 12 6568 CRB

**DAVID (GUARDIAN OF CHARLIE)
GIZZARELLI'S NOTICE OF
SETTLEMENT**

21 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE THAT the parties executed a Full and Final Release on
23 January 11, 2013. A copy of the Full and Final Release is attached to this Notice of
24 Settlement.

25 DATED: January 13, 2013

APS ANIMAL PROTECTION ATTORNEYS

26 By: _____

27 *John The Animal Protector Mounier*
28 *Attorney for David Gizzarelli,*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

**[January 11, 2013 Executed
FULL AND FINAL RELEASE]**

-2-

FULL AND FINAL RELEASE

Case Name: *Gizzarelli v. City and County of San Francisco et al. (two cases)*

Case No.: *U.S.D.C. Case No. C12-6568 CRB, California Court of Appeal Case No. A137309*

FOR GOOD AND VALUABLE CONSIDERATION, set forth under TERMS OF SETTLEMENT, below, the sufficiency of which is hereby admitted and acknowledged, PLAINTIFF DAVID GIZZARELLI, individually and on behalf of his/her heirs, domestic partners, executors, administrators, and assigns, if any and THE CITY AND COUNTY OF SAN FRANCISCO, REBECCA KATZ AND JOHN DENNY, together with their elective and/or appointive boards, agents, servants, employees, consultants, departments, commissioners, and officers (hereinafter referred to individually and collectively as "SAN FRANCISCO") (hereinafter referred to individually and collectively as "RELEASORS"), hereby agree to fully and forever mutually release and discharge each other, from any and all claims, actions, causes of action, liabilities, damages, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which (1) are alleged or set forth or attempted to be set forth in the pleadings on file in that certain actions entitled "David Gizzarelli vs. City and County of San Francisco, et al." being Action No. C12-6568 CRB on the records of the United States District Court for the Northern District of California, and "David Gizzarelli v. City and County of San Francisco et al." being Action No. A137309 in the Appellate Court for the State of California (hereinafter referred to as the "ACTIONS"), or (2) arise out of or are in any way related to any of the transactions, occurrences, acts or omissions set forth or alleged in any of the pleadings in the Actions (hereinafter referred to collectively as the "CLAIMS").

RELEASORS represent and warrant that they have not assigned or transferred, or agreed to assign or transfer, or attempted to assign or transfer, to any third party or entity (including without limitation any insurer) any interest in any of the CLAIMS. RELEASORS agrees to defend, indemnify and hold harmless each other against any loss, expense or liability, including without limitation reasonable attorneys' fees, arising from any breach of the foregoing representation and warranty in this paragraph. Furthermore, in the event that any party learns that any RELEASOR has breached this warranty, the party may, at its sole option, elect to rescind this Full and Final Release.

RELEASORS certify that they have read Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

RELEASORS hereby waives application of Section 1542 of the Civil Code. RELEASORS understand and acknowledge that, as a consequence of this waiver of Section 1542, even if RELEASORS should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to the CLAIMS, or any of them, RELEASORS will not be permitted to make any further claims against each other to recover for such loss, damages or injury, except as set forth in the specific terms set forth below. RELEASORS acknowledge that they intend these consequences even as to claims for personal injury or property damage that may exist as of the date of this Full and Final Release but which RELEASORS does not know exist, and which, if known, would materially affect RELEASORS' decision to execute this Full and Final Release, regardless of whether RELEASORS' lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

RELEASORS acknowledges that, in executing this Full and Final Release, they each are acting on their own independent judgment informed by his/her legal counsel. RELEASORS acknowledge having read this Full and Final Release and having been advised by his/her attorney as to its meaning and effect. RELEASORS acknowledge and warrant that his/her execution of this Full and Final Release is free and voluntary. RELEASORS further represent and warrant that, at the time he/she executed this Full and Final Release, he/she was not in the period of first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility (as defined in Sections 1203 and 1250 of the Health and Safety Code) as a result of the injury alleged to have given rise to any of the CLAIMS, and that as a result Business and Professions Code section 6152(b) cannot be used to invalidate this Full and Final Release.

RELEASORS acknowledge that this Full and Final Release contains and constitutes the entire agreement between RELEASORS with respect to the CLAIMS. The terms of this Full and Final Release are contractual and not mere recitals. RELEASORS acknowledge that the parties have made no representations, express or implied, to induce RELEASORS to enter into this Full and Final Release, other than as expressly set forth herein.

No aspect of this Full and Final Release or the settlement which led to it is intended to be nor at any time shall be construed, deemed, or treated in any respect as an admission by any party of liability for any purpose. It is expressly understood by RELEASORS that this Full and Final Release does not constitute an admission of the truth or accuracy of any of the allegations made in the complaint on file in the ACTIONS or of liability for any of the CLAIMS, that SAN FRANCISCO expressly denies the allegations made in the complaints, and that Plaintiff expressly denies and disputes the findings of the August 23, 2012 Statement of Decision.

If any of the provisions of this Full and Final Release or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Full and Final Release to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Full and Final Release are declared and understood to be severable.

RELEASORS understands and acknowledges that they shall bear their own legal expenses and costs incurred in connection with prosecuting or defending against the ACTIONS and any of the CLAIMS.

This Full and Final Release and the settlement which led to it have been fully negotiated with the assistance of counsel and should not be construed more strictly against one party than another.

This Full and Final Release may be executed in two or more counterparts, all of which counterparts shall be deemed originals.

TERMS OF SETTLEMENT

RELEASORS agree to the following terms of settlement:

1. Dismissal and mutual release of all known and unknown civil claims (state and federal court), including a mutual release of rights under California Civil Code section 1542, with each party to pay own litigation costs and fees. Plaintiff disputes the accuracy of the administrative findings in case CPF 12-512445, but has agreed to resolve the disputed claims by entering into this negotiated agreement.

2. Gizzarelli hereby relinquishes ownership of Charlie to SF AC&C.

3. AC&C agrees not to euthanize Charlie.

4. AC&C, after considering placements proposed by Gizzarelli, to place Charlie with appropriate third party rehabilitation center or sanctuary. The third party shall have the unlimited authority to determine Charlie's outcome, which can include rehabilitation, lifetime sanctuary, or destruction, if the third party determines it would be the most humane outcome.

5. To compensate for unpaid past care and housing costs (\$3,600.00) and future costs associated with identifying and approving a rehabilitation or sanctuary center; parties agree that Magistrate Judge Cousins, U.S. District Court, NDCA, will retain jurisdiction for the limited purpose of conducting a hearing on April 12, 2013, to apportion costs between the parties. The parties contemplate that the reasonable costs of Charlie's future care and rehabilitation and AC&C's costs to identify and investigate the rehabilitation or sanctuary center ("ACC's Actual Costs") between January 10 and April 10, 2013, will be apportioned 50/50 between AC&C and Gizzarelli. In addition, \$3,600 is owed by Gizzarelli to AC&C for past care and housing of Charlie. All amounts considered at the April 12 hearing (including the \$3,600) will be subject to Gizzarelli's ability to pay. On April 11, 2013, the parties will exchange with each other and submit to the Court (i) evidence of AC&C's Actual Costs; and (ii) evidence of Gizzarelli's income and expenses for the time period August 1, 2012 to April 10, 2013, and ability to pay for Charlie's care. Parties agree to be bound by the decision of Magistrate Cousins apportioning and awarding the costs. Gizzarelli's obligation to pay for Charlie's future care is limited to the time period from January 10, 2013 to April 10, 2013.

6. Gizzarelli to be provided quarterly updates as to Charlie's health and happiness.

7. Gizzarelli agrees not to contact, directly or indirectly, future owners of Charlie.

8. This document constitutes the entire agreement.

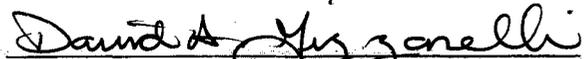
9. Parties agree to cancel the preliminary injunction hearing scheduled for Jan. 11 before Judge Breyer; plaintiff will notify Court of request to cancel hearing.

10. Plaintiff shall file dismissals of the ACTIONS within one week.

Acceptance: this Full and Final Release may be signed and accepted in counterpart, and faxed and photocopied signatures are valid and enforceable.

SO AGREED.

Dated: 1/11/13


David Grizzarelli, Plaintiff

Dated: 1/11/13


Rebecca Katz, Director, Animal Care & Control (on behalf of herself and City and County of San Francisco)

Dated: 1/11/13

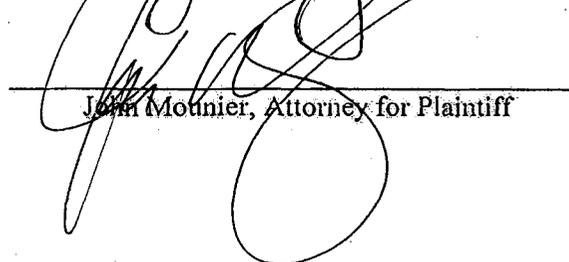

John Denny, Hearing Officer (on behalf of himself and City and County of San Francisco)

APPROVED AS TO
FORM

Dated: 1/14/13


Margaret W. Baumgartner
Deputy City Attorney

Dated: January 11, 2013


John Motinier, Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

CASE NAME: David Gizzarelli, Guardian of Charlie vs. City and County Of San Francisco, Et al.

CASE NUMBER: C 12 6568 CRB

I declare under penalty of perjury under the laws of the State of California, that the following is true and correct:

I am over the age of 18 and not a party or interested in this action. My business address is 35 Miller Avenue, Suite 206, Mill Valley, CA 94941. On the date first written below, at North Bay, California, I served the following document(s):

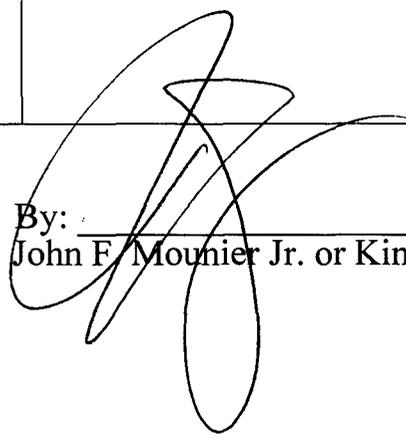
David (Guardian of Charlie) Gizzarelli's Notice of Settlement

XXXX (BY MAIL) On this date I placed the copies in envelopes addressed to the person(s) at the address(es) below, sealed the envelopes, placed appropriate postage on them and personally placed them in the United States mail.

(BY DELIVERY) I caused such documents to be delivered by hand to the offices of the addressee on this date.

City and County of San Francisco City Attorney Dennis Herrera Office of City Attorney 1390 Market Street, Sixth Floor San Francisco, CA 94102 Attn.: Margaret W. Baumgartner, Esq.	Telephone: 415.554-3859 Fax: 415.554-4248
---	--

Date: January 13, 2013

By:  _____
John F. Mounier Jr. or Kim H. Garrett