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**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

**GARY SCOTT, individually and on
behalf of all similarly situated;**

Plaintiffs,

vs.

**CITY OF PAYETTE, an Idaho
municipal corporation;**

Defendant.

Case No.:

CLASS ACTION COMPLAINT

Plaintiff **GARY SCOTT**, through attorney of record **ADAM P. KARP** of **ANIMAL LAW OFFICES**, alleges:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 2201, and 2202; and venue is properly set in the United States District Court for the District of Idaho pursuant to 28 U.S.C. § 1391.

2. The causes of action arise from factual allegations occurring in this judicial district.

1 3. Plaintiff **GARY SCOTT** (“Scott”) resides in the City of Payette. He
2 brings this Class Action pursuant to Federal Rule of Civil Procedure 23 on behalf
3 of all similarly situated persons.

4 4. Defendant **CITY OF PAYETTE** (“City”) is a municipal corporation,
5 organized under the laws of the State of Idaho, including for purposes of liability
6 under 42 U.S.C. § 1983.

8 5. As a result of Defendant’s actions, Scott and other Class members
9 have suffered or will suffer irreparable economic and noneconomic damage,
10 irreversible and adverse declarative and injunctive harm, including violation of
11 their constitutional rights.
12

13 6. Plaintiffs’ claims for attorney’s fees and costs is authorized by, *inter*
14 *alia*, 42 U.S.C. § 1988 and Idaho Code § 12-117.
15

16 7. This court has personal jurisdiction over the Defendant.
17

18 **II. INTRODUCTION**

19 8. Since the City enacted the breed-specific components of Chapter 6.08
20 of the Payette Municipal Code (“PMC”), and even since its amendments by
21 Ordinance 1400 (signed by Mayor Jeffrey T. Williams on January 5, 2016) and
22 Ordinance 1402 (signed by Mayor Williams on August 1, 2016), on information
23 and belief, it has denied owners of dogs their constitutional rights as described
24 below. Those owners’ dogs may have been adversely declared “pit bull dog,”
25

1 “vicious dog,” “vicious dog service animal,” “prohibited breed,” or “prohibited
2 breed service dog,” subjected to onerous restraints, banished, confiscated, or killed.
3 Those dogs’ owners may have been criminally prosecuted for keeping a “pit bull
4 dog,” “vicious dog,” or “prohibited breed.” Because of the recent change in
5 nomenclature with Ordinances 1400 and 1402, this action seeks to rectify the
6 discrimination and mistreatment of those whose dogs were maligned under the
7 earlier versions. Hence, when the terms “prohibited breed” or “prohibited breed
8 service animal” are used, Plaintiffs intend to reach the City’s conduct relative to
9 “pit bull dogs,” “vicious dogs,” and “vicious dog service animals” as well.
10
11

12 **III. CLASS ACTION ALLEGATION**

13 9. Scott brings this suit as a class action pursuant to Rules 23(a), (b)(1),
14 (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and
15 a Plaintiff Class (the “Class”) comprised of—(a) all persons whose dogs have been
16 deemed “prohibited breed” or “prohibited breed service animal” within the City,
17 whether or not banished, killed, or besaddled with onerous restraints; (b) all
18 persons who own, possess, keep, exercise control over, maintain, harbor, or
19 transport dogs who might meet the definition of “prohibited breed” or “prohibited
20 breed service animal” within the City based on nonbehavioral factors; (c) all
21 persons who may wish to acquire a dog the City contend is a “prohibited breed” or
22 “prohibited breed service animal” for nonbehavioral reasons and who might be
23
24
25

1 subject to adverse classification and whose owner may be subject to prosecution;
2 (d) all persons who may wish to move to, domicile in, or transact business within
3 the City in the company of a dog whom the City may deem “prohibited breed” or
4 “prohibited breed service animals”; (e) all persons who have been criminally
5 charged, prosecuted, convicted, and/or sentenced for harboring a “prohibited
6 breed” or “prohibited breed service animal” (or prior, similar label under the Code)
7 within the City based on nonbehavioral factors; and (f) all persons who have
8 removed their dogs from the City for fear of criminal prosecution—due to the
9 City’s vague, otherwise unconstitutional, and unlawful ordinances as described
10 below. Scott reserves the right to modify this class definition prior to moving for
11 class certification.
12
13

14 10. This action has been brought and may be properly maintained as a
15 class action pursuant to Rule 23 of the Federal Rules of Civil Procedure for the
16 following reasons:
17

18 a. The Class is ascertainable, and there is a well-defined community of
19 interest among the members of the Class;
20

21 b. Membership in the Class is so numerous as to make it impractical to
22 bring all Class members before the Court. The identity and exact number of Class
23 members is unknown but is estimated to be at least in the dozens, if not hundreds,
24 considering the fact that several Class members may have decided not to relocate
25

1 their residence or business to the City, or have relocated their dogs out of fear of
2 prosecution, confiscation, and euthanasia, due to the unconstitutional code
3 discussed herein; and given the duration of the laws' implementation since date of
4 enactment.

5
6 c. Scott's claims are typical of those of other Class members, all of
7 whom have suffered harm due to Defendants' uniform course of conduct.

8 d. Scott is a member of the Class.

9
10 e. The Party opposing the Class has acted or refused to act on grounds
11 that apply generally to the class, so that final injunctive relief and corresponding
12 declaratory relief is appropriate respecting the class as a whole, pursuant to Rule
13 23(b)(2).

14
15 f. There are numerous and substantial questions of law and fact common
16 to all of the members of the Class that control this litigation and predominate over
17 any individual issues pursuant to Rule 23(b)(3). The common issues include, but
18 are not limited to, the following:

19
20 1. Does the City of Payette's definition of "prohibited breed" violate the
21 state and federal constitutions, Americans with Disabilities Act,
22 and/or Fair Housing Act, in the respects articulated herein?

23
24 2. Does the City of Payette's definition of "prohibited breed service
25 animal" violate the state and federal constitutions, Americans with

1 Disabilities Act, and/or Fair Housing Act, in the respects articulated
2 herein?

3 3. Does the City of Payette unlawfully threaten criminal prosecution,
4 impoundment, confiscation, and euthanasia premised on
5 nonbehavioral designations of dogs as “prohibited breed” or
6 “prohibited breed service animal”?

8 4. Were Scott and other Class members damaged?

9 g. These and other questions of law or fact which are common to the
10 members of the Class predominate over any questions affecting only individual
11 members of the Class;

13 h. Scott will fairly and adequately protect the interests of the Class in
14 that he has no interests antagonistic to other members of the Class and has retained
15 counsel competent in the prosecution of class actions of this injunctive and
16 declaratory nature so as to represent them and the Class;

18 i. Without a class action, the Class will continue to suffer damage,
19 Defendant’s violations of the law or laws will continue without remedy, and
20 Defendant will continue to enjoy the fruits and proceeds of its unlawful
21 misconduct;

23 j. Given (i) the substantive complexity of this litigation; (ii) the size of
24 individual Class members’ claims; and (iii) the limited resources of the Class

1 members, few, if any, Class members could afford to seek legal redress
2 individually for the wrongs Defendants have committed against them;

3 k. This action will foster an orderly and expeditious administration of
4 Class claims, economies of time, effort and expense, and uniformity of decision;

5
6 l. Inferences and presumptions of materiality and reliance are available
7 to obtain class-wide determinations of those elements within the Class claims, as
8 are accepted methodologies for class-wide proof of declaratory and injunctive
9 harm; alternatively, upon adjudication of Defendant's common liability, the Court
10 can efficiently determine the claims of the individual Class members;

11
12 m. This action presents no difficulty that would impede the Court's
13 management of it as a class action, and a class action is the best (if not the only)
14 available means by which members of the Class can seek legal redress for the harm
15 caused them by Defendant.
16

17 n. In the absence of a class action, Defendant would be unjustly enriched
18 because it would be able to retain the benefits and fruits of its wrongful conduct.
19

20 o. The Claims in this case are also properly certifiable under applicable
21 law.

22 **IV. GENERAL ALLEGATIONS - SCOTT**

23 11. Scott resides at 1111 Center in Payette, Id., which has a secure, 6'
24 wood construction perimeter fence enclosing the backyard.
25

1 12. Though no written pedigree or kennel club registration exists to prove
2 his heritage, and while he has not independently verified breed composition, when
3 Scott bought his now approximately two year old assistance dog Buddy, the seller
4 claimed he was a “pit bull.”

5
6 13. Scott weighs about 260 pounds, has severe arthritis and tendonitis and
7 suffers from seriously worn kneecaps, impacting his mobility. He also suffers from
8 sciatica, bone spurs, and degenerative disc disease. Further, he has depression and
9 PTSD, for which Buddy has been prescribed as an emotional support animal.
10

11 14. Buddy has been individually trained to perform tasks and functions to
12 ameliorate Scott’s physical disabilities. Buddy helps keep Scott mobile, walking
13 with tension to increase Scott’s pace. Buddy also carries Scott’s water bottle. Scott
14 can command Buddy when to pull, when to slow down, and when to stop.
15

16 15. Buddy is a “service animal” for purposes of the Americans with
17 Disabilities Act.

18 16. Buddy is a “service animal” and “emotional support animal” for
19 purposes of the Federal Fair Housing Act.
20

21 17. Scott has a qualifying disability for purposes of the Americans with
22 Disabilities Act.

23 18. Scott has a qualifying handicap for purposes of the Federal Fair
24 Housing Act.
25

1 19. Buddy has never shown aggression toward any person or animal,
2 never been cited for an animal control violation. Rather, he possesses a goodly and
3 well-trained nature. To Scott's knowledge, none has complained about Buddy to
4 the City.

5
6 20. On May 13, 2016, before the City enacted Ordinance 1402 but after it
7 enacted Ordinance 1400, Scott's attorney Adam P. Karp contacted City Attorney
8 Bert Osborn by fax and email, as attached. In that letter, in an effort to seek
9 assurances that no harm would come to Scott or Buddy, and in an effort to provide
10 direction for Scott, Karp asked Osborn of the City's intentions: would it (a) banish
11 Buddy; (b) allow him to be licensed as a nonvicious adult, intact dog; or (c) allow
12 him to be licensed as a vicious dog service animal (mindful that Scott disputed
13 Buddy was at all "vicious")?
14
15

16 21. In or after June 2016, Osborn responded that the City would require
17 him to be licensed as a vicious dog service animal.

18 22. Under protest, Scott applied with the City to keep Buddy as a vicious
19 dog service animal.
20

21 23. The City demanded that Scott provide proof of neuter, proof of
22 liability insurance, and access to his property so a building inspector and police
23 officer could examine whether he had a dog kennel.
24

25 24. Scott refuses to comply with such discriminatory requirements in

order to keep Buddy without threat of prosecution, confiscation, or euthanasia.

VI. CITY OF PAYETTE’S BREED-DISCRIMINATORY CODE

25. PMC 6.08.060(C)(4) deems as a public nuisance any dog meeting the definition of “prohibited breed” under PMC 6.08.010(PROHIBITED BREED), stating that such dogs represent “a threat to the health, safety and welfare of the public in all areas of the City, due to the inherent breed characteristics of exceptional aggression, athleticism, strength, viciousness, unpredictability and tenaciousness, such that dogs have the ability to rapidly and unpredictably inflict significant damage upon their victims.” Nuisance dogs may not be kept or harbored in the City.

26. PMC 6.08.010(PROHIBITED BREED) deems as “prohibited breed” any dog who is a “pit bull dog,” Canary Dog, Dogo Argentina, American Bulldog, Cane Corso, or a dog which has sufficient characteristics as to be identifiable as partially of one of those breeds as determined by the dog owner or a qualified animal control officer, zoologist or veterinarian, mindful that a prima facie case is established when a qualified animal control officer, zoologist or veterinarian makes or provides a sworn statement that a particular dog exhibits distinguishing physical characteristics of one of the “prohibited” breeds.

27. “Pit bull dog” is defined at PMC 6.08.010(PIT BULL DOG) as “Any pit bull terrier.” “Pit bull terrier” is defined as an American pit bull terrier

1 (“APBT”), American bulldog, American Staffordshire terrier (“AST”),
2 Staffordshire bull terrier (“SBT”), English pit bull (“EPB”), English Staffordshire
3 terrier (“EST”) or any breed of dog or any mixed breed of dog which contains as
4 an element of its breeding the breeds of APBT, American bulldog, AST, SBT,
5 EPB, or EST, or having appearance and characteristics so as to be identifiable as
6 partially of one or more of such breeds.
7

8 28. The EPB and EST are not breeds recognized by the American Kennel
9 Club (“AKC”) or United Kennel Club (“UKC”). The APBT is not recognized as a
10 breed by the AKC.
11

12 29. “American bulldog” is defined at PMC 6.08.010(AMERICAN
13 BULLDOG) as any dog having the characteristics of the breed known by said
14 name or any mixed breed of dog which contains, as an element of its breeding, the
15 breed of American Bulldog as to be identifiable as partially of such breed.
16

17 30. The American bulldog are not breeds recognized by the AKC.

18 31. “Canary dog” is defined at PMC 6.08.010(CANARY DOG) as any
19 Canary Dog or Perro de Presa Canario, or any mixed breed of dog which contains,
20 as an element of its breeding, the breed of Canary Dog or Perro de Presa Canario
21 as to be identifiable as partially of such breed.
22

23 32. “Cane Corso” is defined at PMC 6.08.010(CANE CORSO) as any
24 dog having the characteristics of the breed known by said name or any mixed
25

1 breed of dog which contains, as an element of its breeding, the breed of Cane
2 Corso as to be identifiable as partially of such breed.

3 33. “Dogo Argentina” is defined at PMC 6.08.010(DOGO ARGENTINA)
4 as any dog having the characteristics of the breed known by said name or any
5 mixed breed of dog which contains, as an element of its breeding, the breed of
6 Dogo Argentina as to be identifiable as partially of such breed.
7

8 34. “Wolf-hybrid” is defined at PMC 6.08.010(WOLF-HYBRID) as an
9 animal which is the progeny of a dog (canis familiaris) and a wolf (canis lupus or
10 canis rufus). Wolf-hybrid also means an animal which is advertised, registered,
11 licensed or otherwise described or represented as a wolf-hybrid by its owner or
12 keeper or an animal which exhibits primary physical and behavioral wolf
13 characteristics.
14

15 35. The AKC and UKC do not recognize wolf-hybrid or wolf as a breed.
16

17 36. Nothing in Ch. 6.08 PMC sets forth the standards, characteristics, or
18 appearances by which a dog may be reasonably determined to be one of the
19 “prohibited breeds.” It does not reference any kennel club breed standards or
20 authoritative, objective sources.
21

22 37. Owners of dogs deemed nuisances may appeal any order or decision
23 of the Ordinance Officer within ten days after written receipt of notice. Such
24 hearing takes place before the Chief of Police, who must issue a written decision
25

1 without any deadline set by code. That decision may be appealed within fifteen
2 days of entry to the City Council, per PMC 6.08.107.

3 38. Nothing in Ch. 6.08 PMC provides for the standard or burden of proof
4 at the hearing before the Chief of Police or City Council, what rules of evidence
5 apply, or for the issuance of a subpoena to obtain records and command
6 appearance of witnesses for cross-examination.
7

8 39. Nothing in Ch. 6.08 PMC provides that written notice must be given
9 to the owner of a dog deemed a nuisance as a prohibited breed as to the right to
10 appeal and the procedure by which an appeal may occur, except in the narrow case
11 of impoundment of prohibited breed dogs per PMC 6.08.101(A), which only
12 pertains to *redemption*, not *contesting* the enforcement action.
13

14 40. PMC 6.08.100(A) makes it unlawful to keep, harbor, own, sell, offer
15 to sell, or in any way possess a “prohibited breed” within the City. Violation is a
16 misdemeanor. Proof of a prior violation “shall not require proof that the same
17 prohibited breed dog is involved.”
18

19 41. Prohibited breed service animals are exempt from PMC 6.08.100(A)
20 provided that a prohibited breed service animal license is obtained, as described in
21 PMC 6.08.100(C)(1) and (C)(1)(d). To license a prohibited breed service animal
22 requires compliance with the following conditions of PMC 6.08.100(C)(2): (a)
23 proof of current rabies vaccination; (b) two color photographs of the registered
24
25

1 animal clearly showing color and approximate size; (c) the owner or handler must
2 be at least 18; (d) the tasks the dog has been trained to perform must be listed on
3 the licensing application; (e) mandatory spay/neuter with documentary proof of
4 sterilization; (f) microchip implantation with number given to the City, including
5 immediate notification of change of address; (g) surety bond or liability insurance
6 of at least \$25,000 with mandatory notification by the carrier of the City within 30
7 days before any cancellation, termination, or expiration of the policy; (h) wearing a
8 license tag on the dog's collar or harness at all times; (i) confinement whenever
9 outdoors in a locked, secure pen or enclosure, or in the rear yard enclosed by a six
10 foot fence; (j) muzzling and in a secure temporary enclosure or securely leashed
11 (no longer than 4') whenever away from the owner's property (subject to
12 modification if the leash or muzzle interferes with safe, effective performance of
13 the tasks performed by the dog); (k) prohibition on sale or transfer to any person
14 residing in the City; (l) immediate notification of chief of police or designee if the
15 dog is loose, stolen, at large, unconfined, has mauled, bitten, attacked, threatened,
16 or in any way menaced another animal or human, or died; (m) denial of breeder's
17 permit; (n) revocation of license, impoundment and disposition per PMC
18 6.08.100(C)(3) if the dog is a direct threat to the health or safety of others; (o)
19 noncompliance with any of (a) through (n) shall result in license revocation,
20 impoundment and disposition per PMC 6.08.100(C)(3).
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CLASS ACTION COMPLAINT - 14

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1 42. PMC 6.08.100(C)(3) provides for immediate impoundment of a
2 prohibited breed service animal found within the City who does not meet the
3 exceptions stated in PMC 6.08.100. If the dog is not found to be a pit bull by DNA
4 testing, evidence to be obtained at the owner's option and sole expense, or if the
5 dog is deemed a service animal, the dog shall be released to the owner, subject to
6 full compliance with "every requirement of this chapter."

8 43. "DNA Test Evidence" is defined at PMC 6.08.010(DNA TEST
9 EVIDENCE) as a test that looks for genetic markers of the "following breeds: pit
10 bull dog, Canary dog, Dogo Argentina, American bulldog, Cane Corso, or wolf
11 hybrid." To be considered a "prohibited breed," the DNA testing must demonstrate
12 a genetic blueprint containing any element of the prohibited breed. The DNA test
13 results shall constitute evidence which the court may consider in establishing that a
14 dog is other than a breed banned by this chapter. DNA testing results shall override
15 any subjective evidence including observational findings to the contrary.

18 44. The Mars Wisdom Panel 4.0 DNA test, with the broadest breed
19 library on the market presently, does not test for the APBT, EPB, or EST.

21 45. "Secure pen or enclosure" is defined at PMC 6.08.010(SECURE PEN
22 OR ENCLOSURE) as a "six (6) sided structure designed to prevent entry of a
23 child or escape of a vicious dog or prohibited breed service animal." It must have
24 minimum dimensions of five feet by ten feet per animal housed within with secure
25

1 chain-link sides, a secured top and a secure bottom. If no bottom exists, the sides
2 must be embedded in the ground no less than two feet.

3 46. “Prohibited breed service animal” is defined at PMC
4 6.08.010(PROHIBITED BREED SERVICE ANIMAL) as a “prohibited breed”
5 under PMC 6.08.010(PROHIBITED BREED) who “also qualifies as a service
6 animal in accord with the American disabilities act requirements.”
7

8 47. No part of Ch. 6.08 PMC defines the “Americans disabilities act
9 requirements” or identifies by citation the “Americans disabilities act.”
10

11 **X. CITY OF PAYETTE’S PROCEDURAL**
12 **AND SUBSTANTIVE INFIRMITIES**

13 48. The state of science in 2016, including AKC and UKC standards
14 themselves, renders purebred bans, forfeitures, and related criminal charges, such
15 as threatened by the City’s prohibited breed code, not rationally related to any
16 legitimate government purpose and certainly not the least restrictive means
17 available to manage dogs proven harmful by prior misbehavior. Such purebred ban
18 violates substantive due process rights under the United States and Idaho
19 Constitutions.
20

21 49. The City code fails to publicize the City’s precise qualitative or
22 quantitative methodologies or guidelines for determining whether a particular dog
23 has “sufficient” characteristics to be deemed a “prohibited breed” or for
24
25

1 determining whether a particular dog “contains as an element of its breeding” one
2 of the prohibited breeds so as to be identifiable as partially of such breed. Further,
3 it fails to identify which characteristics are deemed distinguishing; what constitutes
4 an “element”; what quantum is “partially”; what characteristics are “identifiable”;
5 how many characteristics make a dog “identifiable”; how must such identification
6 be made (e.g., visual, DNA, other); what makes an animal control officer,
7 zoologist, or veterinarian “qualified”; what quality or quantity of evidence proves
8 same; and how that evidence may be reliably taken pursuant to Idaho Rule of
9 Evidence 702.
10
11

12 50. The City code’s “prohibited breed” definition (and individual breed
13 definitions contained therein) fails to quantify what genetic increment constitutes
14 same, and fails to provide fair warning of those circumstances where genetics
15 manifest physically to an ascertainable and sufficient phenotypic degree. Instead, it
16 determines prohibited conduct according to the often-uneducated eye of the
17 regulator, rendering it unconstitutionally vague, overbroad, and underbroad,
18 violating equal protection and privileges & immunities clauses, and denying
19 citizens procedural due process under federal and state constitutional law.
20
21

22 51. No ascertainable (much less authoritative) source exists for mixed
23 breed standards to which a government official may refer to avoid exercising
24 unbridled, highly subjective discretion in “identifying” a dog as wholly or partially
25

1 of the prohibited breeds, rendering the statute unconstitutionally vague, overbroad,
2 and underbroad, violating equal protection and privileges & immunities clauses,
3 and lacking procedural due process under federal and state constitutional law.

4 52. By granting three classes of individuals the authority to make a prima
5 facie case of breed identification – viz., “qualified animal control officer, zoologist
6 or veterinarian,” the City has delegated to private persons, over whom the City has
7 no control the right to amend, modify, and revoke the statutory law of the City, and
8 gives such individuals the power to frame and adopt a code which becomes a law
9 carrying penal and forfeiture sanctions, violating the nondelegation doctrine of
10 Idaho Const. Art. II, § 1 and corollary federal constitutional law.

13 53. With respect to prohibited breed service animals, the City has
14 prioritized DNA test evidence over any other form of breed identification, going so
15 far as to state that it “shall override any subjective evidence including
16 observational findings to the contrary.” The most common DNA test used to
17 ascertain breed, for *medical purposes only*, is the Mars Wisdom Panel. The
18 company has expressly disclaimed the use of its test for animal control/regulatory
19 purposes. See www.wisdompanel.com/service/faq and
20 www.wisdompanel.com/about_wp/terms_and_conditions/. Thus, the City has
21 delegated to a private corporation, over which it has no control the right to amend,
22 modify, and revoke the statutory law of the City, and gives such private

1 corporation the power to frame and adopt a code which becomes a law carrying
2 penal and forfeiture sanctions, violating the nondelegation doctrine of Idaho Const.
3 Art. II, § 1.

4 54. Nothing in the City code indicates that the hearing before the police
5 chief, his designee, or the City Council is transcribed by a court reporter or
6 otherwise recorded so that a verbatim report of proceedings can be generated,
7 thereby thwarting meaningful appellate review.
8

9 55. Ch. 6.08 PMC does not provide for the issuance of *subpoenae duces*
10 *tecum* or *subpoenae ad testificandum* (whether for deposition or hearing),
11 restricting the dog owner of the ability to meaningfully cross-examine, obtain
12 exculpatory evidence, call witnesses, confront one's accusers, and fully defend.
13

14 56. Ch. 6.08 PMC does not set forth a burden or standard of proof.
15

16 57. Hence, Ch. 6.08 PMC, relative to impoundment, declaring a dog a
17 nuisance, denying or revoking a prohibited breed service animal license, or
18 declaring a dog a prohibited breed, systemically threatens and disrespects, *inter*
19 *alia*, the Fourth and Fourteenth Amendments to the United States Constitution and
20 Arts. I, 13 and 17, and Art. II, § 1 of the Idaho Constitution.
21

22 58. The penalties imposed against dogs declared "prohibited breed" based
23 solely on breed and not behavior, when those canines have no demonstrated history
24 or any allegation of aggression toward animals or humans, but who only face these
25

1 restrictions (i.e., banishment or death) due to a perceived, imprecise, and
2 methodologically deficient based on inaccurate visual identification, violate
3 substantive due process.

4 59. Ch. 6.08 PMC systematically violates the rights of those with
5 emotional support animals of a “prohibited breed” under the Federal Fair Housing
6 Act by only purporting to make exception for prohibited breed *service animals*.
7

8 **XII. CLAIMS FOR RELIEF AGAINST CITY OF PAYETTE**

9 60. All allegations above are incorporated by reference and reasserted as
10 to claims below.
11

12 61. **FIRST CLAIM** – **Retrospective and Prospective Injunctive Relief**
13 **for Ongoing Violation of Federally-Protected Constitutional and Statutory**
14 **Rights (28 U.S.C. §§ 2201-2202, 42 U.S.C. § 1983, 42 U.S.C. § 12101 et seq., 42**
15 **U.S.C. § 3601 et seq.)** to vacate all prior designations of Class Members’ dogs as
16 “prohibited breed” or “prohibited breed service animal” (or precursor definitions)
17 based on nonbehavioral factors (such as purported breed or morphology); to strike
18 those portions of the Payette Municipal Code discussed herein as unconstitutional
19 under the State and Federal Constitutions and/or in violation of the Americans with
20 Disabilities Act and Fair Housing Act and a nullity; to enjoin the City from
21 enforcing the breed-specific aspects of the Code, and from enacting breed-specific
22 prohibitions for the reasons given herein. This claim specifically pertains to, but is
23
24
25

not limited to, Buddy.

62. **SECOND CLAIM – Final Retrospective and Prospective Declaratory Judgment for Ongoing Violation of Federally-Protected Constitutional and Statutory Rights (28 U.S.C. §§ 2201-2202, 42 U.S.C. § 1983)** finding various parts of Ch. 6.08 PMC, as described above, unconstitutional under the State and Federal Constitutions and/or in violation of the Americans with Disabilities Act and Fair Housing Act with respect to both mixed-breed and purebred dogs; and voiding *ab initio* any determination (and related penalties or restraints based thereon) that any Class Member’s dog is a “prohibited breed” or “prohibited breed service animal” (or precursor terminology) based on nonbehavioral factors (such as purported breed or morphology) under the City code. This claim specifically pertains to, but is not limited to, Buddy.

63. **THIRD CLAIM – Violation of Title II of the Americans with Disabilities Act and Implementing Regulations (42 U.S.C. § 12101, et seq., as amended, and 28 CFR Part 35)** in excluding from participation in, denying the benefits of services, programs, and activities of the City, and/or subjecting to discrimination by the City disabled individuals based on the breed of their service animals, viz., disparate licensing and registration scheme and related conditions (see 42 USC § 12132).

64. **FOURTH CLAIM – Violation of Federal Fair Housing Act and CLASS ACTION COMPLAINT - 21**

1 **Implementing Regulations (42 U.S.C. § 3601, et seq., as amended, and 24 CFR**
2 **Part 100)** in discriminating against disabled individuals by imposing onerous and
3 invasive conditions on their keeping emotional support animals based solely on
4 their breed, thereby denying an equal opportunity to enjoy their dwelling, and by
5 failing make reasonable accommodations for those with emotional support animals
6 of a “prohibited breed” by disallowing them the right to license, keep, own, and
7 possess such animals (even as a “prohibited breed service animal”) within City
8 limits like any other dog.
9
10

11 **PRAYER**

12 WHEREFORE, Scott and Class pray for judgment against Defendant as
13 follows:
14

15 A. Certification of the action as a class action pursuant to Rule 23(b)(1), (2),
16 and/or (3) of the Federal Rules of Civil Procedure, and appointment of Scott as
17 Class Representative and his counsel of record as Class Counsel;

18 B. For declaratory and injunctive relief as stated;

19 C. For costs of suit;

20
21 D. For reasonable attorney’s fees and other litigation-related costs as
22 allowed by law under 42 U.S.C. § 1988, the ADA and/or the FHA, or as otherwise
23 provided by law or equity, or in the alternative, statutory attorney’s fees; and
24

25 E. For such other and further relief as the Court may deem just and proper.

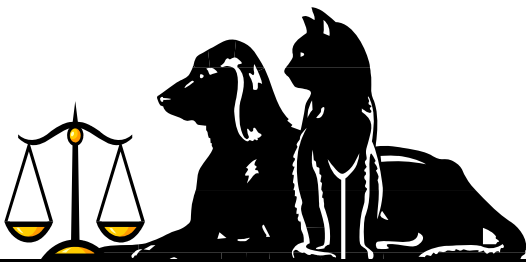
Dated this December 8, 2016.

ANIMAL LAW OFFICES

/s/ Adam P. Karp

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 Attorney for Plaintiffs Scott and Class Members
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By Fax and Email

Friday, May 13, 2016

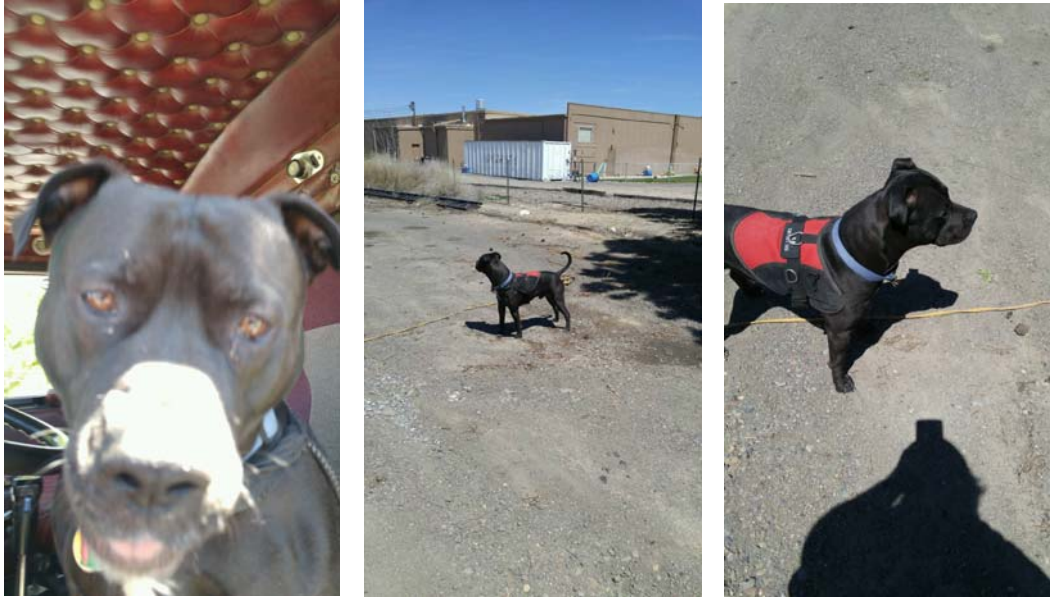
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RE: *Licensing of Buddy Scott*

Dear Mr. Osborn,

I represent Gary Scott of 1111 Center, Payette, Id. and his assistance dog Buddy. This letter seeks direction from the City as to whether it will allow Buddy to enter and remain within the city limits of Payette. Photos of Buddy are shown below. Though no written pedigree or kennel club registration exists to prove his heritage, and while he has not independently verified breed composition, when Mr. Scott purchased him, the seller claimed he was a "pit bull." Mr. Scott weighs about 260 pounds, has severe arthritis and tendonitis and suffers from seriously worn kneecaps, impacting his mobility. He also has sciatica, bone spurs, and degenerative disc disease with several surgeries anticipated in the near future. In addition to these physical disabilities, Mr. Scott has depression and PTSD, for which his health care provider has prescribed Buddy as an emotional support animal. Buddy helps keep him mobile, walking with tension (think weight-pulling) to increase Mr. Scott's pace.¹ Buddy also carries his water bottle.

¹ Buddy's pulling Mr. Scott is not a function of being untrained (as some dogs tug at the leash because they do not know how to heel). Rather, Mr. Scott can command Buddy when to pull, when to slow down, and when to stop.



As discussed in my letter to you dated Mar. 27, 2015, the City has breed-discriminatory legislation. While Ord. 1400 (2015) changed Ch. 6.08 PMC in many respects, it still deems all “pit bulls” as “vicious dogs” and bans those not licensed as same before 2006 (see PMC 6.08.070(N)(5)). It does, however, make an exception for vicious dog service animals. Yet, the definition of “service animal” is based on unpublished standards of a third party, non-governmental entity Animals of America. PMC 6.08.010(VICIOUS DOG SERVICE ANIMAL) is also confusing, for it is unclear if it treats *service* and *therapy* animals as interchangeable or distinct. Regardless, I have no doubt that Buddy qualifies as a service dog under the ADA and as an emotional support animal under the FHA.

To be clear, Mr. Scott wishes to license Buddy. The question is whether the City will (a) banish Buddy; (b) allow him to be licensed as a nonvicious adult, intact dog; (c) or allow him to be licensed as a vicious dog service animal, all while requiring compliance with PMC 6.08.070(N)(6)(a-e). Note that Mr. Scott takes the position that, regardless of his breed, Buddy should not be declared “vicious,” whether of the service animal variety or not.

Please respond to this request no later than next **Tues., May 17, 2016**. If I do not hear from you, I will assume that the City intends to enforce those unconstitutional and unlawful breed-specific parts of Ch. 6.08 PMC against Mr. Scott and his dog.

Respectfully,

ANIMAL LAW OFFICES

Adam P. Karp, Esq.
CC: Gary Scott