

1 M. DAVID MEAGHER, ESQ. SBN 171151  
2 LAW OFFICES OF M. DAVID MEAGHER  
3 333 S. JUNIPER STREET, SUITE 217  
4 ESCONDIDO, CA 92025  
5 (760) 743-2200

6  
7  
8 ATTORNEYS FOR DEFENDANTS  
9 MARC SAYER AND RENEE BRODEN

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE

10 GENTLE GIANTS RESCUE AND  
11 ADOPTIONS, INC. A California Non-Profit  
12 Public Benefit Corporation, BURT WARD,  
13 an individual, and TRACY WARD, an  
14 Individual,

15 Plaintiffs,

16 v.

17 BARBARA LAIRD, an Individual, MARC  
18 SAYER, an Individual, RENEE BRODEN,  
19 an Individual, JAMIE GARCIA, an  
20 Individual, and DOES 1 through 100  
21 Inclusive,

22 Defendants,

CASE NUMBER: 05 CC 09035

NOTICE OF LODGMENT AND  
LODGMENT OF EXHIBITS 1 THROUGH 9  
IN SUPPORT OF DEFENDANTS SPECIAL  
MOTION TO STRIKE THE PLAINTIFFS  
COMPLAINT AS A STRATEGIC  
LITIGATION AGAINST PUBLIC  
PARTICIPATION SUIT  
{C.C.P. § 425.16 et.seq.}

HON: DEREK G. JOHNSON  
TIME: 1:45 P.M.  
DEPT: C7  
DATE: JANUARY 3, 2006

23 Defendants and Moving Parties MARC SAYER and RENEE BRODEN, respectfully  
24 lodge the following document(s) in the above captioned action, for consideration in conjunction  
25 with this SPECIAL MOTION TO STRIKE AS A SLAPP, PLAINTIFFS COMPLAINT.

26 Exhibit Number:


- 27 1. Superior Court for County Of Riverside ORDER Granting SLAPP Motion in the Matter  
28 of BURT WARD v. THE PRESS-ENTERPRISE COMPANY, and PAIGE AUSTIN;

NOTICE OF LODGMENT OF EXHIBITS IN SUPPORT OF SPECIAL MOTION TO STRIKE  
COMPLAINT AS A SLAPP

- 1 2. Letter from Sanford Passman, to Marc Sayer, Dated September 7, 2005;
- 2 3. California Regional Water Quality Control Board Draft Letter to Burt Ward, Dated April
- 3 2, 2003.
- 4 4. Declaration of Defendant Marc Sayer;
- 5 5. Declaration of Renee Broden;
- 6 6. Press-Enterprise Newspaper Article by Paige Austin;
- 7 7. ROAR Internet message postings;
- 8 8. E-Mail exchange between Defendant Renee Broden and Giles; and,
- 9 9. Declaration of M. David Meagher.

10  
11 DATED: October 12, 2005

12  
13  
14 Respectfully submitted,  
**LAW OFFICES OF M. DAVID MEAGHER**

15  
16  
17 By:   
18 **M. DAVID MEAGHER, Esq.**  
19 **Attorneys for Defendants**  
20 **And Moving Parties**

**EXHIBIT 1**

RECEIVED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JUN 09 2004

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JUN 23 2004

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE

*De*

**BY FAX**

BURT WARD,

Plaintiff,

vs.

THE PRESS-ENTERPRISE COMPANY,  
PAIGE AUSTIN, and DOES 1 through 50,

Defendants.

Case No. RIC 403072

~~PROPOSED~~ ORDER GRANTING  
DEFENDANTS' SPECIAL MOTION TO  
STRIKE PLAINTIFF'S COMPLAINT

Judge: Hon. Sharon J. Waters  
Dept. 6

Action Filed: November 12, 2003

On May 20, 2004, the Special Motion To Strike Plaintiff's Complaint brought by defendants The Press-Enterprise Company and Paige Austin (collectively, "defendants") pursuant to C.C.P. § 425.16, came on regularly for hearing before this Court, the Honorable Sharon J. Waters, Judge, presiding. Kelli L. Sager and Jack Clarke, Jr., appeared on behalf of defendants and Paul Hoffman and Michael Morrison appeared on behalf of plaintiff Burt Ward.

This Court, having read and considered the supporting points and authorities and evidence, having heard the argument of counsel, and good cause appearing therefor, issues the following Order granting the Special Motion To Strike Plaintiff's Complaint.

[PROPOSED] ORDER

10Y 209756v1 49185-92

**ORIGINAL**

1  
2 **1.**  
3 **PLAINTIFF'S LAWSUIT ARISES FROM DEFENDANTS' CONDUCT IN**  
4 **FURTHERANCE OF THEIR FREE SPEECH RIGHTS AND IS SUBJECT TO A SPECIAL**  
5 **MOTION TO STRIKE UNDER C.C.P. § 425.16**

6 Code of Civil Procedure § 425.16 was enacted by the Legislature as a "carefully crafted  
7 scheme for disposing of SLAPP's quickly and at minimal expense to taxpayers and litigants" to  
8 ensure that meritless lawsuits do not chill constitutionally protected free speech and petitioning  
9 activity and "to encourage continued participation in matters of public significance[.]"<sup>1</sup> Equilon  
10 Enterprises, LLC v. Consumer Cause, Inc., 29 Cal. 4th 53, 60, 66 (2002). Section 425.16 requires a  
11 court to "engage in a two-step process." Id. at 67. First, the court determines whether the  
12 defendant has made "a threshold showing" that defendant's "act or acts of which the plaintiff  
13 complains were taken 'in furtherance of the defendant's right of petition or free speech under the  
14 United States or California Constitution in connection with a public issue,' as defined in the  
15 statute." Id., quoting C.C.P. § 425.16(b)(1) (brackets omitted). Section 425.16(e) expressly defines  
16 an "act in furtherance of free speech" to include "any written or oral statement or writing made in  
17 connection with an issue under consideration or review by ... any ... official proceeding authorized  
18 by law," C.C.P. § 425.16(e)(2), or "any other conduct in furtherance of the exercise of the  
19 constitutional right of free speech in connection with an issue of public interest." C.C.P.  
20 § 425.16(e)(4).

21 Once the defendant makes this threshold showing, the court "then determines whether the  
22 plaintiff has demonstrated a probability of prevailing on the claim," based on the court's analysis of  
23 "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or  
24 defense is based." Equilon, 29 Cal. 4th at 67, citing C.C.P. § 425.16(b)(1).

25 Plaintiff has not disputed that Section 425.16 applies to the single cause of action for libel  
26 alleged in the Complaint, nor could there be any question about the application of the statute.  
27 Plaintiff's claim is based exclusively on statements and alleged implications in defendants' April 2,  
28

---

<sup>1</sup> SLAPP is an acronym for Strategic Lawsuits Against Public Participation. Equilon, 29 Cal. 4th at 57 n.1.

1 | 2003 news article and May 3, 2003 "Clarification." (Complaint at ¶¶ 1a-1c; 8-31; Exhibits A-B to  
2 | Complaint.)<sup>2</sup> Defendants' news reports plainly constitute acts in furtherance of their right of free  
3 | speech. See, e.g., Braun v. Chronicle Publ. Co., 52 Cal. App. 4th 1036, 1045 (1997) (news  
4 | reporting involves the exercise of free speech rights).

5 | Moreover, these publications fell within Section 425.16(e)(2) because they reported about  
6 | the investigation and action by the Santa Ana Regional Water Quality Control Board into alleged  
7 | run-off water pollution, which is a "government proceeding." Braun, 52 Cal. App. 4th at 1043-45  
8 | (newspaper articles about state audit were protected written statements "in connection with" official  
9 | government proceeding under Section 425.16(e).)

10 | Defendants' publications also fell within Section 425.16(e)(4) because they related to an  
11 | issue of public interest. See, e.g., Dixon v. Superior Court, 30 Cal. App. 4th 733, 744 (1994)  
12 | (defendant who wrote letters to state university criticizing its environmental impact study of  
13 | development exercised First Amendment rights in connection with matter of public interest under  
14 | § 425.16(e)); Ludwig v. Superior Court, 37 Cal. App. 4th 8, 12, 15 (1995) (developer who

15 | \_\_\_\_\_  
16 | <sup>2</sup> Plaintiff asserts that the following six statements are false and defamatory and/or contain  
17 | false and defamatory implications, including that plaintiff is a "polluter" and was "ordered" to clean  
18 | up pollution:

18 | (1) "DOGS: Fecal bacteria is found in a Norco creek behind land where Burt Ward keeps  
19 | Great Danes";

19 | (2) "The Santa Ana Regional Water Quality Control Board on Tuesday directed Burt Ward  
20 | to clean up water runoff from his Great Dane Rescue Center after samples taken contained  
21 | unacceptable levels of fecal bacteria";

21 | (3) "Water flows from Ward's property into a small creek that washes into the Santa Ana  
22 | River, said Milasol Gaslan of the Santa Ana Regional Water Quality Control Board. A sample of  
23 | that runoff taken in February contained at least 40 times the fecal bacteria level acceptable for such  
24 | a creek, she said";

24 | (4) "On Tuesday, board officials asked Ward to submit plans to fix the problem or face  
25 | possible fines or closure. He offered to install a septic tank, a measure that could solve the  
26 | problem, Gaslan said";

26 | (5) "The story did not allude to any written document"; and

27 | (6) "Agency officials advised Ward ... in a verbal directive that runoff from the kennel  
28 | contributed to an abnormally high fecal bacteria count and that steps had to be taken to mitigate that  
29 | condition." (See Complaint at ¶¶ 1a-1c; 9-13; Exhibits A-B to Complaint.)

1 organized protests at city council meeting and orchestrated litigation to block development based  
2 on environmental impact exercised First Amendment rights in connection with a matter of a public  
3 interest under § 425.16(e)). Thus, Section 425.16 applies here.

4 **2.**  
5 **PLAINTIFF FAILED TO ESTABLISH A PROBABILITY OF PREVAILING.**

6 Because defendants demonstrated that plaintiff's cause of action arises from conduct  
7 protected under Section 425.16, the burden shifted to plaintiff to establish "a probability of  
8 prevailing on the claim[s]." Equilon, 29 Cal. 4th at 67; C.C.P. § 425.16(b)(1). To satisfy this  
9 burden, plaintiff had to "meet ... defendant[s'] constitutional defenses," Robertson v. Rodriguez, 36  
10 Cal. App. 4th 347, 359 (1995), meet defendants' statutory defenses, Braun, 52 Cal. App. 4th at  
11 1048, and make a sufficient evidentiary showing "to sustain a favorable judgment if [his] evidence  
12 ... is credited." Navellier v. Sletten, 29 Cal. 4th 82, 88 (2002). Plaintiff failed to meet this burden  
13 for each of the independent reasons set forth below.

14 **A. Plaintiff Failed To Show That The Statements And Alleged Implications Were False.**

15 Because the publications involved a matter of public interest, which plaintiff conceded, the  
16 First Amendment places the burden on plaintiff to prove that the statements and alleged  
17 implications are false. Philadelphia Newspapers v. Hepps, 475 U.S. 767, 776-78 (1986); Miller v.  
18 Nestande, 192 Cal. App. 3d 191, 198 (1987). Both sides agree that under the First Amendment, a  
19 statement is not false if it is "substantially true." Masson v. New Yorker Magazine, 501 U.S. 496,  
20 516-17 (1991). "Minor inaccuracies do not amount to falsity so long as the 'substance, the gist, the  
21 sting, of the libelous charge be justified.'" Id. If the literal true facts would not place the plaintiff  
22 in a better light than he is portrayed in the article, the publication is not "false," and, consequently,  
23 is not actionable. Id. See also Morningstar v. Superior Court, 23 Cal. App. 4th 676, 687 (1994)  
24 (same).

25 Plaintiff failed to present admissible evidence demonstrating that any of defendants'  
26 statements or alleged implications is false. The gist of plaintiff's Complaint was his claim that the  
27 challenged statements falsely implied that he was a "polluter." (Complaint at ¶ 1a.) But plaintiff  
28 offered no competent evidence that there was no pollution coming from his property. He also

1 admitted that he installed a septic tank after reviewing the Board's lab results and speaking to  
2 Board officials about the suspected pollution coming from his property. (Burt Ward Declaration at  
3 ¶ 5.)

4 Moreover, the declarations from the Board's employees, lab reports, photographs, and draft  
5 "Notice of Violation" letter, and plaintiff's declaration and Complaint, make clear that the pollution  
6 agency did initiate an investigation and enforcement action against plaintiff, and that the agency  
7 concluded that plaintiff was partially responsible for the pollution. Among other things, the  
8 evidence established the following incontrovertible facts:

- 9 • The Santa Ana Regional Water Quality Control Board conducted an inquiry into  
10 allegations of alleged runoff pollution from plaintiff's Great Dane Rescue Center in  
11 response to a neighbor's complaint. (Exhibits 1-3; Exhibit 6 at ¶¶ 3-4.)
- 12 • Agency tests showed fecal bacteria in a ravine immediately adjacent to Plaintiff's  
13 property was 40 times higher than the legal limit for water in the nearby Santa Ana River,  
14 and officials concluded that the dog shelter was at least partly responsible. (Exhibits 1-3;  
15 Exhibit 4 at ¶ 5; Exhibit 6 at ¶¶ 3-4.)
- 16 • Board officials drafted a letter to plaintiff titled "NOTICE OF VIOLATION: FAILURE  
17 TO COMPLY WITH THE CALIFORNIA WATER CODE AND THE FEDERAL  
18 WATER ACT," which stated that tests showed "a significant amount of waste material  
19 could be coming in contact with storm water leaving [plaintiff's] residence" and which  
20 requested plaintiff to submit a plan "to control the discharge of pollutants in runoff from  
21 your residence." (Exhibit 1, Exhibit 4 at ¶ 3.)
- 22 • Plaintiff obtained a copy of the Board's pollution test results on April 1, 2004. (Burt  
23 Ward Declaration at ¶ 5.)
- 24 • A Board official verbally informed plaintiff of the elevated bacteria levels in the adjacent  
25 ravine and "discussed with [plaintiff] his options to avoid any future possible problems  
26 concerning the runoff from the Great Dane Rescue" dog shelter. (Exhibit 4 at ¶ 5)  
27 (emphasis added).

28

1 • Plaintiff admits that he offered to install a septic tank as a solution to the runoff problem.  
2 and that after it was installed, a Board employee inspected the septic tank and concluded  
3 that “the coliform [bacteria] contribution to the runoff from Mr. Ward’s rescue operation  
4 [was] minimized if not eliminated” by the septic tank. (Exhibit 5 at ¶ 5; Exhibit 6 at ¶¶ 4, 6;  
5 Burt Ward Decl. at ¶ 14) (emphasis added). The Board therefore considered the matter  
6 “closed.” (Id.)

7 Based on the admissible evidence presented, it is substantially true that the Board believed  
8 plaintiff was at a minimum partially responsible for the run-off pollution in the ravine next to his  
9 property.

10 Plaintiff also alleged that the statements falsely reported and implied that Board officials  
11 issued a formal written “order” or “directive” commanding him to clean up the pollution.  
12 (Complaint at ¶¶ 1b, 1c, 10, 13b.) But plaintiff did not provide any admissible evidence refuting  
13 that (1) the Board drafted a “Notice of Violation” letter addressed to plaintiff “requesting” that he  
14 clean up the pollution from his dog shelter, (2) Board employees orally discussed with plaintiff  
15 their findings and his “options” for correcting “any future possible problems concerning the run-off  
16 from the Great Dane Rescue,” (3) plaintiff reviewed the pollution test results, (4) plaintiff offered to  
17 connect a septic tank to remedy the problem, and (5) when plaintiff did connect the tank, the Board  
18 inspected it and based on this change, declared the matter “closed.” (Exhibits 1-3; Exhibit 4 at  
19 ¶¶ 3, 5; Exhibit 5 at ¶ 5; Exhibit 6 at ¶¶ 4, 6; Burt Ward Decl. at ¶¶ 5, 14.) In light of this  
20 uncontroverted sequence of events, plaintiff’s claim that he was never “directed” to do anything is a  
21 distinction without a difference. He acted based on the Board’s findings, and the Board closed its  
22 investigation as a direct result of plaintiff’s remedial action.

23 Courts repeatedly have rejected claims of falsity in circumstances like the ones presented  
24 here. See, e.g., Rouch v. Enquirer, 478 N.W.2d 205, 216, 219 (Mich. 1992) (newspaper report that  
25 suspect had been arrested on rape “charges” substantially true, even though suspect was only  
26 booked and never charged; reporters not required to “recapitulate technical legal terminology  
27 employed by courts or law enforcement personnel where popular words might be clearer for the lay  
28 reader”); Conroy v. Spitzer, 70 Cal. App. 4th 1446, 1453 (1999) (granting special motion to strike

1 on substantial truth grounds; holding that report that state legislator had been found "guilty" of  
2 sexual harassment was substantially true, even though legislator only "reprimanded" and not found  
3 "guilty" of crime); Robertson v. Rodriguez, 36 Cal. App. 4th 347, 359 (1995) (granting special  
4 motion to strike on substantial truth grounds; holding that report that city councilman was "fined"  
5 by city for running illegal home business was substantially true, even though councilman agreed to  
6 pay only "civil compromise" to reimburse city for investigation and enforcement costs).

7 Because plaintiff failed to present admissible evidence demonstrating that defendants' news  
8 reports were false, and because the evidence and plaintiff's own admissions demonstrate that the  
9 statements at issue were substantially true, plaintiff has failed to establish a probability of  
10 prevailing on his libel claim.

11 **B. Plaintiff Failed To Show That The Statements And Alleged Implications Were Not  
12 Privileged Reports Of Official Government Proceedings Under Civil Code § 47(d) And  
The First Amendment.**

13 Plaintiff's libel claim also fails because he cannot overcome the protection for substantially  
14 accurate reporting about government proceedings and records provided under the First Amendment  
15 and Civil Code § 47(d). See Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 495-96 (1975) (First  
16 Amendment protects accurate reports of governmental proceedings); Reeves v. ABC, 719 F.2d 602,  
17 607 (2d Cir. 1983) (same); Braun, 52 Cal. App. 4th at 1036 ("fair and true" newspaper report about  
18 government audit is privileged under Section 47(d)); Hayward v. Watsonville Register, 265 Cal.  
19 App. 2d 255, 259-60 (1968) (statement made by person connected with government proceeding  
20 about "circumstances" of case is privileged "fair and true" report under Section 47(d)).

21 Under California law, preliminary investigations by public agencies are "public official  
22 proceedings" for purposes of Section 47(d). For example, in Braun, 52 Cal. App. 4th at 1051-52,  
23 the court held that a newspaper article about non-public investigation by State Auditor is privileged  
24 "fair and true" report of "official proceeding" under Section 47(d). See also Hagberg v. California  
25 Federal Bank FSB, 32 Cal. 4th 350, 362 (2004) ("official proceeding" privilege is not restricted to  
26 "formal" enforcement proceedings, and includes citizen complaints to government agencies); King  
27 v. Borges, 28 Cal. App. 3d 27, 32-34 (1972) (citizen complaint to state Division of Real Estate is  
28 "official proceeding" under Section 47); Wise v. Thrifty Payless, Inc., 83 Cal. App. 4th 1296, 1303

1 (2000) (malicious report to Department of Motor Vehicles was "official proceeding" under Section  
2 47). The privilege also applies to the media's reports about statements made by parties connected  
3 with official proceedings, Dorsey v. National Enquirer, 973 F.2d 1431, 1437 (9th Cir. 1992), and  
4 the "basis and background" of a government proceeding. Braun, 52 Cal. App. 4th at 1050.

5 A "fair and true" report is not required to be a verbatim republication. The publication  
6 complained of need only be "substantially in accord" with the material relied upon. Handlesman v.  
7 San Francisco Chronicle, 11 Cal. App. 3d 381, 386-387 (1970). "It is sufficient if the substance,  
8 the gist, the sting of the libelous charge [can] be justified." Siipple v. Foundation for Nat'l Progress,  
9 71 Cal. App. 4th 226, 242 (1999). Accord Reader's Digest Ass'n v. Superior Court, 37 Cal. 3d  
10 244, 261-262 n.13 (1984) (Section 47(d) permits "a certain degree of flexibility/literary license in  
11 defining 'fair report.'"). As with application of the substantial truth protection, courts evaluating  
12 the "fair report" requirement have held that statements are "not to be judged by the standard of  
13 accuracy that would be adopted if [they] were ... report[s] of a professional law reporter or a trained  
14 lawyer." Handlesman, 11 Cal. App. 3d at 386-387. Instead, the challenged statements are to be  
15 "measured by the natural and probable effect on the mind of the average reader" and "how those in  
16 the community where the matters were published would reasonably understand them." Id.

17 In Colt v. Freedom Commun., Inc., 109 Cal. App. 4th 1551 (2003), the plaintiffs alleged  
18 that a newspaper inaccurately described an Securities and Exchange Commission proceeding by  
19 using lay terms, such as "pump and dump scenario" and "worthless" stock, and stating that the SEC  
20 "caught" the plaintiff. 109 Cal. App. 4th at 1559-60. The court rejected plaintiffs' challenges as a  
21 mere "parsing of words and sentences," and concluded that the "quarrel with the language of the  
22 articles involves a level of exegesis beyond the ken of the average reader of newspaper articles."  
23 Id. The court concluded that the linguistic differences were not of a "substantial character," and  
24 that the "effect on readers of the articles would have been substantially the same as the effect on  
25 [average] readers of the SEC complaint." Id. at 1560.

26 The same is true here. Whether the Board issued a formal written order, or did plaintiff the  
27 favor of informally advising him of the pollution concern and allowing him to take remedial steps,  
28 would not cause an average reader to come to any different conclusion about these events. The

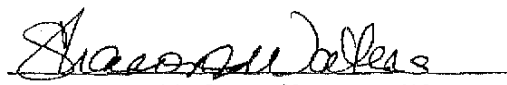
1 Board declarations, lab results, photographs and draft "Notice of Violation" letter establish that the  
 2 agency investigated allegations about plaintiff's property by testing a ravine behind his dog shelter.  
 3 found elevated levels of fecal bacteria in that ravine, believed plaintiff was at least partly  
 4 responsible for the pollution, orally communicated its findings to plaintiff, and considered the  
 5 matter "closed" after Ward installed a septic tank. (Exhibits 1-3; Exhibit 4 at ¶¶ 3, 5; Exhibit 5 at ¶  
 6 5; Exhibit 6 at ¶¶ 3-4, 6; Burt Ward Decl. at ¶¶ 5, 14; see also Exhibit 7 at 23.) The Board's  
 7 investigation and oral communications with plaintiff constituted at minimum an "informal  
 8 enforcement proceeding" under the state guidelines, the gist of which was fairly described in  
 9 defendants' publications. Thus, plaintiff's claim independently is barred under the constitutional  
 10 and California statutory fair report privilege.

11 **3.**  
**CONCLUSION**

12 For all of the reasons set forth above, this Court hereby orders that:

- 13 (1) Defendants The Press-Enterprise Company's and Paige Austin's Special Motion to  
 14 Strike Plaintiff's Complaint is **GRANTED**;  
 15 (2) Plaintiff's Complaint shall be dismissed in its entirety with prejudice;  
 16 (3) Judgment shall be entered in favor of defendants The Press-Enterprise Company and  
 17 Paige Austin and against plaintiff Burt Ward; and  
 18 (4) Plaintiff Burt Ward shall be ordered to pay defendants The Press-Enterprise Company  
 19 and Paige Austin their mandatory attorneys' fees and costs pursuant to C.C.P. § 426.16(c) upon the  
 20 filing of a noticed motion.

21 DATED: June 15, 2004

22   
 23 Honorable Judge Sharon A. Waters  
 24 Judge, Riverside County Superior Court

25  
 26  
 27  
 28

1 Submitted by:  
2 DAVIS WRIGHT TREMAINE LLP  
3 KELLI L. SAGER  
4 ALONZO WICKERS IV  
5 SUSAN E. SEAGER

6 BEST BEST & KRIEGER LLP  
7 JACK R. CLARKE, JR.  
8 ANNA W. WANG

9  
10 By:   
11 Kelli L. Sager

12  
13 Attorneys for Defendants  
14 THE PRESS-ENTERPRISE COMPANY  
15 and PAIGE AUSTIN  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT 2**

SANFORD M. PASSMAN  
H. JASON COHEN

**PASSMAN & COHEN**  
An Association of Law Firms  
6303 WILSHIRE BOULEVARD  
SUITE 207  
LOS ANGELES, CALIFORNIA 90048-5001

TELEPHONE (323) 852-1883  
FACSIMILE (323) 852-1899

SENDER'S EMAIL:  
sandypassman@comcast.net

September 7, 2005

Marc Sayer  
[marc@gentlegiantsrescue.info](mailto:marc@gentlegiantsrescue.info)

Re: Burt & Tracy Ward/Gentle Giants Rescue

Dear Mr Sayer,

My office represents the above referenced clients with respect to certain unfounded and patently untrue representations which you have stated publicly, as well as posted on the Internet. You are also intentionally using a nearly identical domain name specifically designed to interfere with my clients business.

In fact, in an e-mail posting of Roars, which is apparently an entity of yours, you state that it is the intention of Roars "to intercept as many dogs as possible, from ending up at Gentle Giants". This could certainly be construed as intentional interference with my clients business.

Your posting on Roars states, "if anyone finds they are unable to keep a dog they get from GG, but they are unwilling to return it to them (a feeling we understand), the Roars Coalition will be more than happy to take the dog and get it into a reputable rescue." These dogs are microchipped to Tracy Ward and under contract to Gentle Giants. It is apparent that your intention is to take dogs that don't belong to you and encourage adopters to violate their contracts with Gentle Giants.

What is most disturbing to me is that the rhetoric employed by you seems to border on the maniacal, given the fact that your mantra like babblings are without substance in whole or in part.

Case in point; representations that an "investigation " was conducted of my clients' business by you and/or your sycophants smacks of alien sightings, given the fact that that statement was manufactured from whole cloth. Simply put Mr. Sayer, candor and veracity is not your long suit.

You appear to be a dog politician, no offense to our canine brothers, simply hell bent on self aggrandizement for your own financial benefit. This much is patently obvious.

Therefore, this letter shall serve as a demand to cease and desist from disparaging my clients in any way, shape or form, both publicly and on the internet, forthwith. Failure to do so, will catalyze my clients into action, and they will seek to enforce their rights in the appropriate court, be it state or federal, and in the appropriate jurisdiction, be that Oregon, California or Alabama.

In closing, be advised that my clients are now mobilizing to procure information regarding you, Roars and/or your associates. It is quite appalling that an entity like Gentle Giants Rescue, which

*Passman & Cohen*  
*An Association of Law Firms*

has saved so many lives, and has thousands of happy adopters has to deal with malicious people like you, but they are quite ably prepared to engage you head on, if that is what is required..

Very truly yours,  
Sanford Passman  
**PASSMAN & COHEN**  
*an Association of Law Firms*

By: \_\_\_\_\_  
Sanford M. Passman, Esq.

SMP:caq

**EXHIBIT 3**



# California Regional Water Quality Control Board

## Santa Ana Region

Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>  
3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (909) 782-4130 - FAX (909) 781-6288



Gray Davis  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.swrcb.ca.gov/rwqcb8](http://www.swrcb.ca.gov/rwqcb8).*

April 2, 2003

# DRAFT

Mr. Burt Ward  
4867 Pedley Ave.  
Norco, CA 92860

### NOTICE OF VIOLATION : FAILURE TO COMPLY WITH THE CALIFORNIA WATER CODE AND THE FEDERAL CLEAN WATER ACT

Dear Mr. Ward:

As you may be aware, local ordinances and state and federal law prohibit the discharge of materials other than storm water and authorized non-storm water to storm drains. All activities that may impact water quality discharged from storm drain system into receiving waters are required to develop and implement best management practices (BMPs) designed to reduce/eliminate migration of sediment and other pollutants to storm drains and/or receiving waters.

On February 7, 2003, Mr. Michael Roth of this office visited your residence to observe the operation of your animal rescue facility. During his visit, there did not appear to be any problem with operation of the facility that violated any applicable laws.

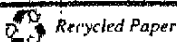
On February 25, 2003, Mr. Roth sampled the discharge from the northwest corner of your property and had the sample analyzed for total coliform and fecal coliform. We have attached a picture of the sampling event.

The results of the sample indicated a concentration equal to or greater than 160,000 most probable number per 100 milliliter (MPN/100) for both parameters. A copy of the analytical results are enclosed for your reference. The water quality objectives specified in the Basin Plan for these constituents are:

- 100 MPN/100 (MUN) total coliform
- log mean of five samples less than 200 MPN/100 fecal coliform, and not more than 10% of samples exceed 400 MPN/100 for any 30 day period (REC1)
- average less than 2,000 MPN/100 fecal coliform and not more than 10% of samples exceed 4,000 MPN/100 for any 30 day period(REC2)

MUN refers to those water bodies used for community, military, municipal or individual water supply systems, including drinking water supply. REC 1 refers to recreational activities involving body contact with water such as swimming and water skiing. REC2 refers to non-contact recreational activities such as boating, camping, and picnicking.

*California Environmental Protection Agency*



Mr. Burt Ward

-2-

April 2, 2003

The runoff from your residence discharges into the Santa Ana River. The portion of the Santa Ana River that receives the runoff from your residence is designated as REC1 and REC2.

Although insufficient samples were collected to determine whether the fecal coliform or total coliform standards are actually exceeded, the levels indicate a significant amount of waste material could be coming in contact with storm water leaving your residence. It might also mean that there is a contaminated flow coming onto your property where you have run-on.

We request that you submit a plan to address possible sources of bacteria such as animal wastes from your operations. Please provide a written report by **May 6, 2003**, to this office explaining a plan that you have developed and a schedule for implementation, including appropriate BMPs to control the discharge of pollutants in runoff from your residence.

If you have any questions regarding this matter, please contact Mr. Michael Roth at (909) 320-2027.

Sincerely,

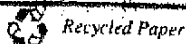
**DRAFT**

Milasol C. Gaslan, Chief  
Inland Storm Water

Enclosure

Cc: Lori Askew, City of Norco, NPDES Coordinator  
Steve Stump, Riverside County Flood Control District

*California Environmental Protection Agency*



**EXHIBIT 4**

M. DAVID MEAGHER, ESQ. SBN 171151  
LAW OFFICES OF M. DAVID MEAGHER  
333 S. JUNIPER STREET, SUITE 217  
ESCONDIDO, CA 92025  
(760) 743-2200

ATTORNEYS FOR DEFENDANTS  
MARC SAYER AND RENEE BRODEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

GENTLE GIANTS RESCUE AND ADOPTIONS, INC. A California Non-Profit Public Benefit Corporation, BURT WARD, an individual, and TRACY WARD, an Individual,

Plaintiffs,

v.

BARBARA LAID, an Individual, MARC SAYER, an Individual, RENEE BRODEN, an Individual, JAMIE GARCIA, an Individual, and DOES 1 through 100 Inclusive,

Defendants,

CASE NUMBER: 05 CC 09035

DECLARATION OF DEFENDANT MARC SAYER IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE THE PLAINTIFFS COMPLAINT AS A STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION SUIT  
(C.C.P. § 425.16 et.seq.)

HON: DEREK G. JOHNSON

TIME:

DEPT. C7

DATE:

I, Marc Sayer, declare under the penalty of perjury under the laws of the State of California that the below is true and correct to the best of my knowledge. I am a resident of the State of Oregon.

1. I am the operator of Gracieland.org, and the founder of Deaf Dane Rescue, Inc.
2. I have devoted my time and efforts to this cause since 2002. However, I have been an owner of Great Danes since the 1970's.
3. In addition to my rescue efforts, I am the founder of the Western States Great Dane Rescue Association, (WSGDRA) whose goal is to improve the overall quality of rescue, to facilitate cooperation between rescues, and to help ensure that no Dane is euthanized for lack of a rescue to take him or her.

4. To facilitate an exchange of information and protect against a Dane being put down, the WSGDRA has a "load sharing" program that allows rescues to communicate about dogs and to transfer dogs from rescues that are overcrowded to rescues that have space.

5. I am a member of an informal organization named ROARS. We are a coalition of adopters, rescues, breeders, breed enthusiasts, lawyers, animal advocates, breed clubs, and people in the animal welfare field, all of whom have come together to see to it that no one else has to go through the things some of us have experienced in adopting a dog. We represent at least a dozen different breeds. Our rescue members range from local mom and pop operations, to regional and even national organizations. Our members hail from California, Arizona, Nevada, Oregon, Washington, Montana, Utah, Colorado, and even as far away as Alabama. We all share one common goal, to improve the quality of rescue overall, to protect dogs in rescue and the public.

6. Because of our stated goal of improving the quality of rescues, we actively investigate information concerning rescue facilities, by reviewing public information sites. ROARS members brought their concerns to the Norco City Counsel. This in turn led to a meeting with Los Angeles County animal control. As shown below, L.A. County Animal Control elected to stop releasing dogs to Gentle Giants.

7. As a result of ROARS appearance at the City Counsel meeting, a reporter undertook a story related our overall concerns. I placed a link on the ROARS web-site to this article. A true and correct copy of this newspaper article is attached as NOL Exhibit "5."

8. In addition to the Newspaper report, I posted the following, including the statement presented by the Los Angeles County Animal Shelter. This statement was:

#### L.A. County Says No to GG

Los Angeles County Animal Control has stopped sending dogs to Gentle Giants Rescue located in Norco CA. This means that, in addition to the Norco shelter, all six of the L.A. Co. shelters will no longer be sending any dogs to GG or to anyone at their address. According to Ron R. Edwards, Deputy Director County of Los Angeles Department of Animal Care and Control "I have directed our six County of Los Angeles Animal Care Centers to discontinue adoptions to Gentle Giants until an investigation is complete as to the allegations made about their organization. Norco Animal Control is currently investigating the complaints and I will be in touch with them to determine if and when we are able to resume adoptions to them once again." Mr. Edwards went on to say, "We do all that we can to make sure that the animals that we adopt are going into the best possible environment and until we know that those requirements are being met, we will not be adopting to Gentle Giants." And Mr Edwards urged everyone, "If you have specific information about Gentle Giants (positive or negative), I would encourage you to contact the Norco Animal Control at (951) 737-8972 to share your information with them if you haven't already."

9. At ROARS we recognize that there are numerous opinions as to how a rescued dog should be treated. As part of my involvement in Western States Great Dane Rescue Association and ROARS, I helped develop and I personally subscribe to the following statements:

"All rescue groups have different philosophies, different goals, different numbers of foster homes available, operate in different climates and cultures, etc. Because of this, all rescues operate somewhat differently. We are cognizant of this, and we have worked with some of our rescue partners and advisors to create a list of standards of care that we expect all rescues to provide for the Danes we send them (and if possible all Danes in their care). We will be asking all rescues to agree to the following terms before we transport a Dane (or other animal) to or from their rescue:

Animal will be housed indoors while in the care of my rescue. Animal will be kept in my home or in a supervised foster home. If rescue utilizes indoor kennels, Animal will receive a minimum of one hour of personal attention outside of the kennel daily, being cared for by staff, volunteers, or myself. Animal will not be housed in an outdoor kennel. Animal will be adopted under a contract requiring that Animal be housed indoors for the lifetime of Animal.

Animal's temperament will be evaluated prior to adoption by myself (if experienced), a professional trainer or behaviorist, or a volunteer with supervised experience evaluating temperament, and the evaluation will be recorded and retained in Rescue's records.

Animal will be altered prior to adoption, unless a qualified medical condition precludes it, on the advice of a veterinarian. No spay/neuter contracts will be considered, even for young puppies. A veterinarian will evaluate Animal's health, and records shall be kept and transferred to adopter. All health conditions identified by a veterinarian will be treated, or for chronic conditions, treatment will begin prior to adoption, at the advice of at least one veterinarian. Animal will be up-to-date on relevant area vaccinations prior to adoption, unless this goes against a veterinarian's advice based on health. Adoption contract will require

that the Animal be kept up-to-date on vaccinations (see above), and free of parasites including heartworms (including preventative where this is a problem). If Rescue permits adopters to use holistic preventatives, etc, in place of conventional vaccinations and treatments, Animal must be under the care of a qualified holistic veterinarian.

A home visit will be done for adopters prior to adoption. Rescue understands that Dane T.R.A.I.N. may be able to provide volunteers for home visits for out-of-area adoptions. Rescue will require and verify references for any potential adopter, including one or more veterinarian reference.

For out-of-area adoptions, Rescue will contact all same-breed rescues in the state of the potential adoption, to ensure adopter is not on a "do-not-adopt" list. Rescue has made arrangements to recover Animal if adoption were to fail.

Rescue will inform adopter of the unique nutritional, medical, and behavioral requirements of the breed, including Blot and Torsion, growth issues such as HOD, OCD, and Pano, etc. An adoption packet with articles listing such things is strongly recommended. Rescue will always be available for any questions from the adopter, for the life of the Animal.

Adoption contract will stipulate that if the adoption were to fail, the Animal will be returned to the Rescue, and never be sold, given away, abandoned, or released to an animal shelter.

Animal will receive some basic training while in the care of Rescue, concentrating on positive reinforcement techniques. Rescue will require adopters to continue with basic training, and will emphasize the importance of training with breeds like the Great Dane. A requirement of formal obedience classes in the contract is strongly recommended, especially for puppies."

10. The ROARS Web-site offers individuals an opportunity to discuss the experiences they have had in adoptions. As a means to express themselves, our web-site posts third party comments. Representative postings of third parties are set out in NOL Exhibit "6" which are true and correct copies of the e-mails that I have posted on behalf of others. These postings are e-mails sent to ROARS, and are not offered as the truth, but rather as a demonstration that I have been involved in posting others comments.

11. In the Plaintiffs complaint, they allege that I accused them of violating the law. This is not accurate. On the ROARS web-site I posted the publically available records related to this non profit public benefit corporation. The posting read in relevant part:

Want to see Gentle Giant's tax return for 2003?

This is the only year available so far, and it is only a half year really, as it covers May through December. It is sparse, but it does give some interesting information. Did you know that Tracy takes a salary? Yep, according to their IRS Form 990 (the "tax return" for charitable organizations) Tracy took \$7000 in salary in 2003. While this is not illegal or anything, it is unusual in the rescue community. Especially given that it represents almost 1/3 of total expenditures for that portion of the year. And in addition to the salary, there were also payroll taxes due in the amount of \$1,379. So total cost to the rescue was really \$8,379 as I read the return, which is more than 1/3 of the total expenditures for that portion of the year. Check it out for yourself, and draw your own conclusions.

In checking out their 501c3 application, we discovered that their projected income for 2004 was listed at \$263,000. And that they expect to spend almost 1/3 of that, \$84,000 on Tracy's salary alone.

12. It is relevant to note that contrary to the language in the complaint claiming that I accused them of illegal activity, I stated "While this is not illegal or anything, it is unusual in the rescue community..."

13. I am personally aware of the fact that there are many thousands of rescues throughout the United States.

14. Within ROARS there are individuals from shelters, rescues, trainers, kennel owners, and individuals.

15. I have never libeled the Plaintiffs, but I am genuinely concerned for the well-being of the dogs in their care.

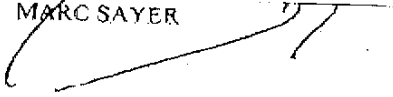
16. I believe that I have a right and a duty to share these numerous articles and actions taken by governmental agencies, as well as complaints from individuals, as a member of a large community of dog rescuers.

17. My web-site, while it may seem provocative, is in fact a factually sound representation of the facts related to governmental actions and expressions of dissatisfaction of individuals who have conducted business with the Plaintiffs.

18. I am personally aware that there are many thousands of web-sites devoted to the discussion of dog rescue. Because of the time, cost and distance involved, it is a usual practice for those of us involved in rescues to communicate and exchange information and ideas via the internet.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11<sup>th</sup> day of October, 2005, in the State of Oregon.

MARC SAYER

A handwritten signature in black ink, appearing to read "MARC SAYER", written over a horizontal line.

**EXHIBIT 5**

1 M. DAVID MEAGHER, ESQ. SBN 171151  
 2 LAW OFFICES OF M. DAVID MEAGHER  
 3 333 S. JUNIPER STREET, SUITE 217  
 ESCONDIDO, CA 92025  
 (760) 743-2200

4 ATTORNEYS FOR DEFENDANTS  
 5 MARC SAYER AND RENEE BRODEN

6  
 7  
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ORANGE

10 CASE NUMBER: 05 CC 09035

11 GENTLE GIANTS RESCUE AND  
 12 ADOPTIONS, INC. A California Non-Profit  
 Public Benefit Corporation, BURT WARD,  
 13 an individual, and TRACY WARD, an  
 Individual,

14 Plaintiffs,

15 v.

16 BARBARA LAID, an Individual, MARC  
 17 SAYER, an Individual, RENEE BRODEN,  
 18 an Individual, JAMIE GARCIA, an  
 19 Individual, and DOES 1 through 100  
 Inclusive,

20 Defendants,  
 21

DECLARATION OF DEFENDANT RENEE  
 BRODEN IN SUPPORT OF DEFENDANT'S  
 MOTION TO STRIKE THE PLAINTIFFS  
 COMPLAINT AS A STRATEGIC  
 LITIGATION AGAINST PUBLIC  
 PARTICIPATION SUIT  
 {C.C.P. § 425.16 et.seq.}

HON: DEREK G. JOHNSON  
 TIME: 1:30 P.M.  
 DEPT: C7  
 DATE:

22  
 23 I, RENEE BRODEN, declare under the penalty of perjury under the laws of the State of  
 24 California that the below is true and correct to the best of my knowledge. I am a resident of the  
 25 City of Granite Bay, in the State of California.

26 1. I am the operator of Great Dane Rescue of Northern California on-line message board  
 27 that permits interested parties to post their messages concerning their experiences and  
 28 opinions related to large breed dogs.

DECLARATION OF RENEE BRODEN IN SUPPORT OF SPECIAL MOTION TO STRIKE COMPLAINT  
 AS A SLAPP

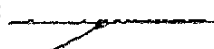
- 1 2. I do not edit or otherwise involve myself with the content of messages.
- 2 3. There is a message board located at danesonline.com of which I am a contributor but  
3 not an owner. The Complaint allegation regarding this web-site is a republication of the  
4 comments of Michelle Giles, and I stated that it was only hearsay on this message board.
- 5 4. As of October 10, 2005, there were just under 2,000 messages on the board.
- 6 5. This web-site and message board is designed to meet the needs of the very large number  
7 of individuals who are concerned about the well-being of large breed dogs such as Great  
8 Danes.
- 9 6. The message board and the internet in general provide a convenient and fast method of  
10 communication which allows us to facilitate the rescue of a Great Dane when time can be  
11 a very important consideration.
- 12 7. The communication that Plaintiffs complain was not posted on the message board.
- 13 8. Ms. Giles raised the issue in an E-mail to me that she had adopted a dog she named  
14 "Amtrak." She claimed to have adopted this dog from Plaintiff Gentle Giant. She further  
15 claimed that the dog was microchipped, and that when she checked the microchip, she  
16 discovered the dog had been reported stolen.
- 17 9. Ms. Giles alleged that the dog she had adopted had been removed from the true owners  
18 yard by a volunteer of Gentle Giant.
- 19 10. I do not know if this is true or not.
- 20 11. Attached to the Notice of Lodgment as Exhibit "B" is a true and correct copy of the  
21 exchange of e-mails I had with Ms. Giles. I do not offer this as proof of what Ms. Giles  
22 says, only for evidence that I received this report from a third party.
- 23 12. The Plaintiffs allege that I libeled them by "publishing" accusations that they stolen and  
24 sold dogs and committed other improper acts.
- 25 13. I have never libeled the Plaintiffs. The publication that they refer to is a third party  
26 statement on the internet.
- 27 14. Ironically, as NOL Exhibit "8" shows, my response to Ms. Giles was that neither  
28 Northern California Great Danes Rescue, nor I wanted any involvement with a dispute

**DECLARATION OF RENEE BRODEN IN SUPPORT OF SPECIAL MOTION TO STRIKE COMPLAINT  
AS A SLAPP**

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

between Ms. Giles and the Wards. I suggested she discuss any questions or concerns she had with them.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11<sup>th</sup> day of October, 2005, in the State of California.

By:  RENE BRODEN

DECLARATION OF RENEE BRODEN IN SUPPORT OF SPECIAL MOTION TO STRIKE COMPLAINT AS A SLAPP

**EXHIBIT 6**

## Dog rescue shelter called unhealthy

### 1. NORCO: Actor Burt Ward's facility is substandard, council members are told.

12:24 AM PDT on Friday, June 3, 2005

By PAIGE AUSTIN / The Press-Enterprise

NORCO - About a dozen dog rescuers from Southern California appeared before the Norco City Council on Wednesday, accusing a local shelter of keeping animals in substandard conditions.

At a council meeting, the group asked city leaders to revoke the operating permit for Gentle Giants Rescue and Adoptions, a nonprofit rescue shelter at the home of Burt and Tracy Ward. Burt Ward, who was not at the meeting, denied the allegations Thursday. City officials said the Norco Planning Commission and City Council have not had a chance to review and discuss the concerns raised by other rescuers Wednesday. If the allegations are true, the Wards would be in violation of the conditions of their operating permit and their permit could be revoked, confirmed Rene Power, Norco's Animal Control superintendent.

A spokeswoman for the group of rescuers told the council that the Wards failed to adequately care for some animals and violated their nonprofit status by adopting out dogs without spaying or neutering them and charging more for animals with desirable traits.

"We have signed declarations under penalty of perjury by various persons attesting to the poor physical condition of animals at this property -- that they were thin with open sores and wounds. ... They were filthy -- covered in feces and dirt," Kelly Cromer, a dog breeder and rescuer, said at the meeting.

Cromer said the Wards adopted out animals in need of medical care as well as animals that attacked other dogs and a human.

"They are making money off these dogs that they are supposed to be rescuing," she said.

Cromer's speech prompted one audience member to speak up at the meeting about his experience with the rescue shelter.

Richard Hallam, a Norco Parks and Recreation commissioner and owner of a local plumbing company, said one of his employees refused to install a toilet this week because of unsanitary conditions, including dog fecal matter on the floor.

"He said there were 40 dogs in one room," Hallam said. "The carpet was covered with cardboard and the lady said, 'Don't step on that because the carpet is diseased.'"

That is ridiculous, said Burt Ward, best known as Robin the Boy Wonder in the 1960s TV show "Batman." "It is completely false."

Ward said Home Depot had hired the plumber to install the toilet, but he showed up several days

late and refused to complete the work because furniture was blocking a hallway while the Ward's rearranged a room. The plumber could not be reached for comment. "He never saw a dog because there was no dog in the house at the time," Ward said.

As to the rescuers' allegations, Ward said he is being targeted with false allegations because of his celebrity status.

"Every accusation was false. None of those people were ever on our property, nor did they ever adopt a dog from us," he said. "There are a lot of people who are envious or jealous."

Ward insisted he and his wife maintain a state-of-the-art property and Gentle Giants has rescued and placed thousands of healthy dogs, he said.

According to a 2003, tax form filed by Tracy Ward, the shelter earned \$22,294 and spent \$22,318. On their Web site -- [www.gentlegiantsrescue.com](http://www.gentlegiantsrescue.com) -- they offer nearly round-the-clock telephone help for dog owners at \$695 a year along with a year's supply of the \$43.50 a bag dog food made by the Wards.

Film producer Mike Cargile, said he adopted his two dogs -- Broadway and Hollywood -- from Gentle Giants this year. After his previous dog died late last year, he adopted a 16-month-old Great Dane mix for about \$600.

"She's the best dog I ever had," he said in a phone interview. "I'm ready to get two more."

**EXHIBIT 7**



# Rescuers Organized for Actual Resc

Rescues working together for the betterment of Rescue

## The Stories

Tricia Perkins

The Story of Tiergan...

The story of Tiergan should probably be written in six different chapters... It should read...

Chapter One: Tiergan's Original Home and Family

Chapter Two: Tiergan's Time at Gentle Giants

Chapter Three: Tiergan's Time with his New Adoptive Family

Chapter Four: Tiergan's Trip to Rescue

Chapter Five: Tiergan's Adventures in Rescue

Chapter Six: The End of Tiergan's Tale... Tiergan at his Forever Home

Unfortunately, we don't know the beginning two parts of his story- we don't have the facts in regard to why Tiergan was turned into Gentle Giants or how his rear leg was paralyzed... We don't know anything of Tiergan's past.

Therefore, we must begin Tiergan's story in April of 2005.

My family found themselves at Gentle Giants Rescue in Norco, California, hoping to adopt an adult Great Dane to integrate into our family. Our request, per our adoption application, was that the Dane in question would need to be small-animal friendly, child-friendly, and appropriate for our household. At the time, it did not seem like we were asking for much.

We spent over 6 hours at Gentle Giants, looking at the various Great Danes that were taken out one at a time. Two in particular caught my eye and I was aghast when I heard their adoption fee- \$900.

According to the adoption paperwork, most dogs adopted out of Gentle Giants required an adoption fee of \$400 in cash. Although \$400 may appear to be a lot- when you calculate the price of a healthy Great Dane puppy (\$1000), vet care for the puppy into adulthood, including neutering (\$500), and miscellaneous additional costs, \$400 seemed rather reasonable at the time. Nine hundred dollars, however, for an adult Great Dane that might live another 6 years, if we were lucky, was not in our price range and I refused to pay such an outrageous adoption fee for an adult animal.

I told Tracy Ward this and she appeared to stop and think... She then stated that she had another Dane that had been on

their property for quite a while, but no one wanted to look at him. "He has a bad back leg," I was told, "But our vet said there was nothing we could do- but no one wants to look at him because of his handicap."

My husband and I immediately agreed - bring out this handicapped boy and we would talk about adopting him.

The Great Dane Tracy walked out of her house was nothing like we expected... He was skin and bones and his rear leg literally dragged behind him.

We were informed that he had lost weight after his recent neuter surgery and that's why he was skin and bones... We were also told that his back leg had been x-rayed by their vet and the vet could not determine what had happened to cause such a horrible injury. When asked if it would not be kinder to amputate the leg, we were told no- the vet said the leg should not be amputated since occasionally, the Great Dane would use it as a crutch to stump around the yard.

At this point in time, Tracy offered us another Dane if we adopted this one in such a horrible condition. She offered us a younger female that appeared to be a pointer-mix. This youngster was healthy, but frightened of her own shadow.

For \$600, we could adopt both dogs.

For a second, I considered it. Then I looked at the mantle Great Dane with his rear foot dragging in the filthy dirt. I looked at his gentle brown eyes and I noted how he leaned up against anyone who would stay next to him for any amount of time.

I decided that this mantle Great Dane would come home with us. Sadly, we turned away the little scared female that was offered with him.

Realizing that we were going to take this Dane off of her hands, Tracy remembered that she had a dog boot in the house that might help protect his raw foot from the vicious ground; she quickly went inside and retrieved it. Although this small detail did not seem important at the time- now it raises questions in my mind. If she had a boot that could have protected this dog's foot during his stay with her family- why not already have the bootie on his paw? Why wait until an adoptive family decided to bring him home?

That night, as we drove away with the mantle Great Dane in the back of our vehicle, I knew we were doing the right thing adopting this dog. We could not have left him behind - he was destined to be a part of our family, even if just for a short time.

I told my husband that night, "He has such a strong heart and soul - we shall call him 'Tiergan'. It means 'strong'."

Tiergan's integration into our family began that first night. After a sponge bath to clean as much of the filth off of him from his time at the rescue as we could, we laid a blanket on our bed and coaxed him up. As most Danes do, Tiergan quickly realized that sleeping on the bed was his favorite place to be.

I can't help but wonder if that night was the first time Tiergan spent his night on a soft, warm surface versus the cold ground.

His personality was extremely calm and loving. Even with his

bad leg, Tiergan wanted to spend time with our family and would typically be in the room with one of us.

Although Tiergan was only 11 months old, it struck us as odd that he never wanted to play - with us or our two dogs. Due to his severe malnourishment, we hoped this was just a temporary phase and one day soon, Tiergan would play again.

Contrary to what we were told during our adoption process, Tiergan did not appear to be house broken. He also appeared as though he either had never seen the inside of a crate or if he had, it had been extremely traumatic for him. It took a lot of treats to coax him inside his crate for any amount of time in the beginning.

Worse, however, was the fact that Tiergan began evincing signs of being food aggressive towards our other dogs. At the time, I did not realize the severity of the issue; now, I wonder if perhaps Tiergan learned this aggression at Gentle Giants - trying to fight his way to the front of the 'pack' in order to eat. Due to his condition, he could never push a full grown 150 pound Great Dane or Saint Bernard out of the way to get to a food bowl - was this why Tiergan only weighed approximately 70 pounds when he came into our life? Perhaps his physical condition prevented him from eating his fill during the daily feedings of the 'herd' at Gentle Giants? We hoped, with time, that Tiergan would learn that he would always be allowed to eat his fill in our home.

Still believing Gentle Giants, we purchased a \$100 set of booties to help protect Tiergan's foot from dragging. We discussed amputation, but thought it would be best to have Tiergan's medical records before requesting a complete evaluation by our own veterinarian.

We also debated, those first two weeks, whether it would be kinder to euthanize Tiergan... Although most dogs with three legs were capable of moving without assistance, Tiergan was constantly tripping himself. At times, he would pull his body forward with his front legs and drag his entire back half on the ground. Using the bathroom was difficult as well - we were cleaning Tiergan constantly due to his instability. Sometimes, it appeared that his entire rear end was weaker than his front, which seemed odd if we were simply dealing with a paralyzed hind leg.

During this time, I sent repeated emails to the Wards requesting Tiergan's veterinarian record. We were informed while we were there that he had been seen by a local vet and that his leg had been x-rayed - their personal vet did not recommend amputation. I wanted those records before bringing him to my veterinarian. I figured we would have a better chance of moving forward if I had all of his medical information ahead of the appointment.

I never received a response about his medical records.

I did, however, receive one email from the Wards during this time.

The second time I asked for his vet records, about 3 days after adopting him, I asked about the adoption fee for a Saint Bernard my husband had grown fond of during our visit. I immediately received a response about the dog's adoption fee, but conveniently, Burt Ward did not mention Tiergan's vet records.

At this point in time, I began to become suspicious. I realized that each rescue handles their adoptions differently

and each rescue has their own requirements. However, due to Tiergan's physical condition, it struck me as neglectful not to supply his new owner with the veterinarian records as soon as possible.

This is when I began talking to people about Tiergan...

If you search the internet for 'Gentle Giants', you will only find propaganda for the rescue. However, once I began to talk to people, I realized there was more to the story behind Gentle Giants... I learned that I probably would never see Tiergan's veterinarian record because it did not exist. He was probably never treated by their vet; he never received x-rays of his bad leg... He was simply a way for the Wards to put another \$300 of cold hard cash into their pocket. Worse than all of this, I learned I was not the first person to be fooled by their flashy website and rescue name.

The stories I heard were atrocious, but they are not mine to share. I hope one day, those adopters will feel comfortable sharing their experiences publicly as well.

Within almost 48 hours of learning this information, something horrible happened. As I was watching our dogs from my kitchen window, Tiergan fiercely attacked my smaller Dane.

I yelled at Tiergan to back off and raced out into the yard. My puppy ran into the house and cowered in his kennel, screaming. I expected my Dane to be over-reacting, but when I called him over to me - I was shocked.

Puncture marks on his ear and neck, a gash clear to the muscle over his eye- Tiergan had definitely left his mark on my puppy. Our puppy developed a raging infection and it

cost us \$700 to treat the bite wound.

I immediately called the one rescuer I knew and trusted in the Great Dane world - the same individual who helped us adopt our deaf Great Dane puppy. I needed to know - was this a one time incident? Could it happen again? Is it safe to keep Tiergan in our home?

The rescuer realized the depth of our problem. Not only did we have a potential time bomb on our hands, but at this point in time, we needed a full veterinarian work-up on Tiergan because it obviously was never done at Gentle Giants. After our \$300 adoption fee, \$200 travel fees to Norco and now our \$700 vet fee, he knew we would not be able to afford to give Tiergan the care he needed.

He recommended, kindly, that we place Tiergan into rescue.

I felt as though we were failing Tiergan. I did not blame him for biting our smaller Dane; I realized his life before he came to us was not ideal. I asked for ways to ensure Tiergan never attacked our pup again, but it always came down to the same answer - unless we could keep both dogs separated indefinitely, we could never guarantee that an attack would not happen again. Plus, if we chose to keep Tiergan, we would need to be able to give him the veterinarian care he needed.

I knew we could give Tiergan back to Gentle Giants, but at what cost to the soul of this sweet Great Dane? My family realized immediately that sending him back to a place where he obviously did not receive the treatment he so desperately needed was not an option.

For those who question my decision - tell me, what would

you have done?

My options were to keep him and risk my puppy and possibly family, send him back to a place that did not take care of him when he was there, or send him to a rescue where, hopefully, he would receive the appropriate veterinarian care and then spend the next 7 years gracing the life of someone who would adore him.

Regardless of what you believe, I believe I made the right choice. I spent a lot of time crying and spent a lot of time on the phone with my friend, the rescuer, for reassurance. And then I made my decision - Tiergan was going to enter rescue, if rescue would have him.

The day Tiergan left my life was extremely bittersweet. Although I was sending him away, I knew I was doing what was best for him. I knew I had made the right choice. It still was heartwrenching to hand Tiergan's leash over to someone else and watch him drive out of my life...

This is the end of my story, but not the end of Tiergan's tale...Hopefully, one day, the rest of his story will be written.

Tricia Perkins

\*All opinions expressed in this story are the sole opinions of the author.\*

[Home](#) | [Rescue Practices](#) | [In The News](#) | [Contact Us](#) |  
[Documents](#) | [Adopters Tales](#) | [Rescues](#) | [Tiergan's Roar](#)

Website and all original artwork © **Copyright** ROARS, 2005  
contact [Webmaster](#) for more info



# Rescuers Organized for Actual Rescues

Rescues working together for the betterment of Rescues

## The Stories

Barbara Laird

My name is Barbara Laird. My explanation is quite lengthy, so please pardon me for taking up so much of your time as I give details.

At the beginning of this year, I had decided that I would like to adopt a Great Dane into my family as I believe that a Great Dane and I would be the most compatible. I did a lot of research before making this decision. I learned very quickly about their potential for lots of health problems that Danes are more susceptible to other dogs. I learned about what Bloat is, but am still confused as to what causes it. To the best of my knowledge, it appears that Bloat is not caused by just one thing, but could be caused by numerous conditions or a combination of conditions. I had also learned about the importance of the dietary intake for the Dane. What high maintenance this "little doggie" will be, but nonetheless, this is not beyond what is manageable for me.

From what I am learning about Great Danes, all of this is WELL worth it.

So then my quest began on finding the best brand and type of food to feed my soon-to-be new companion. In the past, I had a great working relationship with a Pet Food Delivery Service in Huntington Beach, VIP Pet Food Delivery, Cathy Cunningham. So I called her. I quickly discovered that she, too, has Great Danes. Cathy suggested that I feed my Dane-To-Be Eagle Pack Dog Food. Since she herself has Danes and since she has a lot of time invested in researching Dog Food and Dog dietary needs and issues, I decided to rely on her advise.\*\*

\*\* In addition to relying on Cathy's advise, I had also performed my own "survey" with a large majority of Great Dane breeders throughout the nation. I sent an email out to more than 200 breeders, handlers, and rescuers and asked them a simple question: "What do you recommend as an appropriate food to feed my adult Great Dane?" Surprisingly enough, more than 100 of them replied back. The results showed that more than 40% of the Dane breeders/rescuers either feed or recommend Eagle. Those results were very impressive to me. That was all the information I needed to know. There is no way that 40% of the Dane community are "killing" there Danes by feeding them Eagle brand dog food.

I then located a Great Dane rescue organization called Gentle Giants Rescue and Adoptions in Norco, CA, operated by Burt and Tracy Ward. Through this organization I adopted my very first Great Dane on January 30, 2005 !!! He is a 3 year old neutered male. He appeared to be in excellent health - not underweight, skin and coat in good condition, very alert and responsive to his environment. He

introduced himself to me by gently jumping up, placing his forearms on my shoulders, looking into my eyes and telling me (with his eyes) that he would really LOVE to go home with me. Well that did it. He's the dog for me. On the way home, I renamed him to Samson ("Samson" fit - he liked the name too).

At the time of the adoption (January 30, 2005), the rescue organization (Gentle Giants) gave me brief instructions about feeding so as not to cause bloat. She (Tracy Ward) explained about not feeding my dog at least one hour before or after exercise, not free feeding, not a lot of water during meal times, and using elevated food bowls. (All of this I have already learned in my research, but it was good to hear it again). This feeding instructions is also spelled out in detail on Paragraph No. 6 of their Two (2) page contract. She (Tracy) also told me that all of her dogs are fed Pedigree and told me to continue feeding "Pedigree Adult Complete Nutrition Small Crunchy Bites Dog Food" as this food has the appropriate protein and fat count, which is necessary for the health of a Great Dane.

During the next 6 weeks to follow, the transition to my Dane's new environment was quite difficult for him. I continued to keep feeding "Samson" Pedigree for the first 3 weeks before the gradual process of integrating the new food "EaglePack Natural" into his diet. This transition took over 3 weeks to switch over to the new food. During this entire 6 week period of time, Samson has diarrhea most of those days. This really did not concern me too much, as I know that Samson was under a lot of undo stress, and stress is often manifested into intestinal conditions like diarrhea.

During these same initial 6 weeks, I had also been

communicating with Gentle Giants (Tracy Ward) via email with short updates about how Samson is doing, how much "in love" we are, how well he is fitting into my household, how he has been introduced to my cats, and have sent her photographs (of which she has posted on her website). On one of these emails (April 5, 2005) I told her about Samson's diarrhea problems and that I have switch him over to a more nutritious, whole dog food, and was asking her for any suggestions.

Well - that's what started it all. I had no idea that this "Food Issue" could escalate into a legal battle.

Apparently, Gentle Giants seems to believe that they have a "contract" with me that says that I MUST feed my dog according to their feeding protocol, which is the above mentioned Pedigree food. This created quite a heated "discussion" between us (mostly via email). In these emails, they (Tracy) "informed" me that Eagle is BAD for his health and will cause MANY health problems. She "informed" me that Pedigree is the ONLY food appropriate to feed a Great Dane.

I knew this to be untrue and I have expressed to them my unwillingness NOT to take "Samson" off of Eagle and switch back to Pedigree. I also "informed" them that their contract does not have any provisions as to what brand or type of dog food to feed my dog, thus they have no say so in this matter.

Then on April 11, 2005, Gentle Giants (Burt Ward) sent me an email of a "Notice of Violation of Adoption Agreement and Notice of Intent to Repossess Samson". Unless I switched back to Pedigree, they were intending to Repossess my dog.

This again generated some unproductive "conversation" between us.

In response to their "Notice of Violation", I sent them a reply stating that I am currently in Full compliance with their contract.

As a result of my reply (I am guessing), this was not satisfactory to them (Gentle Giants), on April 13, 2005 I received a 2nd email from Gentle Giants (Burt Ward) and a letter from their attorney stating their "Notice of Repossession of Samson effective immediately". They gave me 24 hours to return my dog back to their organization and stated that they were not open to any further discussion.

Needless to say, this didn't go over very well with me.

I have obtained an attorney that is "Volunteering" to help me to avoid the rescue organization from taking legal action against me. However, all she has done was just place a couple of phone calls to the rescue organization's attorney, informed him (verbally only) that since the contract does not have food requirements and since my Dane is in good health and no longer has diarrhea problems, then there really isn't a case. My "attorney" seems to believe that this will just "Go Away". She is not really wanting to more than that - at least not without getting paid for it. In a way, I can understand her unwillingness to help me further, but that still leaves me with not much legal counsel.

According to the letters from the letters from Gentle Giant's, all they want from me is to inform them in writing that I have discontinued the use of Eagle dog food and that I have switched back to Pedigree (or purchase food directly from Gentle Giants - they have their own food now). I could take

the easy way out and just write them the letter and lie to them that I am complying with there "demands". But I will NOT lie in order to defend what is right, that sounds pretty counter-productive. If I do not give Gentle Giants what they want, then they WILL be proceeding with legal actions against me (in Superior Court) in order to obtain an order to repossess my dog.

I do not believe that Gentle Giants can form a case against me, however I have to go through the time and expense to go to court to prove it ???

I am thinking that perhaps I need to take a defensive course of action. But again, all of this takes time and money. All of this just to defend my right to use whatever dog food I choose?

Sincerely,  
Barbara Laird

**Roars Note:** We have seen all the documentation that goes with Barb's story, the contract, the letters, all of it. There is no mention in the contract of feeding a specific brand of food. Some of this documentation is up on the web now.

\*All opinions expressed in this story are the sole opinions  
of the author.\*

[Home](#) | [Rescue Practices](#) | [In The News](#) | [Contact Us](#) |  
[Documents](#) | [Adopters Tales](#) | [Rescues](#) | [Tiergan's Roar](#)

Website and all original artwork © **Copyright** ROARS, 2005  
contact [Webmaster](#) for more info

**EXHIBIT 8**

Subj: **Re: Amtrak-Fawn dane rescue**  
Date: 1/6/2005 10:29:12 PM Pacific Standard Time  
From: john\_chel@yahoo.com  
To: RENY4FUN@aol.com  
Sent from the Internet (Details)

Renee

Hello. I am not sure if you remember when all of this happened but I wanted to let you know it has been resolved. We came to be the owners of Amtrak when my in laws adopted him but due to an illness could not care for him. Since my husband and I had just lost our dane 6 months before (to natural causes) we decided we would love to give him a home. We brought him home and had him for 17 months, and that is when the gentle Giants Rescue contacted you about our Great Dane and questioned his ownership, I had the vet read his microchip so I could trace his previous owners. When I called Home Again Microchip readers, they stated that Amtrak was reported stolen by his previous owners (the ones who originally purchased him from a breeder).

I immediately contacted the legal owners who were happy to know he was safe. They explained to us how he ended up in possession of Tracy Ward at her rescue ( he was illegally removed by a volunteer from their fenced back yard while his owners were at the store) and how they contacted her to get him back and she denied him being there. The vet who neutered Amtrak had contacted the Microchip agency when he had his surgery prior to my in laws adopting him. By the time they were able to get to the vets office Tracy had adopted him out. Sadly, the legal owners came to our home to take their missing pet home. With all our hearts breaking and children so sad the legal owners decided that Amtrak loved us as much as we loved him and that we were the best family for him. They turned over all legal ownership including his AKC registration to us. We are the legal rightful owners of Lord Justice, but to us he is still our lovable doofus that we like to call Amtrak because he doesn't realize how big he is and steams through everything like a giant freight train. I hope that in the future you would not mind me posting photos of our guy since all has been resolved and Tracy no longer has an interest in our pet.

Thank you,

Michelle Gilles  
Animal House Rescue

RENY4FUN@aol.com wrote:

*Hello,*

*I have already talked everything over with Michelle and she totally understands why I had to delete her pictures until everything is resolved regarding this dog.*

*I own and manage the message board that represents the N. CA Great Dane Rescue and I cannot have negative issues going on regarding us. I personally don't want to be involved with this, nor does the N. CA Great Dane Rescue, so if you have further questions or comments please direct them to Tracy Ward and her rescue.*

*Thank You.*

Regards,  
Renee Broden

check out our webpage  
California Dreaming Quarter Horses & Great Danes

**EXHIBIT 9**

1 M. DAVID MEAGHER, ESQ. SBN 171151  
2 LAW OFFICES OF M. DAVID MEAGHER  
3 333 S. JUNIPER STREET, SUITE 217  
4 ESCONDIDO, CA 92025  
5 (760) 743-2200

6 ATTORNEYS FOR DEFENDANTS  
7 MARC SAYER AND RENEE BRODEN

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ORANGE

10 GENTLE GIANTS RESCUE AND  
11 ADOPTIONS, INC. A California Non-Profit  
12 Public Benefit Corporation, BURT WARD,  
13 an individual, and TRACY WARD, an  
14 Individual,

15 Plaintiffs,

16 v.

17 BARBARA LAIRD, an Individual, MARC  
18 SAYER, an Individual, RENEE BRODEN,  
19 an Individual, JAMIE GARCIA, an  
20 Individual, and DOES 1 through 100  
21 Inclusive,

22 Defendants,

CASE NUMBER: 05 CC 09035

DECLARATION OF M. DAVID  
MEAGHER, ESQ. IN SUPPORT OF  
MOTION TO STRIKE THE PLAINTIFFS  
COMPLAINT AS A STRATEGIC  
LITIGATION AGAINST PUBLIC  
PARTICIPATION SUIT  
{C.C.P. § 425.16 et.seq.}

HON: DEREK G. JOHNSON  
TIME: 1:30 P.M.  
DEPT: C7  
DATE:

23 I, M. David Meagher, Esq., am a duly licensed attorney, qualified to practice in all Courts  
24 of the State of California. The information set forth below is true of my own knowledge, accept  
25 those matters which are set forth as being on information and belief, which I believe to be true.

26 1. The Defendants Marc Sayer and Renee Broden contacted me and advised me that a law  
27 suit had been filed against them as individuals by the Plaintiffs.

28 2. I reviewed the law suit which had been served on Mr. Sayer and Ms. Broden.

DECLARATION OF M. DAVID MEAGHER IN SUPPORT OF SPECIAL MOTION TO STRIKE  
COMPLAINT AS A SLAPP

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

3. I research the applicable codes and case law related to the act of making complaints to governmental agencies, as well as republication of third party content on the World Wide Web, as well as the statute and case law related to C.C.P. § 425.16, and developed the opinion that the suit by Plaintiffs was meritless and presented the classic example of a SLAPP suit.

4. I reviewed documents associated with this matter.

5. Prior to my accepting this matter for defense, I am advised and believe, and therefore on such information and belief state that Attorney Paul Clifford who initially considered this defense had secured an agreement with Plaintiffs' Counsel to stipulate to the filing a of a responsive pleading by Defendants by October 13, 2005.

6. This SLAPP Motion is timely filed based upon the date of service of this complaint.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of October, 2005, in the City of Escondido, in the County of San Diego, California.

///

By:   
M. DAVID MEAGHER, ESQ.