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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**DEBORAH STREICHER,**

**Appellant,**

**v.**

**GREGORY AHERN, as Sheriff, etc., et  
al.,**

**Respondents.**

**A114397**

**(Alameda County  
Super. Ct. No. RG06272180)**

Deborah Streicher (Streicher) appeals from an order denying her petition for a writ of mandate (Code Civ. Proc., § 1094.5), by which she sought reversal of an administrative decision declaring her dog a public nuisance and ordering that the dog be humanely destroyed. The decision was made after a hearing that was held on the basis of her purported breach of her written agreement with the Alameda County Sheriff's Office regarding the dog. Streicher contends: (1) respondents had no authority to conduct an administrative hearing to determine whether she breached the agreement; (2) res judicata barred adjudication of the alleged breach because an earlier proceeding addressed the same incident; (3) collateral estoppel precludes respondents from arguing that they had authority to hold the administrative hearing; and (4) respondents previously conducted a hearing concerning the breach of the agreement and could not conduct a second. We will affirm the order.

## I. FACTS AND PROCEDURAL HISTORY

Streicher owns a 69-pound female dog named “Sasha.” We previously addressed an appeal by Streicher in connection with respondents’ refusal to return Sasha to Streicher after holding her as a vicious dog. (Case No. A110089.) We begin our discussion with a summary of the events up through the prior appeal, and then address the proceedings directly at issue in this appeal.

### A. BACKGROUND

#### 1. Vicious Dogs Ordinance

We adopt the following discussion from our previous opinion, case No. A110089.

“Alameda County has an ordinance governing vicious dogs. (Alameda County General Code (Ordinances [hereafter, Ordinance]), Title 5 ‘Animals,’ § 5.20.)<sup>1</sup> A dog is presumed vicious when it [perpetrates]: (a) an attack that requires a defensive action by any person to prevent bodily injury or property damage when the person is conducting himself or herself peacefully and lawfully; (b) an attack that results in property damage or injury to a person when such person is conducting himself or herself peacefully and lawfully; (c) an attack on another animal which occurs on property other than that of the owner of the attacking dog; or (d) any behavior that constitutes a threat of bodily harm to a person when the person is conducting himself peacefully and lawfully. (§ 5.20.020.) For purposes of the definition of “vicious,” . . . a person is conducting himself peacefully and lawfully on the dog owner’s private property when he or she is on such property upon express or implied invitation. (§ 5.20.020.)

“The director of field services for the Alameda County Sheriff’s Office, or his authorized deputy or representative, may investigate the report of any incident concerning a possible vicious dog. (§§ 5.04.010, 5.20.030.) If, based on the investigation, the director concludes there is probable cause to believe the dog is vicious, he shall certify his conclusion in writing to the dog’s owner and schedule a hearing to determine if the dog is vicious. (§§ 5.04.010, 5.20.030, 5.20.050.) He shall also insure that the dog is

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<sup>1</sup> Except where otherwise indicated, all section references are to the Ordinance.

securely confined either on the owner's premises, or, if necessary to protect public health and safety, in an appropriate animal shelter until the hearing officer's decision.

(§ 5.20.040.)

“If the director, based on the hearing, finds that the dog is vicious, he shall so specify in writing and give the reasons therefor. (§ 5.20.070.) A dog found to be vicious is deemed a public nuisance ‘and shall be, pursuant to the order of the director, humanely destroyed or removed from the county, or the nuisance otherwise abated by appropriate order including, but not limited to, confinement, fencing, muzzling or leashing.’

(§ 5.20.070.)”

## 2. Vicious Dog Hearings in 2003

Respondents conducted hearings on March 11, 2003, September 4, 2003, and November 4, 2003, concerning separate incidents in which Sasha escaped her yard and bit people or attacked another dog. At each of the first two hearings, it was determined that Sasha fell within the Ordinance's definition of a vicious dog. Restrictions were imposed to safeguard against another incident, and it was noted that a further violation would render Sasha subject to euthanasia.

No decision issued following the November 4, 2003, hearing. Instead, on November 13, 2003, Streicher and the sheriff's office entered into a written “Agreement” (hereafter, Agreement) in “resolution of Streicher's violations and alleged violations of the Vicious Dogs ordinance.”

## 3. Last Chance Agreement

The Agreement recited that Sasha had been off of Streicher's property, was out of Streicher's control, attacked or threatened to attack others, and had been the subject of complaints to the sheriff's office, including two complaints of alleged bites. This conduct brought Sasha within the definition of a vicious dog under section 5.20.020. The Agreement also noted Streicher's allegation that Sasha's behavior had been provoked.

The Agreement further recited that Streicher “understands that [Sasha] cannot be off her property at any time unless controlled by a leash of six feet or less because of the potential danger to others in the community,” (italics omitted) and “understands that this

Agreement constitutes a ‘last chance’ for her to control [Sasha] or [Sasha] may be humanely destroyed by” the sheriff’s office, pursuant to section 5.20.070.

On this basis, the parties agreed:

1. Streicher would keep Sasha indoors or in an escape-proof kennel located in the rear yard at a point farthest away from the fence separating her property from neighboring property.

2. Sasha would be on a leash no longer than six feet and under the control of an adult whenever she was not in the residence or kennel.

3. The Agreement was a “‘last chance’ agreement with no appeal rights for future violations, i.e. if [Sasha] is running at large for any reason, [Sasha] shall be seized and subject to the provisions of” the Ordinance and state law.

4. If Alameda County was found liable for any injury caused by Sasha, Streicher would indemnify, defend, and hold harmless Alameda County and the sheriff’s office from any losses.

5. If Streicher transferred ownership of Sasha to another party, she would inform the new owner of the Agreement.

6. The sheriff’s office would not then destroy or remove Sasha from the county pursuant to the Ordinance “in order to facilitate this ‘last chance’ for Streicher to control [Sasha] under the above provisions.”

The Agreement thus varied from the Ordinance in terms of what would render Sasha subject to the Ordinance’s abatement provisions in the future. The Agreement subjected Sasha to abatement if she was “running at large” (not on a leash held by an adult or at Streicher’s residence or a kennel). It did not require a determination that Sasha was vicious within the meaning of the Ordinance, which would require proof of, among other things, the location of the victim. As Streicher would later admit at the administrative hearing at issue in this appeal, she consented to the Agreement because she knew that otherwise Sasha would likely have been destroyed.

#### 4. The Skaff Incident and the July 12, 2004 Administrative Hearing

On June 15, 2004, Sasha attacked and bit Streicher's neighbor, William Skaff, who sought medical treatment as a result of the dog bite.

On June 30, 2004, the sheriff's office sent Streicher a "NOTICE OF HEARING REGARDING VICIOUS DOG," stating there would be a hearing pursuant to section 5.20 as a result of Sasha biting Skaff on June 15. The hearing was conducted by Sergeant Chris Carmine of the sheriff's office, who made written findings and issued a final decision.

The hearing officer at the July 12, 2004 hearing stated that "considering the signed agreement" he had consulted with the Alameda County Counsel on the case, and county counsel "agreed[d] that the incident was a breach of said agreement." The officer then ruled: "Based on the statements received and the Animal Control incident report, Sgt. Carmine found the dog's attack on June 15, 2004, does again fall within the definition of Alameda County Ordinance 5.20.020, Vicious Dog Defined. Taking everything into consideration, it is his decision that the dog will not be allowed back into Streicher's ownership." The hearing resulted in a decision that Sasha fell within the vicious dog definition of section 5.20.020

Streicher protested the decision at the hearing because, she claimed, Sasha was on her property, Sasha was on a leash held by Streicher, and Sasha's actions were not in violation of the Agreement.

#### 5. Petition to Court for Writ of Mandate (Code Civ. Proc., § 1094.5) Re: July 12 Decision

On October 22, 2004, Streicher filed a petition in Alameda County Superior Court under Code of Civil Procedure section 1094.5, requesting that the July 12 administrative decision be overturned.

At the mandamus hearing on December 15, 2004, Judge Brick emphasized that he was only to consider whether the evidence supported the hearing officer's conclusion that there was a violation of the Ordinance, not whether Streicher had failed to abide by the terms of the Agreement. The court stated: "We're not here on a breach of contract or

declaratory relief . . . [section] 1094.5 asks me to look at an administrative record with respect to a particular decision.” Counsel for respondent agreed, but proceeded to argue that the July 12 administrative hearing decision was based on a violation of the Ordinance as well as a breach of the Agreement. The court suggested that the July 12 administrative decision was not based on the Agreement, because “there’s nothing in the ordinance that gave the Sheriff’s Department the authority to enforce the agreement through an ordinance enforcement proceeding.” The judge added that he had no “problem” with respondents’ position that Streicher violated the Agreement by losing control of Sasha, but added that the issue was not before him. He later reiterated that it appeared Streicher had violated the Agreement, and “the county was at liberty to enforce the agreement, in my judgment,” but “that’s not the issue before me.”

Judge Brick ruled, by written order entered on January 11, 2005, that the evidence at the administrative hearing was insufficient to show that Sasha fell within the Ordinance’s definition of a vicious dog, because it failed to prove that Sasha was not on Streicher’s property at the time of the attack or that Skaff was not on Streicher’s property “peacefully and lawfully” or by “invitation.” (See § 5.20.020.) Because the finding of the violation of the Ordinance was not supported by the evidence, the writ of administrative mandamus was granted, vacating the July 12 administrative decision. (See Code Civ. Proc., § 1094.5, subd. (b).) The court’s order further provided that “[t]he Court does not reach the question, in its review pursuant to C.C.P. § 1094.5, whether Plaintiff breached the ‘last chance’ agreement by losing control of the dog, despite its being on a leash, such that the dog lunged and bit Mr. Skaff.” No appeal was taken from this order.

6. Petition to Trial Court for Writ of Mandate (Code Civ. Proc., § 1085) Re: Return of Sasha

Respondents continued to hold Sasha after the July 12 administrative decision was overturned. Streicher therefore filed a petition for writ of mandamus pursuant to Code of Civil Procedure section 1085 to force respondents to release Sasha. Streicher asserted that, given the court’s ruling that the assault on Skaff did not violate the Ordinance, the

only basis for holding Sasha had been vacated and Streicher was entitled to possession of Sasha. The respondent argued that the court's decision in the Code of Civil Procedure section 1094.5 proceeding, though it found no proven violation of the *Ordinance*, did not preclude the sheriff's office from holding Sasha until it conducted another hearing as to whether the attack on Skaff reflected a violation of the *Agreement*.

The Code of Civil Procedure section 1085 petition was also heard by Judge Brick. He denied Streicher's petition, reasoning that respondent "previously determined the dog in question to be 'vicious' under Alameda County Ordinance 5.20.020 at hearings held on March 11, 2003, and September 4, 2003. Respondent therefore had no duty to return the dog to [Streicher]."

7. Streicher's Appeal of the Trial Court's Denial of Her Code of Civil Procedure Section 1085 Petition

Streicher appealed Judge Brick's denial of the Code of Civil Procedure section 1085 petition. She contended it was a violation of due process for Sasha to be held based on earlier determinations that Sasha was vicious, since the court subsequently concluded in the Code of Civil Procedure section 1094.5 proceeding that the evidence was insufficient to prove Sasha vicious based on the 2004 Skaff incident. Respondent countered that once a dog is determined to be vicious as defined by the Ordinance and thus a public nuisance, the sheriff's office has continuing authority to abate the nuisance by appropriate means, including confinement or destruction, without separate hearings for successive incidents of alleged vicious behavior.

We issued our decision on January 9, 2006. (*Streicher v. Williams* (Jan. 9, 2006, A110089) [nonpub. opn.] (*Streicher I*.) We concluded that the Ordinance required the sheriff's office to conduct a new hearing if it believes a dog previously found vicious but not ordered confined should subsequently be seized as a vicious dog under the Ordinance. Although the July 12, 2004 administrative hearing had found Sasha to be a vicious dog, the trial court vacated that order and the court's decision had become final. Absent a valid finding of viciousness based on an incident after the September 2003 decision

permitting Streicher to retain custody of Sasha, respondent had no authority under the Ordinance to confine her.<sup>2</sup>

We then turned to respondent's argument that it could continue to hold Sasha under the Agreement, even if the 2004 incident involving Skaff was not a violation of the Ordinance. We recognized, for purposes of that appeal, that the parties could enter into such an agreement: "For purposes of this appeal we accept that appellant and the sheriff's office were free to enter into an agreement that would be broader than the reach of the vicious dog ordinance. In other words, they could agree that, as of the date of their agreement, the sheriff's office could thereafter hold Sasha based on behavior other than behavior that qualifies as vicious under the ordinance." We noted, however, that a breach of the Agreement had to be based on something Sasha did after the Agreement was signed. The only post-agreement act alleged was the 2004 Skaff incident. Because there had been a final determination that the Skaff incident did not constitute a violation of the Ordinance, a breach of the Agreement had to be established by facts other than violation of the Ordinance.

We also addressed Streicher's argument that the sheriff's office lacked authority to determine whether there was a breach of the Agreement: "[Streicher] argues that the sheriff's office, while it may claim a breach, is not empowered, as a party to the agreement, to determine whether there was in fact a breach; rather, it must file a civil action based on breach of the agreement. She also argues the sheriff's office has no authority to seize and hold Sasha based on its claim of a breach of the agreement." We observed that the determination of whether there was a breach would have to comply with due process: "To comport with due process, a neutral and impartial trier of fact is a fundamental component of a fair adjudication. Equally fundamental is the rule that no

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<sup>2</sup> We stated: "We hold only that, under the vicious dog ordinance, when the dispositive order following a finding of viciousness provides that the dog shall be released to the owner, the sheriff's office cannot later unilaterally retract that order and confine the dog based only on that finding. Rather, the ordinance requires it to hold a hearing to determine whether the dog's subsequent behavior warrants confinement."

person can be the judge of his own case. (See *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1234 [(*BreakZone*)].)” But we did not decide whether the sheriff’s office could adjudicate a breach in the context of an administrative hearing, since respondent had not raised the issue of a breach of the Agreement in the Code of Civil Procedure section 1085 proceeding we were reviewing: “[W]e need not decide whether the sheriff’s office can adjudicate, at least preliminarily, the question whether there has been a breach of an agreement to which it is a party, because a claimed breach was not adequately raised by respondent in the trial court.”<sup>3</sup>

We concluded that, because the July 12, 2004 finding by the sheriff’s office that Sasha was vicious had been vacated and because there had been no fair hearing at which Streicher was found to have breached the Agreement, respondent had no authority to hold Sasha and she must be returned to Streicher. Our disposition read: “The order is reversed. In the absence of any pending *administrative proceeding to litigate an alleged*

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<sup>3</sup> Our discussion continued: “Assuming respondent had raised the Last Chance Agreement as an affirmative defense to defeat appellant’s claim that he had a duty to release Sasha, we see no impediment to the trial court determining whether there was a breach during the Code of Civil Procedure section 1085 proceedings, after the parties have been given the opportunity to present relevant evidence. [¶] However, respondent’s opposition to appellant’s section 1085 petition did not raise such an affirmative defense. It simply asserted that, based on comments by the trial court during the earlier section 1094.5 hearing, the sheriff’s office was now entitled to determine whether appellant had violated the Last Chance Agreement and intended to do so. Nor was the instant section 1085 proceeding conducted as a forum at which the parties were invited or permitted to present evidence of how the Last Chance Agreement had or had not been breached for reasons other than violation of the ordinance, or to present evidence as to the meaning of the agreement. And while the court commented during the hearing about a ‘plausible breach of contract’ and that the administrative record it reviewed during the section 1094.5 proceeding ‘indicated to me’ a breach of the agreement, the language of its written order controls. (*Selfridge v. Carnation Co.* (1962) 200 Cal.App.2d 245, 249.) The court’s order denying appellant’s section 1085 motion is specifically and solely based on the sheriff’s office May and September 2003 findings of viciousness. Insofar as these two findings were made before the parties entered into their November 2003 Last Chance Agreement, they cannot form the basis of a breach of that agreement.”

*breach of the Last Chance Agreement*, the trial court is directed to order respondent to release Sasha to appellant. Each party to bear their own costs on appeal.”

B. PRESENT PROCEEDING

1. February 2006 Administrative Hearing and April 2006 Decision

Taking our opinion in *Streicher I* as an invitation to proceed with an administrative hearing to litigate an alleged breach of the Agreement, respondents sent Streicher another “NOTICE OF HEARING REGARDING VICIOUS DOG” on February 7, 2006, stating that a hearing would occur on February 24, 2006, to determine if Streicher violated the terms of the Agreement. The notice further stated that “In the event your dog is found to be in violation of the Agreement, it will be ordered to be destroyed, restricted or otherwise abated as a public nuisance and any impoundment costs incurred shall be assessed against you.”

At the beginning of the February 24 hearing, Streicher’s counsel objected to the county holding what he termed a “breach of contract hearing,” and asserted that the county instead had to file a breach of contract “claim” in court. In counsel’s view, *Streicher I* had left open the issue of whether the sheriff’s office could adjudicate a breach of the Agreement in an administrative hearing.

The hearing officer proceeded with the testimony. Skaff testified as to the attack by Sasha on June 15, contending that, although he weighed 235 pounds, Sasha knocked him down and bit him without provocation. He asserted that he was on the street and not on Streicher’s property at the time of the attack (evidence which, if believed, would have established a violation of Ordinance at the prior administrative hearing). Skaff further testified that Streicher had asked him to sign a statement that he *was* on her property at the time of the attack, but he refused to do so because the assertion was untrue.

Streicher testified that she did “not doubt that the dog bit” Skaff. She also admitted asking Skaff to state that he was on her lawn during the attack, explaining that she wanted to do anything to save Sasha since “the neighbors lied and they had provoked the dog.” She also testified that, when she signed the Agreement, she as an attorney

“knew the evidence against the dog was mounting” and “knew that she had to sign the [A]greement to save the dog.”

The hearing officer took the matter under submission and requested written briefs on certain legal arguments Streicher had raised. In her brief, Streicher did not dispute Sasha’s attack on Skaff but argued: (1) the hearing was barred by the res judicata effect of the prior administrative proceeding overturned by Judge Brick; (2) the sheriff’s office lacked jurisdiction to decide the action alleging breach of the Agreement; and (3) the hearing was barred due to laches.

On March 20, 2006, based on the hearing and the parties’ letter briefs, the hearing officer ruled that Streicher had violated the Agreement. In addition, he rejected Streicher’s legal arguments. As to res judicata, the hearing officer noted that the previous Code of Civil Procedure section 1094.5 decision did not reach the issue of whether Streicher breached the Agreement, because it was not the subject of the administrative hearing. The hearing officer also noted that *Streicher I* observed “there has been no fair hearing at which [Streicher] was found to have breached the Last Chance Agreement.” As to Streicher’s argument that respondents lacked authority to conduct a hearing based on a breach of the Agreement, the hearing officer concluded that the Agreement had to be understood in light of the fact that it was negotiated pending an administrative hearing that could have resulted in the Sasha’s destruction. In that context, the hearing officer characterized the Agreement as follows: “It is more akin to a written stipulation (or perhaps a written memorandum of an oral stipulation) entered into to avoid proceeding with a hearing, the outcome of which the parties did not wish to chance. Even more accurately, it represents a plea bargain in which ‘probation’ was agreed to by the ‘defendant’ in order to avoid the potentially more serious consequences of a trial. Now is the time for the ‘probation violation’ hearing in the forum where the agreement was reached. The dog owner greatly benefitted [*sic*] from the agreement, she cannot now seek escape [*sic*] its burdens.”

The hearing officer invited further briefing as to the appropriate remedy, given the Agreement’s language that, “in the event a violation of the Agreement is found to have

occurred, the dog shall be ‘subject to the provisions of County Ordinance 5.20 and State law.’” In Streicher’s brief, she admitted that if respondents had authority to hold the hearing, and the hearing was not barred by res judicata or laches, the hearing officer had jurisdiction under the Agreement to take any action with respect to the remedies provided under the Ordinance.

On April 24, 2006, the hearing officer issued his written decision, finding that: “the parties do not dispute the Hearing Officer’s jurisdiction to make a finding that the dog is a public nuisance subject to abatement. Counsel for [Streicher] concludes that, ‘Therefore, if the hearing officer finds that the Agreement has been breached by Ms. Streicher, then he is finding that the dog is vicious.’” Based upon the entirety of his findings—including the fact that “over a period of sixteen months this dog attacked and caused injury to five persons” and another dog—the hearing officer found that Sasha was “a public nuisance subject to abatement” under the Ordinance and ordered Sasha to be “humanely destroyed.”

2. Streicher’s Code of Civil Procedure Section 1094.5 Petition for Writ of Mandate Re: April 2006 Ruling

Sasha was to be humanely destroyed on June 1, 2006. On May 30, 2006, Streicher filed a petition for a writ of administrative mandamus under section 1094.5, to review the hearing that occurred on February 24, 2006 (more precisely, to reverse the April 2006 administrative decision). The trial court issued a temporary restraining order to prevent Sasha’s euthanasia while Streicher’s Code of Civil Procedure section 1094.5 petition was pending.

In her Code of Civil Procedure section 1094.5 petition, Streicher asserted the three contentions of law that she had asserted in the administrative hearing: (1) respondents were not empowered to hear contract actions; (2) the hearing was barred by res judicata; and (3) laches.

At a hearing on July 6, 2006, the trial court concluded that respondents had the authority to hold the administrative hearing in light of the disposition in *Streicher I*. The trial court stated: “Let me ask you to presume for a minute that the Court of Appeals

meant what it said, that there could be an administrative proceeding to litigate the breach of the last chance agreement. Because I'll tell you I think that the Court of Appeals thinks based on what I read there, that the County could have an administrative proceeding." In denying the petition from the bench, the court further stated: "I've considered all the papers and I've considered the argument of counsel. I can't reach any other conclusion and I have to believe that the Court of Appeals meant what it said regarding pending administrative hearings. [¶] I've read the record of the hearing and the hearing, it seems to me based on the evidence before that hearing officer, the hearing officer did not abuse her discretion and there was more than substantial evidence to support the hearing officer's decision."

By written order on July 6, 2006, the trial court summarily denied Streicher's Code of Civil Procedure section 1094.5 petition. Streicher did not request a statement of decision.

This appeal followed.<sup>4</sup>

## II. DISCUSSION

Streicher does not challenge the hearing officer's factual findings, the sufficiency of the evidence, or the remedy he selected. Instead, she contends: (1) respondents had no statutory authority to conduct the February 2006 hearing, which was based on the breach of the Agreement; (2) res judicata barred respondents from adjudicating a breach of the Agreement, because the alleged breach was based on the primary rights at issue in the July 12, 2004 administrative hearing; (3) collateral estoppel precludes respondents from arguing that they have authority to hold a hearing based on an alleged breach of the Agreement; and (4) even if respondents could conduct a hearing to determine if there was a breach of the Agreement, they already conducted such a hearing and cannot conduct a second. We address each of these contentions, in a slightly different order.

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<sup>4</sup> We granted Streicher's petition for a writ of supersedeas to restrain respondents from destroying Sasha pending the appeal.

We conduct an independent review to determine whether the Ordinance provides respondents authority to conduct a hearing based on the alleged breach of the Agreement. (*Goddard v. South Bay Union High School Dist.* (1978) 79 Cal.App.3d 98, 105 (*Goddard*)). We also review de novo Streicher’s other questions of law, such as res judicata and collateral estoppel. (See *Roos v. Red* (2005) 130 Cal.App.4th 870, 878.)

A. AUTHORITY TO CONDUCT THE FEBRUARY 2006 HEARING RE: BREACH OF THE AGREEMENT

Streicher contends that respondents had no authority to conduct the February 2006 administrative hearing based on Streicher’s breach of the Agreement, because the Ordinance limits their authority to conducting hearings to determine if dogs are “vicious.” To support this argument, she refers to sections of the Ordinance that authorize a determination of viciousness: section 5.20.060 describes evidence that may be presented at a hearing “in determining whether the dog is vicious;” section 5.20.050 requires a hearing notice that specifies the hearing is for the purpose of determining whether the dog is vicious; and under section 5.20.070, only if a dog is determined to be vicious can the director authorize the euthanasia of the dog. Furthermore, Streicher argues, the Ordinance does not affirmatively state that respondents have authority to conduct a hearing to determine if any contract was breached.<sup>5</sup> Streicher thus contends that, if respondents believe there was a breach of the Agreement, they could not enforce it through an administrative hearing but instead must file a lawsuit in superior court.

Streicher’s argument is unpersuasive. As we shall explain, respondents’ authority to determine whether Sasha should be subject to the abatement provisions of the Ordinance due to the Agreement falls within their general authority under the Ordinance to implement abatement procedures for vicious dogs.

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<sup>5</sup> Streicher also notes that Judge Brick opined at the first Code of Civil Procedure section 1094.5 hearing that “[t]here’s nothing in the ordinance that gave [respondents] the authority to enforce the agreement through an ordinance enforcement proceeding.” This observation is not binding on this court and, as we discuss *ante*, does not give rise to collateral estoppel.

Before proceeding with our analysis, however, we will first address the parties’ debate over whether we decided this issue in *Streicher I*. There, Streicher had argued that the sheriff’s office lacked authority to determine whether there was a breach of the Agreement and instead had to file a civil action. Although we observed that the determination of whether there was a breach would have to comply with due process, we did not decide the question: “we need not decide whether the sheriff’s office can adjudicate, at least preliminarily, the question whether there has been a breach of an agreement to which it is a party, because a claimed breach was not adequately raised by respondent in the trial court.” And while we directed the trial court to order Sasha released “[i]n the *absence of any pending administrative proceeding to litigate an alleged breach of the Last Chance Agreement,*” (italics added) this disposition anticipated the action respondents might take, rather than decide the question—unnecessary to the disposition of the appeal—whether there was authority to hold such a hearing. At bottom, we did not decide in *Streicher I* whether the sheriff’s office could determine if Streicher breached the Agreement in an administrative hearing.

Next, we must clarify the precise issue now before us. It is not, as Streicher implies, whether respondents may generally adjudicate breach of contract actions, which might involve a variety of contexts and typically involve requests for civil damages. The narrow question before us is whether the Ordinance, in granting authority to identify and abate vicious dogs for public safety, is broad enough to impart the incidental power for respondents to determine whether Streicher had subjected Sasha to the Ordinance’s abatement provisions by breach of the parties’ Agreement.

Key, therefore, is the nature of the Agreement, which recites that “[Streicher] agrees that this is a ‘*last chance*’ agreement.” (Italics added.) Further, the Agreement reads, Streicher understood that the Agreement reflected “a ‘last chance’ for her to control [Sasha] or [Sasha] may be humanely destroyed” by the sheriff’s office, pursuant to section 5.20.070. (Italics added.) Under the terms of the Agreement, there would be “no appeal rights for future violations, i.e. if [Sasha] is running at large for any reason,

[Sasha] shall be *seized and subject to the provisions of County Ordinance 5.20 and State Law.*<sup>6</sup> (Italics added.) In short, Streicher, as Sasha’s owner, stipulated to conditions that would render Sasha subject to the abatement provisions of the Ordinance.

When the parties signed the Agreement, they were awaiting the results of a third administrative hearing concerning Sasha’s vicious attacks. The hearing could have led to Sasha being found vicious—for a third time—and subject once again to destruction. Indeed, at the February 2006 administrative hearing, Streicher testified that she believed the evidence against Sasha was mounting and an euthanasia order would issue, and she signed the Agreement to save Sasha. Thus, by entering into the Agreement, Streicher obtained a reprieve of the likely destruction of Sasha as a result of incidents that had already occurred. In exchange, the parties agreed that Sasha would thereafter be seized and subject to the Ordinance (as well as state law) if in the future she was “running at large for any reason.” In other words, next time it would be unnecessary to prove that Sasha was vicious, within the meaning of the Ordinance, in order to subject her to the Ordinance’s abatement provisions.

The Agreement thus provided an alternative basis for triggering the Ordinance’s abatement provisions. In turn, the February 2006 administrative hearing simply decided how the Ordinance should be applied to a situation where the parties had *agreed* that Sasha would be subject to the Ordinance if she were “running at large.” The determination of whether Sasha was running at large, and thus subject to the Ordinance’s abatement provisions, is incidental to respondents’ powers under the Ordinance to protect the public by use of those abatement procedures.

In this regard, the administrative hearing officer’s characterization of the Agreement was rather apt. As mentioned *ante*, the hearing officer described the Agreement as follows: “It is more akin to a written stipulation (or perhaps a written

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<sup>6</sup> The parties do not dispute that respondents had authority to enter into the Agreement, or that the Agreement is a valid, binding contract. Rather, they dispute the meaning of the Agreement and the authority to adjudicate its breach in an administrative hearing.

memorandum of an oral stipulation) entered into to avoid proceeding with a hearing, the outcome of which the parties did not wish to chance. Even more accurately, it represents a plea bargain in which ‘probation’ was agreed to by the ‘defendant’ in order to avoid the potentially more serious consequences of a trial. Now is the time for the ‘probation violation’ hearing in the forum where the agreement was reached. The dog owner greatly benefitted [*sic*] from the agreement, she cannot now seek escape [*sic*] its burdens.” On this basis, the hearing officer concluded (as had respondents) that respondents had authority under the Ordinance to conduct the hearing. The construction of a statute or ordinance by the officials charged with its administration is entitled to great weight. (*Spanish Speaking Citizens’ Foundation, Inc. v. Low* (2000) 85 Cal.App.4th 1179, 1214.)

We also note that, to the extent the hearing officer had to decide if Sasha was in fact “running at large” (by being unleashed, on a leash longer than six feet, or leashed but not under control of an adult, when not at her residence or kenneled), there is no indication that the determination was outside the hearing officer’s competence or any more complex than deciding whether a dog is vicious under the Ordinance, because of an attack causing defensive action or injury to a person who was acting peacefully and lawfully. Lastly, we observe that Streicher admitted at the hearing that, if the hearing officer found the Agreement was breached by Streicher, he would be finding that Sasha is “vicious.” Making a finding of viciousness is precisely what Streicher claims the hearing officer had authority to do.

Streicher argues that an administrative hearing is nonetheless inappropriate, pointing to a passage in *Streicher I* in which we stated that “no person can be the judge of his own case” and “a neutral and impartial trier of fact is a fundamental component of a fair adjudication.” We did not mean then, nor do we conclude now, that due process requires respondents to file a civil action in superior court to enforce the Agreement. Due process requires notice and a form of hearing before the government deprives a party of her property, including a dog. (*Phillips v. San Luis Obispo County Dept. etc. Regulation* (1986) 183 Cal.App.3d 372, 377-379 (*Phillips*) [ordinance insufficient where it did not provide for a hearing before or after the seizure of a biting or vicious dog].) Streicher

received notice and an administrative hearing at which she was able to present evidence and argument. The decision we cited in *Streicher I* for the proposition that no person can be the judge of his own case was *Breakzone, supra*, in which the court found *no* violation of that principle in a city council hearing at which four council members had received campaign contributions and one member had an interest in the subject matter of the proceeding. (*Breakzone, supra*, 81 Cal.App.4th at pp. 1226-1227, 1233-1234.) Nothing in *Phillips, Breakzone, Streicher I*, or any authority cited by Streicher suggests that due process cannot be satisfied by an administrative hearing conducted by an officer of the Alameda County Sheriff's Office.

Streicher has not established that the February 2006 hearing was an ultra vires act.

B. COLLATERAL ESTOPPEL RE: AUTHORITY TO HOLD FEBRUARY 2006 HEARING

Streicher contends that the collateral estoppel doctrine barred respondents from arguing that they had authority to hold a hearing based on a breach of the Agreement. "Collateral estoppel applies if (1) the issue decided in the prior case is identical with the one now presented; (2) there was a final judgment on the merits in the prior case; and (3) the party to be estopped was a party to the prior adjudication." (*Stolz v. Bank of America* (1993) 15 Cal.App.4th 217, 222.)

In Streicher's estimation, it was determined in the first Code of Civil Procedure section 1094.5 proceeding that respondents had no authority to hold the hearing based on the following statement made by the trial court during oral argument: "There's nothing in the ordinance that gave the Sheriff's Department the authority to enforce the agreement through an ordinance enforcement proceeding." This statement, Streicher urges, was essential to overturning the July 12 administrative hearing decision, because respondents had argued that the July 12 hearing was based on a violation of the Agreement as well as the Ordinance.

The statement by the court did not collaterally estop respondents from conducting the February 2006 hearing or arguing that they had authority to do so. In context, the court offered this observation orally as a reason for describing how respondents chose to proceed in the July 12 administrative hearing—by attempting to "enforce[]" the

“ordinance” rather than the Agreement. It was not an adjudication by the trial court as to whether respondents had the legal authority to enforce the Agreement. Indeed, the trial court also opined that, upon Streicher’s violation of the Agreement, “the county was at liberty to enforce the Agreement.”

In any event, whether respondents are collaterally estopped from claiming they had authority to hold the February 2006 hearing is beside the point. To prevail in her appeal, Streicher must demonstrate to *this appellate* court that respondents lacked authority to hold the hearing. For reasons explained *ante*, Streicher’s arguments are unconvincing, and Judge Brick’s observation in a prior mandamus proceeding is not binding on this court. (See *Goddard, supra*, 79 Cal.App.3d at p. 105 [trial court’s construction of statute not binding on appellate court].)

#### C. RES JUDICATA DID NOT PRECLUDE THE FEBRUARY 2006 HEARING

Streicher contends that respondents were barred by res judicata from adjudicating in February 2006 whether Streicher had breached the Agreement, because the same primary rights were decided in the July 12, 2004 administrative decision. Under the doctrine of res judicata, a final valid judgment on the merits precludes the parties from relitigating causes of action that were or could have been raised in the proceeding. (*Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 813.)

Streicher’s argument is incorrect. In the first place, the July 12, 2004, *administrative decision* has no res judicata effect, because it was overturned by the trial court’s grant of Streicher’s Code of Civil Procedure section 1094.5 petition.

In addition, the *trial court’s order* granting the Code of Civil Procedure section 1094.5 petition did not preclude the February 2006 hearing either. The Code of Civil Procedure section 1094.5 proceeding determined that there was insufficient evidence to support a finding that Sasha violated *the Ordinance* based on the June 15 incident with Skaff, but it did not adjudicate Streicher’s alleged breach of the *Agreement*. As the order stated: “The Court *does not reach the question*, in its review pursuant to C.C.P. § 1094.5, whether Plaintiff breached the ‘last chance’ agreement by losing control of the dog, despite its being on a leash, such that the dog lunged and bit Mr. Skaff.” (Italics added.)

Moreover, the court in the Code of Civil Procedure section 1094.5 mandamus proceeding *precluded* litigation on the alleged breach of the Agreement, explaining to the parties: “We’re not here on a breach of contract or declaratory relief . . . [section] 1094.5 asks me to look at an administrative record with respect to a particular decision.” “I don’t have a problem with your argument that there is evidence that Ms. Streicher violated her agreement because she lost control of the dog . . . [b]ut that’s not the proceeding that’s before me.” Because the court refused to entertain a claim that the Agreement had been breached, it was not a claim that was *or could have been* litigated, and the court’s order cannot bar litigation of the breach of the Agreement under a res judicata theory. (*Cason v. Glass Bottle Blowers Assn.* (1951) 37 Cal.2d 134, 141.) Thus, the fact that the alleged violation of the Ordinance and alleged breach of the Agreement are based on the same June 15 incident is immaterial, as are Streicher’s arguments that respondents’ claim in February 2006 (based on Streicher’s breach of the Agreement) derives from the same primary right as Streicher’s claim in the Code of Civil Procedure section 1094.5 proceeding (based on Sasha’s alleged violation of the Ordinance)<sup>7</sup> and that the Agreement was an affirmative defense which could have been asserted in the Code of Civil Procedure section 1094.5 proceeding.

The February 2006 administrative proceeding was not barred by the final judgment arising from the Code of Civil Procedure section 1094.5 proceeding.

#### D. THE JUNE 12 HEARING DID NOT DECIDE A BREACH OF THE AGREEMENT

Streicher contends that even if respondents could conduct a hearing to determine if there was a breach of the Agreement, they held such a hearing on July 12, 2004, and therefore could not conduct a second one in February 2006. She is incorrect.

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<sup>7</sup> The primary rights theory, which involves a primary right of the plaintiff, a primary duty of the defendant, and a wrong or harm suffered by the plaintiff as a result of the defendant’s breach of duty, is applied to determine if res judicata precludes the plaintiff from splitting a single cause of action in two successive lawsuits. (See *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 904; *Slater v. Blackwood* (1975) 15 Cal.3d 791, 795.)

Streicher claims that the July 12 administrative hearing involved the Agreement, as well as the Ordinance, because the hearing officer referred to the Agreement. She provides two quotes from the hearing transcript in this regard. The first one merely recites the history of the case: “It was noted that this is the fourth hearing on the dog ‘Sasha.’ In the first two hearings, the dog was declared vicious and restrictions were placed on the dog. Following the third hearing, Streicher signed an agreement with Alameda County Council [*sic*] in December 2003. Said agreement indicated that this was the final chance for the dog.” The second quotation reads in Streicher’s opening brief as follows: “Sgt. Carmine stated that, considering the signed agreement, he consulted Alameda County Council [*sic*] on this case and they agree that the incident was a breach of said agreement. . . . Taking everything into consideration, it is his decision that the dog will not be allowed back into Streicher’s ownership.”

Streicher’s use of the ellipsis in purporting to quote from the hearing officer’s statement is misleading, as it suggests that the hearing officer decided Sasha would not be returned to Streicher’s possession because there was a breach of the Agreement. The quoted passage actually begins as follows: “Sgt. Carmine stated that, considering the signed agreement, he consulted Alameda County Council [*sic*] on this case and they agree that the incident was a breach of said agreement. County Council [*sic*] has changed the way hearing [*sic*] will be handled. Starting with the current hearing, he will have to write up his decision and submit it to his Commanding Officer for approval.” Then, in a *separate* paragraph, the hearing officer wrote the following (we italicize the portion Streicher omitted from her brief): “*Based on the statements received and the Animal Control incident report, Sgt. Carmine found the dog’s attack on June 15, 2004, does again fall within the definition of Alameda County Ordinance 5.20.020, Vicious Dog Defined.* Taking everything into consideration, it is his decision that the dog will not be allowed back into Streicher’s ownership.” Thus, abatement was ordered in July 2004 “[b]ased on the statements received and the Animal Control incident report,” and because Sasha was a “vicious dog” under the Ordinance in light of the evidence at the hearing, not because Streicher had breached the Agreement.

Because the July 2004 administrative decision was not based on whether Streicher breached the Agreement, but whether Sasha's actions were in violation of the Ordinance, the July 2004 hearing decision did not preclude the February 2006 hearing.

III. DISPOSITION

The order is affirmed.

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NEEDHAM, J.

We concur.

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JONES, P. J.

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GEMELLO, J.