

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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DONALD WANZER, : Civ. No. 3:15CV16 (AWT)
JENNIFER WANZER, and :
ROBIN MITTASCH, TRUSTEE of the:
COMPANION ANIMAL TRUST for the:
BENEFIT of LUCA, INDIVIDUALLY :
AND EX REL "LUCA," A DOG, and :
ON BEHALF OF ALL OTHERS :
SIMILARLY SITUATED :
:
v. :
:
TOWN OF PLAINVILLE, : JUNE 4, 2015
MATTHEW CATANIA, CHIEF OF :
POLICE, DONNA WEINHOFFER, :
ANIMAL CONTROL OFFICER, and :
ROBERT LEE, TOWN MANAGER :
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RULING AND ORDER RE: JUNE 17 SETTLEMENT CONFERENCE

Plaintiffs Donald Wanzer, Jennifer Wanzer ("the Wanzers") and Robin Mittasch, Trustee of The Companion Animal Trust for the Benefit of Luca, Individually and Ex Rel "Luca," a dog, ("the Trust"), and on behalf of all others similarly situated, commenced this class action on January 6, 2015, seeking declaratory and injunctive relief and damages arising under 42 U.S.C. §1983, as a result of the seizure and incarceration of plaintiffs' dog, Luca, in violation of plaintiffs' rights to due process and guarantee against unreasonable search and seizure under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the

United States Constitution and the Connecticut State Constitution. [Compl. Doc. #1]

This case was referred for a settlement conference on May 6, 2015. [Doc. #17] During a conference on May 27, 2015, the parties reported that the claim for injunctive relief was moot as Luca the dog was ordered released from detention at Plainville's Animal Control Shelter on May 14, 2015, by Superior Court Judge Cynthia K. Sweinton in the state court action. A settlement conference is scheduled for June 17, 2015 at 9:30 AM.

On June 3, 2015, plaintiffs filed a Consent Motion to Permit Plaintiffs to Appear at Settlement Conference by Trust Protector. [Doc. #28] The Wanzers seek leave of Court excusing their attendance at the settlement conference, and to permit Attorney Richard Bruce Rosenthal, the "trust protector" of the Trust, to appear on behalf of all three plaintiffs. [Doc. #28 at 1-2] The Wanzers represent that Attorney Rosenthal has full authority to settle on behalf of all three plaintiffs. Id. at 2. Defendants consent to plaintiffs' request. Id. The motion does not include a representation or affidavit from the Trustee, Robin Mittasch. The motion also does not indicate whether the Trustee will be available by telephone during the conference should any issues arise in the course of discussions.

At paragraph 34 of the Complaint, plaintiffs state that "the trust was formed and ownership of the dog Luca was

transferred to his trustee." [Compl. at ¶34] By affidavit dated June 2, 2015, the Wanzers aver that they "transferred all right, title, claim and interest in Luca the dog to [the Trust] and granted the Trust full authority to enter into agreements with the Town of Plainville to resolve all issues arising from the disposal order of February 22, 2014" [Aff. at ¶8] The Wanzers also state that "[h]aving assigned all rights and claims to the trust . . . [they] state, acknowledge, and agree that [the Trust] has full authority and [their] consent to decide all matters to the case and to settle, compromise or otherwise enter into any agreements" [Aff. at ¶13] Finally, the Wanzers "further acknowledge that any and all moneys to be paid in settlement . . . out of this action, or the state action are to be paid to the trust for the benefit of Luca." [Aff. at ¶14]. However, at this time, the Wanzers remain named as plaintiffs in this matter.

Accordingly, on or before **June 9, 2015**, plaintiffs Donald Wanzer and Jennifer Wanzer will notify the Court whether they will continue as plaintiffs in this case or, in the alternative, they will file a Notice of Voluntary Dismissal of their claims with prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A).

The Court reserves decision on plaintiffs' Motion pending their response to this order.

SO ORDERED at New Haven, Connecticut this 4th day of June 2015.

/S/

HON. SARAH A. L. MERRIAM
UNITED STATES MAGISTRATE JUDGE