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**DIVISION III, COURT OF APPEALS
OF THE STATE OF WASHINGTON**

ROBERT REPIN,

Plaintiff-Appellant

v.

STATE OF WASHINGTON, et al.,

Defendants-Respondents

ON APPEAL FROM KITTITAS COUNTY SUPERIOR COURT
CAUSE NO. 14-2-00217-6

**AMICUS CURIAE BRIEF OF ANIMAL LEGAL DEFENSE FUND
IN SUPPORT OF PLAINTIFF-APPELLANT ROBERT REPIN**

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I. INTRODUCTION

Appellant Robert Repin instituted a lawsuit in the Superior Court of Kittitas County seeking, in part, compensatory damages for emotional distress arising from the reckless and material breach of a contract with a veterinarian to euthanize Mr. Repin's dog, Kaisa. Mr. Repin agonized over this decision, but like many loving pet owners, he decided that the "good death" of euthanasia was the last act of compassion and kindness that he could perform for his beloved companion, and arranged to be present to comfort Kaisa as she died. But rather than providing Kaisa with the "good death" that Mr. Repin had contracted for, the veterinarian botched the procedure, causing Kaisa's death to be needlessly painful and traumatic. Naturally, seeing Kaisa experience intense pain, fear, and suffering as she died was emotionally devastating to Mr. Repin. The trial court, without considering any evidence of the actual emotional harm suffered by Mr. Repin, categorically barred him from recovering any noneconomic damages arising from the breach of the euthanasia contract. Commissioner Wasson granted discretionary review of this and other issues pursuant to RAP 2.3(b)(4).

The Animal Legal Defense Fund ("ALDF") respectfully submits this amicus curiae brief in support of Mr. Repin's request that this Court reverse the trial court's categorical exclusion of noneconomic damages for

the breach of a contract for the euthanasia of a companion animal, and urges this Court to adopt a rule that permits the recovery of damages for emotional distress arising from the material breach of such a contract. The adoption of this rule would give due judicial recognition to the significance of the bonds that people form with their companion animals, granting recovery for the easily foreseeable emotional distress caused by the breach of an owner-present euthanasia contract, and thus fulfilling the fundamental purposes of tort law.

II. IDENTITY AND INTEREST OF AMICUS

ALDF is a national nonprofit organization with more than thirty-five years of experience litigating cases and analyzing legal issues concerning animals. ALDF's efforts to advance the legal interests of animals are supported by hundreds of dedicated attorneys, law professors, law students, and more than 110,000 members, many of whom live in Washington.

Each year, ALDF receives many requests for assistance from members of the public whose companion animals have been harmed by negligence, gross negligence or malice, and consequently files amicus curiae briefs in many related civil claims. Courts have found ALDF's amicus briefs persuasive, and have cited and quoted them in opinions. *See, e.g., Martinez v. Robledo*, 210 Cal. App. 4th 384 (Cal. Ct. App. 2012).

III. STATEMENT OF ISSUES OF CONCERN TO AMICUS

Whether the courts of this State should permit the recovery of compensatory damages for emotional distress arising from the material breach of a contract for the euthanasia of a companion animal.

IV. ARGUMENT

A contract for euthanasia is unique. In a sense, euthanasia is the opposite of a wrongful death: it is a deliberate ending of a life in a painless and peaceful manner. The decision to euthanize an animal is heartbreaking and difficult, and often a person's last act of love and compassion for a beloved companion animal. The entire purpose of a contract for euthanasia is to spare the companion animal from needless suffering and the trauma of a prolonged and painful death. Naturally, when such a contract is materially breached—when the animal's life is ended in a way that *is* prolonged and painful—the human companion who arranged for the euthanasia, and witnessed the traumatic death, will suffer devastating emotional harm.

Washington courts should allow for the recovery of emotional distress damages caused by the material breach of a contract for euthanasia because the availability of such noneconomic damages would appropriately recognize the profound nature of the human bond with companion animals in that it would allow for recovery commensurate with the actual harm caused by the breach of such a contract. Allowing plaintiffs to seek

emotional distress damages would thereby fulfill the fundamental purposes of tort law—fair compensation, meaningful deterrence, and the reflection of societal values. Furthermore, the ability to recover damages in this context would be appropriately limited to cases in which they are foreseeable, as emotional distress is the near-inevitable result of a breach of this unique type of contract.

A. The Depth of the Human Bond with Companion Animals Is Widely Understood and Acknowledged

As human relationships with animals have been more closely scrutinized and studied in recent years, it has become widely understood and acknowledged that we develop deep and meaningful bonds with our companion animals. The depth of this bond is reflected in part by the corresponding depth of our grief when we experience the suffering or death of a companion animal. Psychological studies conclude that the grief we experience over the loss of a companion animal is comparable to the grief we experience over the loss of a family member or close friend. See Wendy Packman, et al., *Therapeutic Implications of Continuing Bonds Expressions Following the Death of a Pet*, 64 OMEGA: JOURNAL OF DEATH AND DYING 335, 336 (2011-2012). Not only do we experience grief at the deaths of our companion animals, but we experience similar grief and emotional trauma when they are injured or ill—again, similar to the feelings that we would

experience at the injury or illness of a human family member. See Janice M. Pintar, *Negligent Infliction of Emotional Distress and the Fair Market Value Approach in Wisconsin: The Case for Extending Tort Protection to Companion Animals and Their Owners*, 2002 WIS. L. REV. 735, 741 (2002) (citing E. Gregory MacEwen, *The Pet with Cancer: Impact on the Family*, in EUTHANASIA OF THE COMPANION ANIMAL at 97-98 (William J. Kay, et al., eds., 1988)).

Like the loss of a close human relationship or the emotional trauma caused by the suffering of a family member, the death or grave injury or illness of a companion animal can be one of the most difficult events in our lives. In recognition of this fact, grief counselors are cautioned to be wary of minimizing a patient's grief over a companion animal, because platitudes such as "get another dog" or "it was only a cat" can be extremely damaging. Anna Chur-Hansen, *Grief and Bereavement Issues and Loss of a Companion Animal: People Living with a Companion Animal, Owners of Livestock, and Animal Support Workers*, 14 CLINICAL PSYCHOLOGIST 14, 17 (Mar. 2010).

Correspondingly, the health benefits of living with a companion animal have been well documented over decades of study. Not only does living with a companion animal provide emotional benefits, but studies show that animal companions actually prolong their guardians' lives and

reduce the frequency of serious disease. See Sandra B. Barker, *Therapeutic Aspects of the Human-Companion Animal Interaction*, PSYCHIATRIC TIMES, Feb. 1, 1999, at 1-3, available at <http://www.psychiatrictimes.com/articles/therapeutic-aspects-human-companion-animal-interaction> (collecting studies documenting the beneficial effects of pets on the emotional and physical health of the elderly and handicapped, and demonstrating that interaction with animal companions reduces blood pressure and anxiety levels, and increases the survival rate of coronary-care patients) (last accessed 8/12/2016). Notably, studies of the health benefits of animal companionship have shown the importance of *specific* human-animal bonds; in one study documenting reductions in blood pressure and other indicators of stress when people simultaneously spoke to and petted dogs, the benefits were amplified when the participants interacted with *their own* dogs. Mara Baun, et al., *Physiologic Effects of Human/Companion Animal Bonding*, 33 NURSING RES. 126, 128 (1984). Thus, as with human relationships, we bond with individual animals, who consequently are uniquely valuable to us.

The depth of the human bond with companion animals is further illustrated by the fact that nearly every American pet owner considers their companion animal to be a “member of the family.” In a 2015 Harris poll, 95 percent of respondents considered their companion animals to be

members of the family—up from 91 percent in 2012. Larry Shannon-Missal, *More Than Ever, Pets are Members of the Family*, THE HARRIS POLL (Jul. 16, 2015), available at <http://www.theharrispoll.com/health-and-life/Pets-are-Members-of-the-Family.html> (last accessed 8/10/2016). In another poll, a significant majority of pet owners even reported that they were likely to risk their own lives for their companion animals. William Root, *Man's Best Friend: Property or Family Member? An Examination of the Legal Classification of Companion Animals and Its Impact on Damages Recoverable for Their Wrongful Death or Injury*, 47 VILL. L. REV. 423, 423 (2002).

In keeping with the demonstrably profound nature of the human-animal bond, courts in jurisdictions throughout the United States have awarded emotional distress damages arising from harm caused to a companion animal. See, e.g., *Richardson v. Fairbanks North Star Borough*, 705 P.2d 454 (Alaska 1985) (recognizing cause of action for intentional infliction of emotional distress for the intentional or reckless killing of a pet animal, including a dog) (citing Restatement (Second) of Torts § 46(1)); *LaPorte v. Associated Independents, Inc.*, 163 So.2d 267, 269 (Fla. 1964) (allowing jury to consider emotional distress in awarding damages for killing of dog, noting that a person's "affection . . . for his dog is a very real thing"); *Fredeen v. Stride*, 269 Or. 369 (1974) (allowing recovery of

emotional distress damages against veterinarian who was paid to euthanize injured dog but in fact gave the dog to another person); *Lawrence v. Stanford*, 655 S.W.2d 927 (Tenn. 1983) (jury could reasonably award emotional distress damages to owners of dog whom veterinarian threatened to “do away with” if the veterinarian’s bills were not paid in full and in cash); *Campbell v. Animal Quarantine Station, Div. of Animal Indus., Dept. of Agric., State of Haw., Bd. of Agric.*, 63 Haw. 557 (1981) (stating that a dog owner may recover for emotional distress caused by injury or death of the owner’s dog, and noting that over ten years, “there has been no ‘plethora of similar cases’; the fears of unlimited liability have not proved true”); *Burgess v. Taylor*, 44 S.W.3d 806 (Ky. Ct. App. 2001) (owner of pet horses who were sold for slaughter by boarders of horses were entitled to recover emotional distress damages); *Knowles Animal Hosp., Inc. v. Willis*, 360 So.2d 37 (Fla. Dist. Ct. App. 1978) (owners of dog who suffered burns after being placed on a heating pad at an animal hospital could recover damages for their emotional distress); *Katsaris v. Cook*, 225 Cal. Rptr. 531 (Cal. Ct. App. 1986) (plaintiff whose dog has been killed may recover emotional distress damages where defendant intentionally caused emotional anguish by failing to notify plaintiff of his dog’s death, or “not being truthful or

forthcoming when asked about [the dog's] fate").¹

The special status and value of animals has been recognized in Washington in particular. Recently, a Washington jury awarded \$36,000 in damages for the wrongful death of a dog, \$15,000 of which was for emotional distress suffered by the dog's owner. *Anderson v. Hayles*, No. 14-2-51133-0 (Franklin Cty. Sup. Ct.), docket no. 71 (Verdict, August 3, 2016). And, like nearly every other state and territory of the United States, Washington has numerous animal-protection laws that apply in various contexts and provide for civil and criminal liability for harming animals. See Animal Legal Defense Fund, *Animal Protection Laws of Washington*, available at <http://aldf.org/wp-content/themes/aldf/compendium-map/us/2015/WASHINGTON15.pdf> (last accessed 8/7/2016). Such laws

¹ Courts have also expressly taken note of the evolving role of companion animals in society and their unique status under the law in awarding more than market-value damages based on harm to animals, including in cases where an animal is harmed by another person's negligent or willful conduct. See, e.g., *Irvin v. Deresh*, 2012 Mass. App. Div. 142, 143 (Mass. App. Div. N. Dist. 2012) (holding that "[l]imiting damages to the market value of a dog or measuring damages by the diminution in market value would not be a fair and reasonable measure of the owner's loss"); *Hyland v. Barras*, 719 A.2d 662, 663 (N.J. Super. Ct. App. 1998) (referring to the market value standard as "overly mechanistic" when applied to companion animals); see also *Leith v. Frost*, 899 N.E.2d 635, 641 (Ill. App. Ct. 2008) (rejecting the defendant's argument that the court's modification of damages from market value to the plaintiff's veterinary expenses would amount to a windfall for the plaintiff). In allowing the recovery of more than market-value damages for harm to animals, these courts observe, often expressly, both the evolving role of companion animals in society and their unique status under the law. See *Martinez v. Robledo*, 210 Cal. App. 4th 384, 391-92 (2012) (noting that "the law already treats animals differently from other forms of personal property" and that such laws "reflect the widespread socially-accepted significance of animals and their connection with people, and demonstrate that our legal system recognizes that animals are a unique kind of property" (citation and internal quotation marks omitted)).

illustrate the fact that, although animals are legally classified as personal property, they are not to be treated like inanimate objects. This is consistent with judicial observations that “the law already treats animals differently from other forms of personal property[.]” *Martinez v. Robledo*, 210 Cal. App. 4th 384, 391 (2012).

B. The Entire Purpose of a Contract for Euthanasia Is a “Good Death”

Euthanasia (literally “good death” in Ancient Greek) refers to the practice of ending a life in a painless manner. Willem H.J. Martens, *They Shoot Horses, Don't They? How Valid Are the Arguments of Opponents Against Euthanasia?*, Med. & L. 739, 739 (2009). The ancient Greeks believed that the passage from life to death should not be agonizing, but serene and dignified. *Id.* (citing Scofield, 1989). Euthanasia of a suffering animal is “generally regarded and accepted as an act of humanity and mercy.” *Id.* at 741; *see also* Emil P. Dolensek & Barbara Burn, *THE PENGUIN BOOK OF PETS: A PRACTICAL GUIDE TO ANIMAL-KEEPING* 307 (1978) (“If an animal is terminally ill, aged and suffering from a number of irreversible ailments that cause it pain, . . . euthanasia is *unquestionably* the best and *most humane* solution.”) (emphasis added).

According to the American Veterinary Medical Association, a “good death” is “tantamount to the humane termination of an animal’s life.” *AVMA GUIDELINES FOR THE EUTHANASIA OF ANIMALS: 2013 ED.*,

available at <https://www.avma.org/KB/Policies/Documents/euthanasia.pdf>. A veterinarian's "prima facie duty" in euthanizing an animal includes (1) inducing death "in a manner that is in accord with an animal's interest and/or because it is a matter of welfare" and (2) using "humane techniques to induce the most rapid and painless and distress-free death possible." *Id.* at 6.

A person's decision to hasten their companion animal's death through euthanasia is difficult and full of inherent emotional trauma and potential guilt, but people often follow their veterinarians' advice that it is in the best interest of the animal. Euthanasia is recommended when, for example, a companion animal is "suffering severely at the end of its life due to a debilitating terminal illness," because in such circumstances, "the animal's life is not worth living but, rather, is worth avoiding." *Id.* at 7. In short, a "good death" by euthanasia "relieves the animal's suffering, which is the desired outcome." *Id.*

The law should evolve to reflect the value of this practice by recognizing that the entire purpose of a contract to perform a euthanasia is to provide a companion animal with a desirable "good death"—which benefits not only the animal, but also the human companion who has the weighty responsibility of making decisions on behalf of the animal, and a deep interest in alleviating the animal's suffering.

C. The Court Should Not Foreclose the Availability of Emotional Distress Damages for Breach of a Contract for Euthanasia

As discussed in Appellant Robert Repin's Brief at 19-23 and his Reply Brief at 5-7, emotional damages caused by a contractual breach are available where "the breach is of such a kind that serious emotional disturbance was a particularly likely result." Restatement (Second) of Contracts § 353. This principle applies to the breach of a contract for euthanasia, in which the very purpose of the contract is to provide a "good death." Where such a contract is materially breached, what is in fact provided is a painful and/or traumatic death—and naturally, this is particularly likely to cause the dying animal's human companion to experience significant emotional distress.

In light of the well-documented and widely-recognized nature of the bond between humans and their companion animals, allowing for the possibility of recovering emotional distress damages where a contract for euthanasia is materially breached is *necessary* to facilitate the fundamental purposes of United States tort law—to fairly compensate injured plaintiffs, to reflect societal values and to meaningfully deter tortious conduct. *See Ford v. Trendwest Resorts, Inc.*, 146 Wn.2d 146, 154, 43 P.3d 1223 (2002) (explaining that "[t]he 'measure of damages in tort [is] based upon the purposes for which actions of tort are maintainable,'" including

compensation, deterrence, and vindication) (quoting Restatement (Second) of Torts § 901). To foreclose the availability of such damages entirely is to disregard the actual harm caused by the breach of a euthanasia contract and to withhold any meaningful check on negligent or intentional conduct that causes the breach.

1. *A Primary Goal of Tort Law Is Fair Compensation for Harm*

“The cornerstone of tort law is the assurance of full compensation to the injured party.” *Seattle-First Nat’l Bank v. Shoreline Concrete Co.*, 91 Wn.2d 230, 236, 588 P.2d 1308 (1978), *superseded on other grounds as recognized in Kottler v. State*, 136 Wn.2d 437, 443, 963 P.2d 834 (1998). As is recognized by courts in virtually every jurisdiction in the United States, “it is the tortfeasor’s responsibility to compensate for all harm that he causes, not confined to the net loss that the injured party receives.” Restatement (Second) of Torts § 920A, cmt. b.

Disallowing the recovery of emotional distress damages for the material breach of a contract for the euthanasia of a companion animal violates the foregoing principle because it disregards both the actual emotional depth of the relationships people have with their companion animals and the fundamental purpose of a euthanasia contract. If courts were to ignore this reality, they would be denying the true severity of the emotional harm caused by such a breach and foreclosing plaintiffs from

being fairly compensated for the actual harm they have suffered. A rule permitting the recovery only of damages to compensate for monetary loss “awards damages for a loss that the owner of a companion animal does not actually suffer (economic value) and refuses to compensate an owner for the damages that an owner actually does suffer.” Steven M. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 ANIMAL L. 33, 72 (1998).

Allowing plaintiffs to recover emotional damages for the breach of a euthanasia contract is consistent with the principles of Washington tort law as applied in similar circumstances. In Washington, damages for emotional distress in the absence of physical injury to the plaintiff are available “where emotional distress is (1) within the scope of foreseeable harm of the negligent conduct, (2) a reasonable reaction given the circumstances, and (3) manifest by objective symptomatology.” *Bylsma v. Burger King Corp.*, 176 Wn.2d 555, 560, 293 P.3d 1168 (2013).² “The essence of the tort is the shock caused by the perception of an especially horrendous event” involving injury to another, such as witnessing “the cries of pain” of the victim. *Colbert v. Moomba Sports, Inc.*, 163 Wn.2d 43, 54,

² Alternatively, objective symptomatology need not be shown where the plaintiff is within the “zone of danger” creating an imminent threat of bodily harm. Appellant’s Brief at 24-26; Reply Brief at 9-11 & n.4.

176 P.3d 497 (2008) (citation and internal quotation marks omitted). The suffering causing the plaintiff's emotional trauma often is, but need not be, the suffering of a family member. See *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 289, 840 P.2d 860 (1992) (allowing recovery based on witnessing co-worker's burning to death).

As discussed above, the emotional harm caused by the breach of a euthanasia contract is certainly foreseeable, and will often be a "reasonable reaction given the circumstances"—for in the event of a breach, instead of providing a suffering pet with a peaceful and painless death, the human companion witnesses the painful and traumatic death of a "member of the family." *Supra* at 6-7; cf. *Hegel v. McMahon*, 136 Wn.2d 122, 136, 960 P.2d 424 (1998) (permitting recovery of emotional distress damages caused by witnessing a loved one's suffering or death). The emotional harm caused by the breach of a euthanasia contract should be compensated in accordance with its severity.

This Court should not be deterred from adopting a measure of damages which permits consideration of non-economic evidence based on the perceived difficulty in assigning an exact dollar amount. When a plaintiff's injuries are proximately caused by the tortfeasor's conduct, the mere fact that damages may be difficult to quantify is not a bar to recovery. *Sherman v. Kissinger*, 146 Wn. App. 855, 872, 195 P.3d 539 (2008)

(“[D]ifficulty of assessment is not cause to deny damages to a plaintiff whose property has no market value and cannot be replaced or reproduced.”); *see also, e.g., Brousseau v. Rosenthal*, 443 N.Y.S.2d 285, 286 (N.Y. Civ. Ct. 1980) (“An element of uncertainty in the assessment of damages or the fact that they cannot be calculated with absolute mathematical accuracy is not a bar to a plaintiff’s recovery.”) (citing 60 A.L.R.2d § 1348; 15 AM. JUR. DAMAGES § 21). In any case where the defendant is found to be liable for plaintiff’s injuries, the rule for the measure of damages must be subordinate to the paramount rule of fair and just compensation.

2. *A Primary Goal of Tort Law Is Deterrence*

Deterrence of tortious behavior is a critical policy objective underlying every damages rule. *See* Mark Geistfeld, *Symposium: Negligence, Compensation and the Coherence of Tort Law*, 91 Geo. L. J. 585, 589-590 (Mar. 2003) (“[N]egligence liability can be justified both in terms of fairness . . . and deterrence (or risk reduction), even if tort liability is based upon a norm of compensation.”). Absent a rule that permits the recovery of meaningful, actual damages in companion animal cases, there is *no deterrent* against even the reckless or intentional material breach of a contract for euthanasia of a companion animal, as economic damages alone are minimal. *See* CP 128 (Client Invoice from Washington State University

Veterinary Teaching Hospital to Mr. Repin for \$260.56, including \$22.50 for Kaisa's "euthanasia"); *cf. also* Christopher Green, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 ANIMAL L. 163, 196 (2004) (observing that "market value" for most companion animals is not adequate to cover the filing fee for a civil lawsuit). The lack of any deterrent against negligently or intentionally harming an animal is particularly salient in the context of euthanasia; not only are companion animals often assigned a low monetary value, rendering lawsuits not worth their cost when recovery is limited to economic damages only, but animals being euthanized are typically dying anyway, meaning their replacement value is nil.

The valuable deterrent effect of making emotional distress available outweighs any concerns about potential negative effects on insurance premiums or the availability of veterinary malpractice insurance. Indeed, the concern that such a rule would cause an alarming increase in insurance premiums is a red herring. *See* Appellant's Reply Brief at 8. An analysis of the available data shows both that the cost of veterinary malpractice insurance is quite low, and any increase in medical costs to pet owners from allowing noneconomic damages for veterinary malpractice would be measured in pennies—and the limited rule for which ALDF advocates here would certainly have a negligible effect on such costs. According to

statistics published by the American Veterinary Medical Association in 2014, the median salary for companion animal veterinary private practitioners was between \$92,000 and \$95,000 in 2013. AVMA, *Market Research Statistics: U.S. Veterinarians 2014*, available at <https://www.avma.org/KB/Resources/Statistics/Pages/Market-research-statistics-US-veterinarians.aspx> (last accessed 8/9/2016). Yet small animal veterinarians pay only \$173 to \$244 in annual malpractice insurance premiums for plans with up to \$300,000 limits, according to 2016 statistics. AVMA, *Annual Premiums Effective January 1, 2016*, available at <https://www.avmaplit.com/products/professional-liability/> (last accessed 8/9/2016).

3. *A Primary Goal of Tort Law Is to Reflect Societal Values and Influence Social Norms*

A prominent function of tort law—and indeed all law—is to reflect societal values and influence social norms. See Cass R. Sunstein, *Incommensurability and Valuation in Law*, 92 MICH. L. REV. 779, 820-21 (Feb. 1994). In cases where a contract for the euthanasia of a companion animal is negligently or intentionally breached, excluding consideration of noneconomic damages evidence disregards current societal norms. As discussed above, companion animals today are not valued for economic reasons, but for the non-economic quality of the relationships formed with

their human counterparts. The law should influence social norms to reflect these values, through enforcing the promise of a “good death” for our companion animals.

D. The Availability of Damages Is Properly a Question for the Courts, Not the Legislature

Contrary to the State’s insistence that this question is “more appropriately addressed to the legislature,” Appellee’s Brief at 14, this Court is not constrained whatsoever in its ability to allow for the recovery of emotional distress damages based on the breach of a contract for the euthanasia of a companion animal. While emotional distress damages are only available in limited contexts, the circumstances in which they are available have been defined and developed through the common law. *See, e.g., Bylsma*, 176 Wn.2d at 560 (stating common-law test for the availability of emotional distress damages); *Colbert*, 163 Wn.2d at 49 (noting that negligent infliction of emotional distress is a “judicially created tort” and describing the principles that constitute this tort as they have developed through the common law). Even where the damages available for a given cause of action are established by a statutory scheme, courts may still award emotional distress damages on top of statutory damages. *See, e.g., Birchler v. Castello Land Co., Inc.*, 133 Wn.2d 106, 112-13, 942 P.2d 968 (1997) (“A claim for damages from emotional distress is not an alternate or

cumulative remedy for timber trespass that one may elect in lieu of a common law remedy or the statutory remedy, but merely another item of damages for a wrong committed as a result of the timber trespass.”).

Particularly because the circumstances presented by the material breach of a euthanasia contract are so similar to other circumstances in which the availability of emotional distress damages has been found warranted—the foreseeability of the emotional harm that will be caused by a breach, the depth of the connection between humans and their animal companions and the corresponding severity of the emotional harm caused by witnessing their suffering, the deterrent value and negligible downside of making emotional distress damages available—this Court should apply the principles developed through the common law to allow for the recovery of emotional distress damages for such a breach.

V. CONCLUSION

For the reasons above, ALDF respectfully submits that the courts of this State should permit plaintiffs to recover compensatory damages for emotional distress arising from the material breach of a contract for the euthanasia of a companion animal, and that the trial court’s judgment in this respect should be reversed accordingly.

RESPECTFULLY SUBMITTED this 15th day of August, 2016.

LANE POWELL PC

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CERTIFICATE OF SERVICE

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