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IN THE
SUPREME COURT OF THE STATE OF WASHINGTON

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No. 89415-9

JULIE HENDRICKSON,

Petitioner

vs.

TENDER CARE ANIMAL HOSPITAL CORP., *et al.*,

Respondents

**AMICUS CURIAE BRIEF OF
THE ANIMAL LEGAL DEFENSE FUND
IN SUPPORT OF PETITION FOR REVIEW**

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I. STATEMENT OF CASE AND INTEREST OF *AMICUS CURIAE*

This appeal arises out of the part of the trial court's order granting summary judgment dismissal of Julie Hendrickson's claims against Tender Care Animal Hospital and veterinarian Dr. Kristen Cage for emotional distress damages and for reckless breach of bailment, resulting in the death of Ms. Hendrickson's dog Bear. On Sept. 17, 2013, Division II of the Washington Court of Appeals held that the trial court's dismissal was appropriate because "no Washington court has held that such causes of action exist in the context of loss of a pet."

The Animal Legal Defense Fund ("ALDF") is a national non-profit organization with thirty years 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, and 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 pets have allegedly been harmed by veterinary malpractice or recklessness, and consequently files *amicus curiae* briefs in many related civil claims.

ALDF asks the Court to grant Hendrickson's petition for review, because the issues of first impression addressed by the Court of Appeals are of substantial public importance under Washington Rule of Appellate

Procedure 13.4(b)(4), with far reaching consequences for all pet owners and for the veterinarians with whom they entrust their pets' lives.

II. THE COURT OF APPEALS' HOLDING IMPLICATES ISSUES OF SUBSTANTIAL PUBLIC INTEREST

A. The Social Importance of the Human-Companion Animal Bond

In the U.S., there are approximately 180 million cats and dogs living with humans in homes¹ – more than one for every two people. An estimated 47 percent of U.S. households own at least one dog.² While the quantity of companion animals is noteworthy, the public's interest is primarily engendered by the *quality* of the human-companion animal relationship. The American Veterinary Medicine Association (“AVMA”) estimates that 98 percent of people consider their pet to be a “family member” or “companion.”³

Society at-large has adapted to the role companion animals play in daily life, and their human companions are benefiting. Animal companions prolong their guardians' lives and reduce the frequency of serious disease.⁴ For example, one study found that blood pressure and

¹ Humane Soc'y of the U.S., *Pets by the Numbers*, http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html (posted September 27, 2013).

² *Id.*

³ Am. Veterinary Med. Assn., *U.S. Pet Ownership & Demographics Sourcebook* (AVMA 2007).

⁴ *See, e.g.*, Erika Friedmann & Sue Thomas, *Pet Ownership, Social Support, and One-Year Survival After Acute Myocardial Infraction in the Cardiac Arrhythmia Suppression*

other health stress indicators reduced when people simultaneously talked to and petted dogs, and the beneficial effects amplified when the humans interacted with their own dogs.⁵ This explains why 50 percent of pet owners say they are “very likely” and another 33 percent are “somewhat likely” to *risk their own lives* for their companion animals.⁶

Thus, it is no surprise that the grief experienced over the loss of a companion animal is comparable to the loss of a family member or close relative.⁷ Counselors must be wary of minimizing a patient’s grief, as platitudes like “get another dog” or “it was only a cat” can be extremely damaging.⁸ One psychologist has acknowledged, “the matter of grief after the death of a pet is a significant social issue in mainstream society.”⁹

B. Animal’s Legal Status as Property Should Not Limit the Damages Available Based on the Wrongful Injury

In keeping with societal trends, companion animals, though still considered property, now occupy a special status under the law, as a

Trial (CAST), 76 Am. J. Cardiology 1213, 1217 (1995) (finding “strong evidence” that animal companions promote cardiovascular health by adding to social support systems).

⁵ Mara Baun et al., *Physiologic Effects of Human/Companion Animal Bonding*, 33 Nursing Res. 126 (1984).

⁶ William Root, *Man’s Best Friend: Property or Family Member? An Examination of the Legal Classification of Animals and its Impact on Damages Recoverable for Their Wrongful Death or Injury*, 47 Vill. L. Rev. 423 (2002).

⁷ J.E. Quackenbush, *The Death of a Pet: How it Can Affect Owners*, 15 Veterinary Clinics of North America: Small Animal Practice 395 (1985); M. Stewart, *Loss of a Pet – Loss of a Person: A Comparative Study of Bereavement*, in *New Perspectives on Our Lives with Companion Animals* 390 (1983) (A.H. Katcher and A.M. Beck, eds.).

⁸ Anna Chur-Hansen, *Grief and Bereavement Issues and the Loss of a Companion Animal: People Living with Companion Animal, Owners of Livestock, and Animal Support Workers*, 14 Clinical Psychologist 14 (Mar. 2010).

⁹ *Id.*

unique and sentient kind of property, with myriad legal protections.

Today, 49 states prosecute companion animal cruelty as a felony, up from 7 states twenty years ago.¹⁰ Many states – including Washington – have statutes or legal precedent regarding custody of companion animals, or providing for companion animal trusts.¹¹ In the past decade, the value of the human-companion animal bond has been codified in state and federal legislation keeping owners and their animals together in the wake of natural disasters.¹²

Similarly, courts have taken a more modern approach in awarding special damages to compensate owners of wrongfully injured or killed animals. In a recent California case in which the defendant “went to his garage, retrieved a bat, and used it to intentionally strike [his neighbor’s dog] Romeo,” the California appellate court stated it had no doubt a “person’s intentional injuring or killing a pet will support recovery of damages for intentional infliction of emotional distress.”¹³ Another

¹⁰ See Animal Legal Defense Fund, *Animal Protection Laws of the United States of America and Canada*, <http://aldf.org/compendium> (posted Dec. 16, 2013); e.g. RCW § 16.52.205(1)-(3) (2013).

¹¹ See generally, Ann Hartwell Britton, *Bones of Contention: Custody of Family Pets*, 20 J. Acad. Matrimonial L. 1 (2006).

¹² Pets Evacuation and Transportation Standards Act of 2006, Pub. L. No. 109-308, 120 Stat. 1725 (codified at 42 U.S.C. §§ 5121, 5196, 5196b, 5170b(a)(3)); 2006 La. Acts 615 (codified at La. Rev. Stat. Ann. §§ 29:726(E)(20)-(21), 729 (E)(13)-(14), 733.1)

¹³ *Plotnik v. Meihaus*, 208 Cal. App. 4th 1590, 1611 (2012); see *id.* at 1607 (citing the Washington case of *Womack v. Von Rardon*, 133 Wn. App. 254, 263 (2006), for the principle that, “cases in other states have recognized a pet owner may recover for mental suffering caused by another's wrongful acts resulting in the pet's injury or death”).

California court dispelled concerns that special damages would lead to animals being treated fundamentally different than any other form of property, noting, “the law *already* treats animals differently from other forms of personal property” because “animals are special, sentient beings... [who] feel pain, suffer and die.”¹⁴ Florida courts consistently hold that juries may consider mental anguish in awarding special damages for wrongfully killed companion animals.¹⁵ In Illinois, an appellate court opined that the value to the owner, including sentimental value, is appropriate to compensate for injury or death of a companion animal and necessary to avoid limiting to merely nominal damages.¹⁶

The provision of special damages beyond market value arises from modern courts realizing that animals are irreplaceable. In *Burgess v. Shampooch Pet Industries*, the Kansas Court of Appeals criticized fair market value damages as a remedy for injuries to plaintiff’s dog, who had “no discernible market value.”¹⁷ California’s Court of Appeals in

¹⁴ *Martinez v. Robledo*, 210 Cal. App. 4th 384, 391-92 (2012) (emphasis added).

¹⁵ *Knowles Animal Hospital v. Wills*, 360 So. 2d 37, 38 (Fla. App. 3d 1978), *cert. denied*, 368 So.2d 1369 (Fla. 1979); *Johnson v. Wander*, 592 So. 2d 1225, 1226 (Fla. App. 3d 1992)

¹⁶ *Anzalone v. Kragness*, 356 Ill. App. 3d. 365, 370-371 (1st Div. 2005). Despite the evolving legal and societal respect for the human-companion animal bond, some states are entrenched in an outmoded rationale – unsupported by science – that companion animals are personal property indistinguishable from one’s other possessions. See *Strickland v. Medlen*, 397 S.W.3d 184 (Tex. 2013) (relying on an 1891 case, *Heligmann v. Rose*, to limit recovery to the animal’s market value); *Goodby v. Vetpharm*, 186 Vt. 63, 69 (2009).

¹⁷ 35 Kan. App. 2d 458, 463-464 (2006).

Martinez court rejected the fairness of market value damages in observing that “while people typically place substantial value on their *own* animal companions... there is generally no market for *other people’s* pets.”¹⁸

There is no market for other people’s pets because, in practice, humans do not sell the companions that they consider as family members. In 2012, humans spent a collective \$53 billion on their companion animals, nearly double the total spent on companion animals in 2001.¹⁹ Spending statistics, however, may be undervaluing companion animals. In one poll, 66 percent of participants replied that they would not sell their companion animal for \$1 million.²⁰ In another survey, 47 percent of participants said they would spend “any amount necessary” on life-saving veterinary services, and 75 percent of participants would go into debt if necessary.²¹

**III. UNDER RESTATEMENT (SECOND) OF CONTRACTS § 353,
EMOTIONAL DISTRESS DAMAGES SHOULD BE AWARDED
WHEN RECKLESS BREACH OF BAILMENT CONTRACT
RESULTS IN THE DEATH OF A COMPANION ANIMAL**

Restatement (Second) of Contracts § 353 permits recovery for emotional disturbance if “the breach also caused bodily harm *or the*

¹⁸ *Martinez*, 210 Cal. App. 4th at 390 (emphasis added).

¹⁹ American Pet Products Ass’n. *Pet Industry Market Size & Ownership Statistics*, http://www.americanpetproducts.org/press_industrytrends.asp.

²⁰ *How Much Will Pet Owners Pay?* *Veterinary Econ.* 74, 77 (Aug. 2002).

²¹ Christopher Green, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 *Animal L.* 163, 206-07 (2004).

*contract or breach is of such a kind that serious emotional harm was particularly likely to result.*²² In particular, the rule applies when a contract protects personal rather than economic interests.²³

A. Serious Personal Harm is Particularly Likely to Result from a Reckless Breach of (Bailment) Contract Resulting in the Loss of a Companion Animal

Considering the familial human-companion animal bond and severity of grief experienced at the severance thereof, emotional harm is particularly likely, and foreseeable, when a healthy animal is killed unexpectedly by veterinary recklessness. Veterinarians are no doubt aware of the familial human-companion animal bond.²⁴ The modern bond between humans and our pets coincides with a roughly 100 percent increase in veterinarian salaries over the past 15 years, as companion animal owners are willing to break the bank for their pet.²⁵

When owners entrust the health and safety of their companion animal to a veterinarian, a mutually beneficial bailment is formed wherein money is exchanged for the protection of a uniquely personal interest: the owner-animal bond. A reckless breach of a bailment contract resulting in

²² Restatement (2d) of Contracts § 353.

²³ See *Stewart v. Rudner*, 84 N.W.2d 816 (Mich. 1957) (affirming emotional distress damages for breach of contract to perform cesarean section when plaintiff's baby died as a result); *Kwan v. Mercedes-Benz of N. Am.*, 23 Cal. App. 4th 174 (1994) (holding that emotional damages are not available for breach of a car sale contract because the contract was not tied to the buyer's mental or emotional well-being).

²⁴ See Am. Veterinary Med. Ass'n., *supra* n.3.

²⁵ See Green, *supra* n.21.

the death of a companion animal can in many cases usher in an unmanageable period of anguish for the owner. Such breach and its consequences entitle an owner emotional distress damages under § 353.

The Court of Appeals held that Ms. Hendrickson could not recover emotional distress damages for reckless breach of bailment contract “because no Washington court has held that such cause of action exists in the context of loss of a pet.”²⁶ The Court is correct because this is an *issue of first impression*; no Washington court has otherwise held that emotional distress damages for a reckless breach of contract cause of action in the context of loss of a pet does not exist. The Court of Appeals relied heavily upon *Gaglidari*, Washington’s seminal § 353 opinion for *economic* damages.²⁷ Yet the employment contract in *Gaglidari* is not applicable because humans do not have the personal, familial connection to an employment position in the way that they interact with a companion animal.

B. The Washington State Legislature’s Decision to Reject House Bill 2945 Should Not Foreclose an Award of Emotional Distress Damages for Reckless Breach of Bailment Contract

²⁶ *Hendrickson v. Tender Care Animal Hosp. Corp.*, 176 Wn. App. 757, 758 (2d Div. 2013).

²⁷ *Id.* at 762. The Court recognized that *Gaglidari v. Denny’s Rests.*, 815 P.2d 1362, 1370 (Wn. 1991), only encompassed economic damages, quoting the *Gaglidari* finding, “breach of an employment contract may result in emotional distress... [because t]he primary purpose in forming such contract... is economic and not to secure the protection of personal interests.” *Id.* at 764.

The Respondents argue that in awarding emotional distress damages to Ms. Hendrickson, the Court would circumvent the Washington Legislature.²⁸ In support of this claim, the Respondents cite the Legislature's 2008 vote to reject a bill which, if enacted, would have created a cause of action for "wrongful death or injury to companion animals."²⁹ The bill would have permitted recovery for "all *economic damages* suffered as a result of the [animal's] injury or death," which would include damages such as veterinary expenses.³⁰ The proposed bill did not reference non-economic, emotional distress damages.³¹ In any event, the Legislature's rejection of this new cause of action should not affect Ms. Hendrickson's claim under an *existing* cause of action: emotional distress damages for reckless breach of bailment contract.

IV. CONCLUSION

The role of companion animals in society has continued to evolve into the 21st century. Many courts, though, fail to fairly compensate owners for the wrongful severance of these familial bonds. In doing so, courts ignore the reality that companion animals are family members, and instead adhere to outmoded social and legal reasoning.

²⁸ Resp't Answer to Pet. for Review, at 10.

²⁹ House Comm. on Judiciary, H.B. Rep. on H.B. 2945, 60th Leg. Reg. Sess. (Wash. 2008) (emphasis added).

³⁰ *Id.*

³¹ *Id.*

ALDF urges this Court to acknowledge that companion animals' value to their owners is not economic in nature. Accordingly, this Court should grant the Petition for Review and reverse the Court of Appeals to hold that emotional distress damages are available for reckless breach of bailment contract resulting in the death of a companion animal.

DATED: December 16, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify under penalty of perjury and the laws of the State of Washington that on December 16, 2013 I caused service of the foregoing on each and every attorney of record herein:

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Dear Supreme Court Clerk's Office and counsel:

Attached are a Motion, Proposed Order, and Amicus Curiae Brief of Animal Legal Defense Fund in support of the Petition for Review in the following case:

Julie Hendrickson v. Tender Care Animal Hospital Corp., et al.
Case No. 89415-9

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