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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By *HAC*

NO. 34049-0-III

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

Robert Repin,

Petitioner (Plaintiff)

v.

State of Washington, et al.

Respondents (Defendants).

**AMICI CURIAE BRIEF OF WASHINGTON STATE
VETERINARY MEDICAL ASSOCIATION,
AMERICAN KENNEL CLUB, CAT FANCIERS'
ASSOCIATION, ANIMAL HEALTH INSTITUTE,
AMERICAN VETERINARY MEDICAL
ASSOCIATION, NATIONAL ANIMAL INTEREST
ALLIANCE, AMERICAN PET PRODUCTS
ASSOCIATION, AMERICAN ANIMAL HOSPITAL
ASSOCIATION AND PET INDUSTRY JOINT
ADVISORY COUNCIL IN SUPPORT OF
RESPONDENTS**

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v

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American Veterinary Medical Association, National Animal Interest
Alliance, American Pet Products Association, American Animal Hospital
Association and Pet Industry Joint Advisory Council

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A. STATEMENT OF THE CASE

Amici adopt Defendants' summary of the dispute in question.

B. QUALIFICATIONS AS AMICI

Amici are the Washington State Veterinary Medical Association, American Kennel Club, Cat Fanciers' Association, Animal Health Institute, American Veterinary Medical Association, National Animal Interest Alliance, American Pet Products Association, American Animal Hospital Association, and Pet Industry Joint Advisory Council. These non-profit associations promote pet welfare and responsible pet ownership and are solely responsible for this brief's preparation and submission. *Amici* have a substantial interest in ensuring that Washington laws promote sound pet welfare and ownership policies. The liability theories sought here are contrary to this goal. A statement of interest for each *amicus* is appended to the brief.

C. SUMMARY OF ARGUMENT

The Plaintiff made the difficult decision to have his dog euthanized after it was diagnosed with cancer. He contracted with the Defendant veterinarian for the purpose of performing this procedure on his dog and chose to be present to comfort his dog. Vocalizations and movements,

expected and unexpected, may occur during euthanasia. Experiencing these events certainly can be upsetting to an owner in the room. However, when a pet experiences such events, including the types alleged here, a veterinarian's obligation must be solely to the pet. At no time can the veterinarian be responsible for the owner's emotional well-being.

Amici pet owner and welfare groups submit this brief because injecting the emotion-based liability Plaintiff seeks into pet care will adversely impact pets. If allowing owners to be present during procedures opens the door to emotion-based liability, veterinarians, groomers and other pet care providers will have no choice but to exclude owners, even when the owners' presence is useful or comforting to the pet. Or, the costs of affected pet care services and products will go up to incorporate this new liability. Thus, injecting new, massive liability into Washington's pet care system will put important pet products and services, and responsible pet ownership, out of reach of many Washington residents. If pets do not receive care, including owner-present euthanasia, because of lawsuits, they will suffer. Creating emotion-based liability in pet litigation is not the pro-pet position. Pets do not benefit from these awards, only owners do.

As this brief shows, the issue of emotion-based damages for harm

to or suffering of a pet has been litigated in thirty-five states under many facts and legal theories. Regardless of the tort, court or circumstance, courts have rejected emotion-based liability for negligent, non-malicious injury to a pet. See Phil Goldberg, *Courts and Legislatures Have Kept the Proper Leash on Pet Injury Lawsuits: Why Rejecting Emotion-Based Damages Promotes the Rule of Law, Modern Value, and Animal Welfare*, 6 Stan. J. of Animal L. & Pol’y 30 (2013).

This jurisprudence includes several Washington cases. See *Sherman v. Kissinger*, 146 Wash. App. 855, 195 P.3d 539 (2008) (“[I]t is well established that a pet owner has no right to emotional distress damages or damages for loss of human-animal bond based on the negligent death or injury to a pet.”); *Pickford v. Masion*, 124 Wash. App. 257, 262-63, 98 P.3d 1232 (2004) (barring claims for negligent infliction of emotional distress and loss of companionship); *Hendrickson v. Tender Care Animal Hosp. Corp.*, 176 Wash. App. 757, 312 P.3d 52 (2013) (contract claims); *Womack v. Von Rardon*, 133 Wash. App. 254, 263, 135 P.3d 542, 546 (2006) (requiring malicious injury for such damages).

These courts have found that new, vastly expanded liability for emotional harm from an injury to a pet is not supported by existing law

and has adverse consequences far outweighing any benefit they allegedly might provide. By contrast, current laws governing pet ownership and care have created a stable legal system that enables responsible ownership, deters abuse, and promotes innovative, affordable, and quality care. *Amici* appreciate the hardship of losing a pet, particularly when end-of-life decisions are made. But, this Court should uphold the ruling below and, like other courts, separate the love for a pet from new liability law.

D. ARGUMENT

**1. THE DISTRICT COURT'S RULING KEEPS
WASHINGTON WITHIN MAINTSTREAM
AMERICAN JURISPRUDENCE**

**a. Courts Have Broadly Rejected Introducing
Emotion-Based Liability into Pet Litigation**

Courts throughout the country, both historically and recently, have broadly rejected claims for emotion-based liability in cases alleging negligent or other non-malicious injuries to a pet. As detailed in the following 50-state survey, regardless of the court, legal theories asserted or circumstances in which the claims arose, the public policy and legal conclusions have been remarkably consistent: emotion-based liability is not available for one's attachment to a pet, no matter how unquestionable

the owner-pet relationship and justified the emotional harm.

- **Alaska:** “[Plaintiff] may not recover damages for her dog’s sentimental value.” *Mitchell v. Heinrichs*, 27 P.3d 309, 314 (Alaska 2001).
- **Arizona:** Allowing “a pet owner to recover emotional distress or loss of companionship damages would be inappropriate as it would offer broader compensation for the loss of a pet than is currently available in this state for the loss of a person.” *Kaufman v. Langhofer*, 222 P.3d 249, 278-79 (Ariz. 2009).
- **California:** “Regardless of how foreseeable a pet owner’s emotional distress may be . . . we discern no basis in policy or reason to impose a duty on a veterinarian to avoid causing emotional distress to the owner of the animal being treated.” *McMahon v. Craig*, 97 Cal. Rptr. 3d 555, 564 (Cal. Ct. App. 2009).
- **Connecticut:** Common law does not allow “noneconomic damages resulting from a defendant’s alleged negligent or intentional act resulting in the death of a pet.” *Myers v. City of Hartford*, 853 A.2d 621, 626 (Conn. App. Ct. 2004).
- **Delaware:** “Delaware law does not provide . . . for the pain and suffering of either dog or owner.” *Naples v. Miller*, 2009 WL 1163504, at *3 (Del. Super. Ct. Apr. 30, 2009), *aff’d*, 992 A.2d 1237 (Del. 2010).
- **Florida:** These cases “would place an unnecessary burden on the ever burgeoning caseload of courts in resolving serious tort claims for individuals.” *Kennedy v. Byas*, 867 So. 2d 1195 (Fla. Dist. Ct. App. 2004).
- **Georgia:** “[T]he unique human animal bond, while cherished, is beyond legal measure.” *Barking Hound Vill., LLC v. Monyak*, 787 S.E.2d 191, 198 (Ga. 2016) (barring sentimental damages for the loss of a pet); *Holbrook v. Stansell*, 562 S.E.2d 731 (Ga. Ct. App. 2002) (barring emotional distress damages for harm to a pet).

- **Idaho:** “We are not persuaded to depart from this general rule” of denying recovery for mental anguish in pet cases. *Gill v. Brown*, 695 P.2d 1276, 1278 (Idaho Ct. App. 1985).
- **Illinois:** Plaintiffs seek “recovery by a dog owner for the loss of companionship of a dog. We do not believe this is consistent with Illinois law.” *Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E.2d 1084, 1087 (Ill. App. Ct. 1987).
- **Indiana:** “The loss of a pet dog is similarly only an economic loss.” *Lachenman v. Stice*, 838 N.E.2d 451, 461 (Ind. Ct. App. 2006).
- **Iowa:** “[S]entimental attachment of an owner to his or her dog has no place in the computation of damages for the dog’s death or injury.” *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 691 (Iowa 1996).
- **Kansas:** Sentimental value is not recoverable. *Burgess v. Shampooch*, 131 P.3d 1248 (Kan. Ct. App. 2006).
- **Kentucky:** “[L]ove and affection” for a pet “is not compensable.” *Ammon v. Welty*, 113 S.W.3d 185, 188 (Ky. Ct. App. 2003).
- **Massachusetts:** “It would be illogical . . . to accord the plaintiff greater rights than would be recognized in the case of a person who suffers emotional distress as a result of the tortiously caused death of a member of his immediate family.” *Krasnecky v. Meffen*, 777 N.E.2d 1286, 1287-90 (Mass. App. Ct. 2002).
- **Michigan:** The Court will not take such “drastic action.” *Koester v. VCA Animal Hosp.*, 624 N.W.2d 209, 211 (Mich. Ct. App. 2000).
- **Minnesota:** There is “no law supporting” emotional distress or noneconomic damages for injuries to a pet. *Soucek v. Banham*, 503 N.W.2d 153, 164 (Minn. Ct. App. 1993).
- **Missouri:** Damages are measured by “the difference between fair market value” before and after injury, not emotional loss. *Wright v. Edison*, 619 S.W.2d 797, 802 (Mo. Ct. App. 1981).

- **Nebraska:** “This court has clearly held that animals are personal property and that emotional damages cannot be had for the negligent destruction of personal property.” *Fackler v. Genetzky*, 595 N.W.2d 884, 892 (Neb. 1999).
- **Nevada:** Noneconomic damages are not allowed for “the death of an animal.” *Thomson v. Lied Animal Shelter*, 2009 WL 3303733, at *7 (D. Nev. Oct. 14, 2009); *see also* Nev. Rev. Stat. § 41.740 (barring such noneconomic damages).
- **New Jersey:** “[T]here is no authority . . . for allowing plaintiffs to recover non-economic damages” from killing of plaintiffs’ pet. *Harabes v. The Barkery*, 791 A.2d 1142, 1146 (N.J. Super. Ct. App. Div. 2001); *McDougall v. Lamm*, 48 A.3d 312 (N.J. 2012) (no emotional distress for dog killed in owner’s presence).
- **New Mexico:** “[D]amages for sentimental value are not recoverable” for death of a pet. *Wilcox v. Butt’s Drug Stores, Inc.*, 35 P.2d 978, 979 (N.M. 1934).
- **New York:** Pet owner “may not recover damages for loss of companionship.” *DeJoy v. Niagara Mohawk Power*, 786 N.Y.S.2d 873 (N.Y. App. Div. 2004).
- **North Carolina:** “[T]he sentimental bond between a human and his or her pet companion can neither be quantified in monetary terms nor compensated for under our current law.” *Shera v. N.C. State Univ. Veter. Teaching Hosp.*, 723 S.E.2d 352, 357 (N.C. Ct. App. 2012).
- **Ohio:** “Without in any way discounting the bonds between humans and animals, we must continue to reject recovery for noneconomic damages for loss or injury to animals.” *Pacher v. Invisible Fence of Dayton*, 798 N.E.2d 1121, 1125-26 (Ohio Ct. App. 2003).
- **Oregon:** “The trial court did not err in denying plaintiffs’ claim for damages based on emotional distress.” *Lockett v. Hill*, 51 P.3d 5, 7-8 (Or. Ct. App. 2002).

- **Pennsylvania:** There is no recovery for “loss of companionship” for a pet death. *Daughen v. Fox*, 539 A.2d 858, 864-65 (Pa. Super. Ct. 1988).
- **Rhode Island:** “[E]motional trauma” for pet injuries is not recoverable. *Rowbotham v. Maher*, 658 A.2d 912, 913 (R.I. 1995).
- **South Carolina:** The law does not support “emotional distress for injury to one’s pet.” *Bales v. Judelsohn*, slip op., No. 011-268-05 (S.C. Ct. App. 2005).
- **Texas:** Rejecting all noneconomic damages for harm to a pet because it would be “effectively creating a novel – and expansive – tort claim: loss of companionship for the wrongful death of a pet.” *Strickland v. Medlen*, 397 S.W.3d 184, 185 (Tex. 2013).
- **Vermont:** There is no “compelling reason why, as a matter of public policy, the law should offer broader compensation for the loss of a pet than would be available for the loss of a friend, relative, work animal, heirloom, or memento – all of which can be prized beyond measure, but for which this state’s law does not recognize recovery for sentimental loss.” *Goodby v. Vetpham*, 974 A.2d 1269, 1274 (Vt. 2009).
- **Virginia:** Damages for pet injury is diminution in value “plus reasonable and necessary expenses.” *Kondaurov v. Kerdasha*, 629 S.E.2d 181, 186 (Va. 2006).
- **Washington:** “[I]t is well established that a pet owner has no right to emotional distress damages for loss of human-animal bond.” *Sherman v. Kissinger*, 146 Wash. App. 855, 873, 195 P.3d 539, 548 (2008).
- **West Virginia:** “[S]entimental value, mental suffering, and emotional distress are not recoverable” for harm to a pet. *Carbasha v. Musulin*, 618 S.E.2d 368, 371 (W. Va. 2005).
- **Wisconsin:** “We note that this rule of nonrecovery applies with equal force to . . . a best friend who is human as it does to a plaintiff whose best friend is a dog.” *Rabideau v. City of Racine*, 627 N.W.2d 795, 801 (Wis. 2001).

Among the remaining states, Hawaii briefly allowed emotion-based liability for harm to property, including pets, but that was legislatively overturned. *See Campbell v. Animal Quarantine Station*, 632 P.2d 1066, 1071 (Haw. 1981); Haw. Rev. Stat. § 663-8.9. In Tennessee, a statute defines damages for pets and would not allow emotion-based recovery here. *See Tenn. Code Ann. § 44-17-403* (specifically excluding any such award against a licensed veterinarian).

As raised by Plaintiff, Louisiana has a mixed history, but the cases relied upon are based solely on civil code particular to that state involving harm to property generally; Louisiana has not created new law for pets. *See Keller v. Case*, 757 So. 2d 920 (La. Ct. App. 2000) (applying standards for anguish for property harm); *Smith v. Univ. Animal Clinic, Inc.*, 30 So. 3d 1154 (La. Ct. App. 2010) (allowing award under depository contracts code); *Barrios v. Safeway Ins. Co.*, 97 So. 3d 1019, 1022 (La. Ct. App. 2012) (allowing award under corporeal movable property code); *but see Kling v. U.S. Fire Ins. Co.*, 146 So. 2d 635, 642 (La. Ct. App. 1962) (“Personal or sentimental considerations cannot enter into” such an award). *Amici* are unaware of reported cases in Alabama, Arkansas, Colorado, the District of Columbia, Maine, Mississippi, Montana, New

Hampshire, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming.

In addition, as Defendant cited in its brief, the *Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm* excludes emotion-based damages in pet cases:

Although harm to pets (and chattels with sentimental value) can cause real and serious emotional harm in some cases, lines – arbitrary at times – that limit recovery for emotional harm are necessary. Indeed, injury to a close personal friend may cause serious emotional harm, but that harm is similarly not recoverable under this Chapter.

Sec. 47 cmt. m (2012); *see also* Victor E. Schwartz & Emily J. Laird, *Non-economic Damages in Pet Litigation: The Serious Need to Preserve a Rational Rule*, 33 Pepp. L. Rev. 227, 236 (2006).

b. Courts Rejecting Emotion-Based Liability Have Expressly Appreciated the Human-Pet Bond

Courts have not mechanically rejected emotion-based damages based on technical classifications. In rejecting emotion-based damages in pet cases, courts, including in Washington, have expressly appreciated the love owners and pets give each other and loss when a pet is wrongfully harmed. *See, e.g., Pickford*, 124 Wash. App. at 263, 98 P.3d at 1235 (recognizing pet owners consider pets as more than mere property); *see also Mansour v. King County*, 131 Wash. App. 255, 266, 128 P.3d 1241

(2006) (“We recognize that the bond between pet and owner often runs deep and that many people consider pets parts of the family.”). They have, though, separated this emotional attachment from creating new liability law, even when owners, such as Plaintiff, viewed their pets the same as children. *See Kondaurov*, 629 S.E.2d at 187 (rejecting claim despite psychologist statement that owner treated pet “like a mother/child unit”).

The Supreme Court of Wisconsin explained that adhering to these tenets of American jurisprudence does not undermine this relationship:

To the extent this opinion uses the term “property” in describing how humans value the dog they live with, it is done only as a means of applying established legal doctrine to the facts of this case.

Rabideau, 627 N.W.2d at 798; *see also Pacher*, 798 N.E.2d at 1125-26 (“[w]ithout in any way discounting the bonds between humans and animals, we must continue to reject recovery for noneconomic damages”); *Strawser v. Wright*, 610 N.E. 2d 610, 612 (Ohio Ct. App. 1992) (while the court “sympathize[d] with one who must endure the sense of loss which may accompany the death of a pet,” it “cannot ignore the law”); *Goodby*, 974 A.2d at 1273 (refusing to create a common law action for pets akin to

a Wrongful Death Act for immediate family).¹

Thus, the law is clear. Courts recognize the quasi-familial quality of many human-pet relationships, and have largely held that emotion-based damages are not compensable for actions that, as here, arise out of negligence or other non-malicious acts. A relational attachment to a pet, just as to a grandparent, cousin or human best friend “is unquestionable. But, it is also uncompensable.” *Medlen*, 397 S.W.3d at 190.²

2. Pet Care Services, Including Euthanasia Do Not Give Rise to Emotion-Based Liability

In an effort to justify the claims alleged in the face of this overwhelming body of law, Plaintiff attempts to re-cast the legal theories for his suit. He suggests that his contract with the veterinarian allowed for emotion-based damages, or that he was the direct victim of the alleged

¹ The Wrongful Death Act provides emotional damages only to spouses and dependent parents and children. *See* RCW § 4.24.010. Loss of companionship is limited to spouses, children and parents. *See Ueland v. Pengo Hydra-Pull Corp.*, 103 Wn.2d 131, 136, 691 P.2d 190 (1984).

² Courts have raised practical concerns, including that there would be “no sensible or just stopping point” for the litigation. *Rabideau*, 627 N.W.2d at 802. They could not “cogently identify the class of companion animals” – dogs, cats, hamsters, etc. – “because the human capacity to form an emotional bond extends to an enormous array of living creatures,” the veracity of claims would be hard to prove, and often “charging tortfeasors with financial burdens” for emotional loss would be unfair. *Id.*

negligence because he was holding his dog down when it physically reacted to the euthanasia drugs. Plaintiff's claims, though, do not fit within the restrictive categories that Washington and other states use for when a person may recover emotion-based damages when not injured him or herself. *See Hunsely v. Giard*, 87 Wash. 2d 424, 533 P.2d 1096 (1976).

a. Pet Contracts Do Not Give Rise to Emotion-Based Liability

Plaintiff appears to be of two minds with regard to the scope of his contract-based claim. On one hand, he says that the new law he is seeking to create would have "broad-scale impact" because it would subject "any person or entity entering into animal related contracts," including veterinarians, "groomers, trainers, and boarders" to emotion-based liability whenever an owner alleges negligence. *See Pl. Br.* at 16. On the other hand, he claims that a euthanasia contract is special and fits within the narrow exceptions for emotion-based liability. *See id.* at 19-20.

To borrow from the state Supreme Court's ruling in *Gagliardi v. Denny's Restaurant*, the "quantum leap" plaintiff urges the court to take with respect to either approach "is justified neither by the cases of other jurisdictions, the Restatement, Washington law, nor public policy." 117

Wash.2d 426, 448, 815 P.2d 1362, 1374 (Wash. 1991). As the Court explained in *Gaglidari*, under all of these sources of law the parties to a contract define their own obligations, rewards and risks. *See* 117 Wash. 2d at 440-448, 815 P.2d at 1370-1374. Emotion-based harms are not compensable unless agreed to in the contract. Such harms can be read into the terms of a contract only when one's emotional well-being is the contract's essence. *See Gaglidari* (The contract must be "uniquely intended to protect some personal interest" where "serious emotional disturbance was a particularly likely result."); *see also Erlich v. Menezes*, 981 P.2d 978, 982, 987 (Cal. 1999) (emotion-based damages are not permitted absent special circumstances).

As a sister Court of Appeals explained in *Hendrickson*, veterinary services do not fit within this highly restrictive category. 176 Wash. App. at 766-67, 312 P.3d at 56-57. The purpose of retaining a veterinarian is for the veterinarian to provide services to the pet, not to preside over the owner's emotional well-being. Thus, allowing emotion-based liability from pet care contracts generally would "constitute a significant change in the law" and have an "enormous" impact on pet-related services. 176 Wash. App. at 767, 312 P.3d at 57.

Owner-present euthanasia also is not among the narrow exceptions for when a person's emotional well-being is the object of the contract. Certainly, pet owners can be emotionally vulnerable when dealing with a pet's death, but owner-present euthanasia is not among the category of contracts "uniquely intended to protect" one's state of mind, like the funeral parlor contracts Plaintiff raises in his brief. Here, Plaintiff retained the Defendant to end his dog's suffering. His choice to be present to comfort his dog does not change the nature of the contract. By contrast, the purpose of a funeral parlor contract is not to service the deceased, but to prepare the deceased solely to facilitate mourners' emotional needs.

Finally, knowledge of an owner's emotional vulnerability and niceties are not offer and acceptance under contracts law. There are many services, including care to a spouse or child, where a party's well-being would foreseeably be severely impacted were something to go wrong. These situations do not lead to emotion-based liability under contract law.

b. Negligent Infliction of Emotional Distress is Not Available in Pet Cases

Plaintiff seeks to circumvent the abundance of case law that a cause of action for negligent infliction of emotional distress is not

available absent physical injury to the Plaintiff by making much of the fact that he was physically interacting with his dog during its vocalizations and movements. He claims this put him in the “zone of danger” of the Defendant’s negligence to the pet. As Defendant explains in its brief, there is no “zone of danger” exception to the general rule against such liability in the State of Washington. *See* Def. Br. at 26-28.

Further, Plaintiff is misapplying the “zone of danger” concept. He was neither the direct victim of the Defendant’s alleged negligent act nor at risk of being physically impacted by the Defendant’s negligent act. *Cf. Vaillancourt v. Med. Ctr. Hosp. of Vt. Inc.*, 425 A.2d 92 (1980) (denying such a claim from a father in the delivery room when malpractice killed his child and risked his wife’s life). Rather, by being in the room, he was in the position to deal with the consequences of the veterinarian’s alleged malpractice to his dog. Being in the zone of danger of a negligent act and attending to the consequences of a negligent act are not the same.

Allowing Plaintiff to blur these lines would impact situations far beyond the facts of this case. Pet owners are regularly present when a pet is being treated. Sometimes an owner’s assistance is needed, which occurs often in rural practices and in-home visits. Other times the owner is there

solely to comfort the pet. Outside of the pet arena, a parent regularly accompanies a child in a pediatrician's office, including having the child on his or her lap when the child receives a vaccination or other service. Family members are often needed when mentally ill or elderly patients receive care. If this Court allows Plaintiff's claim here, an action for emotional distress would be born whenever a pet or human patient has a reaction that physically impacts and upsets the attendant person.

Allowing such liability would result in the owner, parent or other steward being excluded from the room, which is either not practical (as with a child) or in the best interest of the pet or human patient.

3. ALLOWING EMOTION-BASED LIABILITY WILL JEOPARDIZE IMPORTANT PET CARE SERVICES

Pet welfare and social public policy weigh heavily against creating the emotion-based damages Plaintiff seeks. There can be a stark dichotomy between pet welfare and the interests of the owners who seek emotion-based damages – and animal rights groups and attorneys who often support them.³ A few owners, not pets, profit from these awards.

If the Court were to subject veterinarians to liability for the

emotional well-being of an owner present during euthanasia, veterinarians would exclude owners from the room. As discussed, this result would adversely impact pets because an owner can assist a veterinarian and comfort the pet. See AVMA Guidelines for Euthanasia of Animals: 2013 Edition, Am. Veterinary Medical Assoc., available at <https://www.avma.org/KB/Policies/Documents/euthanasia.pdf>. (Euthanasia is most effective when pets are placed in “physical and behavioral comfort zones.”). Here, the practice had a quiet room, and the owner brought in the dog’s blanket. Many veterinarians now go to owners’ homes so a pet can be in familiar surroundings. See Steve Hendrix, *At-Home Pet Euthanasia Grows in Popularity*, Wash. Post, Sept. 25, 2011.

While euthanasia “can be very quick and peaceful, the body can react during and after the injection in ways that can be unexpected.” Beth Guerra, DVM, *ACCES for Pet Health*, Seattle Post-Intelligencer Blog Post, March 31, 2011. For example, “pets usually don’t close their eyes, [and] many people are upset when they see the eyes are still open. Cats often stick out their tongues.” *Id.* Some pets “vocalize” or “take some

³ See Douglas Belkin, *Animal Rights Gains Foothold as Law Career*, Boston Globe, Mar. 6, 2005.

gasping, or agonal, breaths.” *Id.*; see AVMA Guidelines at 12 (explaining “vocalization, and reflex struggling, can be attributed to the second stage of anesthesia”). Some “lose control of their bladder or bowels.” *Id.* “These reactions can be alarming to owners.” *Id.* The costs for these services cannot support large emotion-based liability. See Hendrix, *supra* (stating the cost is \$100 for in-office euthanasia and \$200 for home visits).

If the Court granted Plaintiff’s motion for more “broad-scale” change, veterinary care will resemble human healthcare, where emotion-based damages increase costs and dictate care. Most people’s ability to spend on pet care is limited; many families avoid preventive care, do not treat an ill pet, or euthanize a pet rather than treat it. See Assoc. Press, *Even Pets Feeling Sting of Financial Struggles*, Fosters.com, Nov. 23, 2008 (“we’re putting the dogs to sleep” over finances); Christopher A. Wolf, et al., *An Examination of U.S. Consumer Pet-Related & Veterinary Serv. Expenditures, 1980-2005*, 233 J. Am. Veterinary Med. Ass’n 404, 410 (2008) (“[A]n increasing proportion of households are choosing not to spend any money for veterinary services”). The Legislature has already expressed concern that “low income households may not receive needed veterinary services for household pets.” RCW § 18.92.250. Risks for

other services, such as boarding, will also rise, hindering their availability.

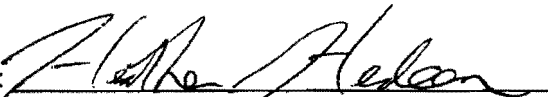
The public recognizes these problems and opposes compensating owners for emotional loss in pet litigation. See Joseph Carroll, *Pet Owners Not Worried That Their Pets Will Get Sick From Pet Food: Most Don't Agree With Pain and Suffering Damages for Pets*, Gallup News Service, Apr. 3, 2007. Given the complexity of the public policies with compensating owners for emotional loss in pet cases, many courts have deferred the issue to their legislatures. See, e.g., *Kondaurov*, 629 S.E.2d at 187 (“permitting such an award would amount to a sweeping change in the law of damages, a subject properly left to legislative consideration”).

E. CONCLUSION

For the foregoing reasons, *Amici* respectfully urge the Court to reject plaintiffs’ appeal for new emotion-based damages in pet cases.

RESPECTFULLY SUBMITTED this 15th day of August, 2016.

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Amici Curiae Brief of Washington State Veterinary Medical Association,
American Kennel Club, Cat Fanciers’ Association, Animal Health Institute,
American Veterinary Medical Association, National Animal Interest
Alliance, American Pet Products Association, American Animal Hospital
Association and Pet Industry Joint Advisory Council

APPENDIX: STATEMENTS OF INTEREST

The Washington State Veterinary Medical Association (“WSVMA”) is committed to advancing the veterinary medical profession and supporting the veterinarian’s role in improving animal and public health. It is a not-for-profit association representing the vast majority of veterinarians in Washington in companion animal practice, food animal practice, government, academia, industry and uniformed services.

Animal Health Institute (“AHI”) is a national trade association of manufacturers of animal health products, pharmaceuticals, vaccines and feed additives used in food production and medicines that keep pets healthy. A primary objective of AHI is to ensure a safe and effective supply of medicines that help pets live longer. AHI supports policies to protect and promote animal healthcare.

The American Kennel Club (“AKC”) is the largest registry of purebred dogs and leading not-for-profit organization devoted to the study, breeding, exhibiting, and advancement of dogs. Along with its more than 5,000 member and licensed clubs and affiliated organizations, the AKC advocates for the purebred dog as a family companion, advances canine

health and well-being, works to protect the rights of all dog owners and promotes responsible dog ownership.

The American Pet Products Association (“APPA”) is the leading U.S. not-for-profit trade association for the pet products industry, representing nearly 1,000 pet product manufacturers, importers, manufacturers’ representatives and livestock suppliers. APPA’s mission is to develop and promote responsible pet ownership.

The American Veterinary Medical Association (“AVMA”), established in 1863, is one of the oldest and largest veterinary medical associations in the world with more than 88,000 member veterinarians engaged in a wide variety of activities dedicated to the art and science of veterinary medicine. The issues presented in this case directly involve the veterinary profession; the “AVMA Guidelines for the Euthanasia of Animals: 2013 Edition” are considered the global gold standard for euthanasia guidance.

The Cat Fanciers’ Association (“CFA”) is a non-profit organization founded in 1906 and has the largest registry of pedigreed cats in the world. CFA’s mission is to preserve and promote the pedigreed breeds of cats and enhance the well-being of all cats. It is dedicated to the

promotion of cat health, cat welfare and public education of responsible cat ownership.

The National Animal Interest Alliance (“NAIA”) is an association of business, agricultural, scientific, and recreational interests dedicated to promoting animal welfare and strengthening the bond between humans and animals. NAIA was founded in 1991 to provide education regarding responsible animal ownership and use, and to oppose animal rights extremism. Its members include pet owners, dog and cat clubs, obedience clubs and rescue groups as well as breeders, trainers, veterinarians, research scientists, farmers, fishermen, hunters and wildlife biologists.

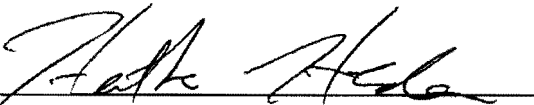
The Pet Industry Joint Advisory Council (“PIJAC”) is the largest trade association advocating on companion animal issues, representing thousands of manufacturers, distributors, breeders, and retailers. PIJAC advocates for healthy and safe pets, responsible trade in pets and pet products, and pro-pet policies.

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on August 15, 2016, I caused service of the foregoing pleading on each and every attorney of record herein via US mail to the following individuals.

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