IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN

JAMES ANDERSON, Plaintiff, vs. **SCOTT HAYLES, et al.,** Defendants.	Case No.: **14-2-51133-0** **PLAINTIFF'S TRIAL MEMORANDUM** **Trial Date: Wed., Jul. 27, 2016**

Plaintiff **JAMES ANDERSON,** through attorney **ADAM P. KARP,** presents this *Trial Memorandum*.

FACTS

The lawsuit arises from the shooting of Chucky, Mr. Anderson's neutered male, seven-year-old, purebred English Springer Spaniel, on Mar. 9, 2014. A highly-trained hunting dog accustomed to firearms, Chucky was drawn to the gunfire of Scott Hayles and his three sons, Andrew, Matthew, and Nathan, as they were trap shooting at the boundary of the Hayleses' property from which they launched clay pigeons across and onto Mr. Anderson's mother's property. By their own admissions, the father and all three sons observed Chucky showing interest in and trying to catch the clay pigeons they targeted.

Chucky was an excellent swimmer (not an uncommon trait for the breed, see

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https://en.wikipedia.org/wiki/English_Springer_Spaniel) and closely bonded to Mr. Anderson. Chucky had a working vocabulary of over 100 words and did not stray (again, unless drawn by gunfire). Thus, Chucky's failure to return directly home after the Hayleses discontinued shooting put Mr. Anderson into a state of concern, which turned into total panic—following, *inter alia*, the odd behavior of Scott and two of his sons on Mr. Anderson's property; the queer assertion by Scott that Chucky would not swim across the canal; the passage of time without recall of Chucky; the sound of gunfire followed by the yelping of a dog, and then more gunfire around the time of the trap shooting (as reported to Mr. Anderson by tenant Jorge Delongo); the lack of any other suspect, despite diligent search by law enforcement and even (so they claim) the Defendants themselves; the untrue assertion by Scott and Lori Hayles that Chucky was likely hit by a car operated by a young woman in the area; and other biases against Mr. Anderson. Direct and circumstantial evidence tying the Hayleses to Chucky's disappearance and death will be brought out during live testimony.

Not until earlier the next morning, Mar. 10, 2014, did Mr. Anderson find Chucky half-dead near the location that he saw Scott and Lori Hayles allegedly searching for Chucky the night of Mar. 9, 2014. Mr. Anderson also observed vehicle tracks from Chucky's location to the location of the trap shooting. As additional facts unfolded, Mr. Anderson came to the realization that one or more of the Hayleses' sons (if not Mr. Hayles himself) shot Chucky and, then, in concert with mother and father, attempted to conceal the shooting and identity of those responsible. Due not only to the nature of his injuries, but also the delay in finding Chucky and getting him veterinary care, Chucky died. This action ensued. As discussed below, Mr. Anderson brings four claims – conversion/trespass to chattels; negligent harm to property; fraudulent concealment; and civil conspiracy. He seeks joint and several liability as articulated by RCW

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4.22.070. Mr. Anderson is entitled to the following damages proximately caused by Defendants: veterinary bills, mileage to clinic, prejudgment interest, loss of use of Chucky, intrinsic value of Chucky, and general damages.

LAW

Defendants are liable to Mr. Anderson based on the following theories:

1. Issues of Liability

a. Conversion/Trespass to Chattels

Conversion turns on the "unwarranted interference by defendant with the dominion over the property of the plaintiff from which injury to the latter results." *Judkins v. Sadler-MacNeil,* 61 Wn.2d 1, at 4 (1962) (quoting *Poggi v. Scott,* 139 Pac. 815, at 816 (1914)). "A conversion is the act of willfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of the possession of it." *Martin v. Sikes,* 38 Wn.2d 274, 278 (quoting *Salmond on the Law of Torts (9th Ed.)* 310 § 78). Wrongful intent is not an element of conversion, and good faith is no defense. *Paris Am. Corp. v. McCausland,* 52 Wash.App. 434, 443 (1988). No intent to deprive the owner need be shown. *Judkins,* at 4. The California Court of Appeals upheld an award totaling over $50,000 in general damages related to the striking of a Min-Pin with a baseball bat, requiring $2600 in veterinary bills. *Plotnik v. Meihaus,* 208 Cal.App.4th 1590 (2012). Defendants' intentional acts causing Chucky's death amply meet the elements of the intentional tort of conversion or the tort of trespass to chattels, relative to lesser intermeddlings with personalty.

b. Negligence

Though Mr. Anderson contends that the Hayleses *willfully* killed Chucky, in the alternative he pleads negligent injury. At common law, a duty of care exists to prevent damaging

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or destroying another's personalty. *See Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587 (2011)(generalized duty to use reasonable care (and avoid misfeasance) imposed where defendant engages in conduct posing risk of injury to plaintiff). Especially when three minors are discharging lethal firearms in close proximity to a dog clearly not spooked by such weapons, while firing projectiles onto land owned by Mr. Anderson's mother, several obligations to avoid harm to a living being exist.

c. Fraud/Intentional Concealment

Fraud requires proof by clear, cogent and convincing evidence of: (1) representation of existing fact; (2) materiality; (3) falsity; (4) speaker's knowledge of falsity; (5) intent of speaker that it be acted upon by plaintiff; (6) plaintiff's ignorance of falsity; (7) plaintiff's reliance on truth of representation; (8) plaintiff's right to rely upon it; and (9) damages. *Stiley v. Block*, 130 Wn.2d 486 (1996). Fraudulent concealment is "a species of fraud." *Nguyen v. Doak Homes, Inc.*, 140 Wash.App. 726, 731 (2007). Though silence is not actionable alone, it becomes actionable when the defendant uses trick or artifice (or decoy, to use hunting terminology) to prevent an adversary from discovering the truth, or where a duty to speak exists and the defendant fails to do so. *Gilliland v. Mount Vernon Hotel Co.*, 51 Wn.2d 712 (1958). As alleged, Mr. and Mrs. Hayles threw Mr. Anderson off the scent of discovering not only the location of his dying dog but the identity of those responsible.

d. Civil Conspiracy

To prove conspiracy, the plaintiff must prove by clear, cogent, and convincing evidence that (1) two or more people combined to accomplish an unlawful purpose, or combined to accomplish a lawful purpose by unlawful means; and (2) the conspirators entered into an agreement to accomplish the conspiracy." *All Star Gas, Inc. v. Bechard*, 100 Wash.App. 732,

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740 (2000); *Adams v. King Cy.*, 164 Wn.2d 640, 660 (2008)(trial court erroneously dismissed claim for civil conspiracy where defendants allegedly removed organ from plaintiff's decedent without her consent). Conspirator liability is joint and several, either before or after their entrance, in furtherance of a common design. Circumstantial evidence is competent to prove conspiracy. *Sterling Business Forms, Inc. v. Thorpe*, 82 Wash.App. 446, 453-54 (1996)(citing *Lyle v. Haskins,* 24 Wn.2d 883 (1946)(noting that direct evidence of conspiracy is ordinarily in possession and control of the alleged conspirators and seldom attainable, so that conspiracy is usually susceptible of no other proof than circumstantial).

2. Issues of Damages

a. Loss of Use

The law allows for the recovery of loss of use of property while being repaired, so long as it is "reasonably susceptible" to repair and for a "reasonable period" of repair. *McCurdy v. Union Pac. R.R. Co*., 68 Wn.2d 457, 470 (1966). Loss of use damages apply even when property is not in business use and not economically-productive. *Rocha v. McClure Motors*, 64 Wn.2d 942, 949 (1964); *Holmes v. Raffo,* 60 Wn.2d 421, 430 (1962) (allowing for car kept for "family purposes or simply for pleasure"). Although typically reserved for damaged property only, until payment is made by the defendant, loss of use is recoverable even on destroyed property. *Straka Trucking, Inc. v. Estate of Peterson,* 98 Wash.App. 209 (1999). No good reason exists to disallow loss of use for animate personalty when *Rocha* and *Holmes* permit it for inanimate hunks of steel.

b. Intrinsic Value

Intrinsic value is the measure of damages for injured or deceased companion animals. *Pickford v. Masion,* 124 Wash.App. 257, 263 (II, 2004), held firmly that Buddy was "much more than a piece of property," and that, in the case of death or injury to a pet, "damages are

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recoverable for the actual or intrinsic value of lost property but not for sentimental value." *Id.* at 263 (citing *Mieske v. Bartell Drug Co.,* 92 Wn.2d 40, 45-46 (1979)). District court Judge Robart confirmed this reading in *Stephens v. Target Corp.,* 482 F.Supp.2d 1234 (W.D.Wash.2007). Recognizing plaintiffs' right to recover intrinsic value for their burned dog, Judge Robart stated, "As the law stands, damages for injury to a pet are limited to the 'actual or intrinsic value' of damaged property. *Pickford,* 98 P.3d at 1235." *Id.,* at 1236. The *Stephens* court added that "a jury could consider the dog's utility (for lack of a better term) in assessing its intrinsic value[.]" *Id.* (citing Mieske).

The Court of Appeals has also twice held that pets are not replaceable. *See Downey v. Pierce Cy.,* 165 Wash.App. 152, 165 (2011) ("pet owners' interests in keeping their pets, which is arguably more than a mere economic interest because pets are not fungible") and *Rhoades v. City of Battleground,* 115 Wash.App. 752, 766 (2003)(pets are not "fungible").[1] If pets were replaceable (i.e., fungible), then, veterinarians might as well go out of business.[2] If a companion

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[1] *See also Womack v. von Rardon,* 133 Wash.App. 254, 263-64 (2006)(embracing *Pickford* in case of cat set on fire and acknowledging the actual or intrinsic value of an animal in creating tort of malicious injury to an animal).

[2] As one modern scholar observed:

> If the economic value of companion animals was important to their human companions, as is normally the case with sofas, chairs, and other inanimate property, small animal veterinarians could close their doors, because human companions would never bring their companion animals for treatment. Instead, they would abandon them. They would throw them out. They would euthanize them upon any pretext rather than incur the high cost of feeding and caring for them. They would obtain newer, younger, and healthier companion animals, who are certainly plentiful and cheap enough. American animal shelters overflow with millions of potential companion animals who can be had for nearly free. One need open any small town newspaper or review the community bulletin board at almost any supermarket to find advertisements for free companion animals. What owner of a worn and broken chair or sofa would not seize the opportunity to replace it with a brand new one for free?
>
> But human companions do not usually throw their companion animals out. They do not usually abandon them. They do not euthanize them merely to obtain newer, younger, or healthier ones. This is because the value of their companion animals to them is not economic. Companion animals are not fungible. They are of a different order.

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, 47 (1998).

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animal is not "commercially interchangeable" and cannot "take the place of another," then there is no fair market value for such an animal, and he cannot be replaced or reproduced as a matter of law.[3] Such holdings are echoed in other jurisdictions.[4] Division III embraced the intrinsic value holding of *Pickford* in *Womack v. von Rardon*, 133 Wash.App. 254, 263-64 (2006):

> For the first time in Washington, we hold malicious injury to a pet can support a claim for, and be considered a factor in measuring a person's emotional

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[3] "Fungible" is defined in Black's Law Dictionary (7th ed., p. 684) as "regarded as commercially interchangeable with other property of the same kind <corn and wheat are fungible goods, whereas land is not>." It is also defined as "of or pertaining to goods (e.g., coal, lumber) of which any unit or part can take the place of another in meeting an order etc." The New Lexicon Webster's Dictionary of the English Language, 1988 ed., at 384.

[4] The Kansas Court of Appeals did not hesitate affirming the trial court's award of veterinary bills, citing "long-standing common-sense jurisprudence" to permit the cost to restore an "injured pet dog with no discernible market value," finding "there are no true marketplaces that routinely deal in the buying and selling of previously owned pet dogs," and perceiving "a distinction between the purely economic value of a horse for hire and a pet dog, like Murphy." *Burgess v. Shampooch Pet Indus. Inc.*, 35 Kan.App.2d 458, 462-63 (2006). *Burgess* approves of a "special value to the owner" instruction, at 461, while rejecting defendant's "hyperbolic[]" claims that its ruling would "open the proverbial 'floodgates' of high dollar litigation on behalf of animals…," at 465. It adds:

> The Restatement and most jurisdictions take a position that in [] cases [involving pet dogs] it would be unjust to limit damages to the fair market value and, instead, use the so-called 'value to the owner' (also known as the 'actual value to the owner' or 'actual value') as the measure of damages.

Id., at 461 (2006) (*citing Restatement (2nd) of Torts* § 911, Comment *e*, at 474 (1965)); see also *Leith v. Frost*, 387 Ill.App.3d 430, 436 (Ill.App.4 Dist.,2008)("Illinois courts recognize that certain items of personal property, such as heirlooms, photographs, trophies, and pets have no market value. …"). The California Court of Appeals agrees:

> There can be little doubt that most pets have minimal to no market value, particularly elderly pets. As amicus notes, while people typically place substantial value on their *own* animal companions, as evidenced by the large sums of money spent on food, medical care, toys, boarding and grooming, etc., there is generally no market for *other people's* pets. (See *Burgess v. Shampooch Pet Industries, Inc., supra,* 35 Kan.App.2d at p. 464, 131 P.3d 1248 ["unlike other types of personal property, there are no true marketplaces that routinely deal in the buying and selling of previously owned pet dogs"]; *Van Patten v. City of Binghamton* (N.D.N.Y.2001) 137 F.Supp.2d 98, 104–105 ["pets are distinguishable from what we normally consider as personal property .... there is no such thing as replacement"].) We agree that the determination of a pet's value cannot be made solely by looking to the marketplace. If the rule were otherwise, an injured animal's owner would bear most or all of the costs of the medical care required to treat the injury caused by a tortfeasor, while the tortfeasor's liability for such costs would in most cases be minimal, no matter how horrific the wrongdoer's conduct or how gross the negligence of a veterinarian or other animal professional.
>
> … Given the Legislature's historical solicitude for the proper care and treatment of animals, and the array of criminal penalties for the mistreatment of animals, as well as the reality that animals are living creatures, the usual standard of recovery for damaged personal property—market value—is inadequate when applied to injured pets.

Martinez v. Robledo, 210 Cal.App.4th 384, 390, 392 (2012).

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> distress damages. **The damages are consistent with actual and intrinsic value concepts as found in *Pickford*** because, depending upon the particular case facts, harm may be caused to a person's emotional well-being by malicious injury to that person's ***264*** pet as personal property. We do not interpret the trial court's final reference to value as limiting the measure of damages to pet fair market value. Thus, we reject Ms. Womack's contrary contention and supportive arguments. The trial court's award for emotional distress damages is akin to a general award for pain and suffering. The court is not required to explain its weighing process or segregate the particular factors it considers so long as the award is reasonably within the range of evidence. It is.

Lest one conclude that sentimental value is not allowed at all as part of the actual value to the owner, see *Mieske v. Bartell Drug Co.,* 92 Wn.2d 40, 45 (1979)(finding that "feeling, sensibility or emotional idealism" is "[o]bviously … not the exclusion contemplated by the statement that sentimental value is not to be compensated"; rather, only that "indulging in feeling to an unwarranted extent" is prohibited); *Barr v. Interbay Citizens Bank*, 96 Wn.2d 692, 700 (1981), stated clearly that there is "nothing stinted" in the "exceedingly liberal" rule of compensation, allowing recovery of "every actual loss, and some which frequently border on the imaginary." In discussing actual/intrinsic value, the Washington Supreme Court cited to **Value,** *Rest. (2nd) Torts* § 911 (1979). Cmt. e (1979), which states:

> *e. Peculiar value to the owner.* The phrase "value to the owner" denotes the existence of factors apart from those entering into exchange value which cause the subject matter to be more desirable to the owner than to others.
>
> Some things may have no exchange value but may be valuable to the owner; other things may have a comparatively small exchange value but have a special and greater value to the owner. The absence or inadequacy of the exchange value may result from the fact that others could not or would not use the things for any purpose, or would employ them only in a less useful manner. Thus a personal record or manuscript, an artificial eye or **a dog trained only to obey one master**, **will have substantially no value to others than the owner**. The same is true of articles which give enjoyment to the user but have no substantial value to others, such as family portraits. Second-hand clothing and furniture have an exchange value, but frequently the value is far less than its use value to the owner. In such

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> cases it would be unjust to limit the damages for destroying or harming the articles to the exchange value.
>
> Real property may also have a value to the owner greater than its exchange value. Thus a particular location may be valuable to an occupant because of a business reason, as where he has built up good will in a particular neighborhood.
>
> Even where the subject matter has its chief value in its value for use by the injured person, if the thing is replaceable, the damages for its loss are limited to replacement value, less an amount for depreciation. If the subject matter cannot be replaced, however, as in the case of a destroyed or lost family portrait, the owner will be compensated for its special value to him, as evidenced by the original cost, and the quality and condition at the time of the loss. Likewise an author who with great labor has compiled a manuscript, useful to him but with no exchange value, is entitled in case of its destruction, to the value of the time spent in producing it or necessary to spend to reproduce it. In such cases, however, damages cannot be based on sentimental value. Compensatory damages are not given for emotional distress caused merely by the loss of such things, except that in unusual circumstances damages may be awarded for humiliation caused by such deprivation, as where one is deprived of essential articles of clothing. Where the subject matter was wantonly destroyed, punitive damages can be awarded.

Id., cmt. e (emphasis added).

Not only may a plaintiff recover for the intrinsic value of a companion animal as a matter of law, but he need not even allege or prove lack of market value. *Kimball v. Betts*, 99 Wash. 348, 351 (1918), held:

> Where household goods, kept for use and not for sale, have been wrongfully converted, it is not necessary to allege and prove that such goods have no market value as a condition precedent to the right to introduce proof of actual value….It seems obvious, however, that the secondhand market value, if there be such, would not compensate the owner of goods which had been wrongfully converted for the loss which he had sustained.

The *Kimball* rule was applied to personal property, wearing apparel, and household goods damaged from an arson fire at a hotel. Accordingly, Mr. Anderson rightly demands the intrinsic

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value of Chucky, his "household good" [5] and "personal effect" [6] kept for "personal use and not for sale." It therefore follows that the relevant inquiry for the court was whether Chucky was bought or used primarily for personal, family or household purposes. If so, the *Kimball* rule applies and the jury should be so instructed.

Herberg v. Swartz, 89 Wn.2d 916 (1978), recognized that items other than apparel and furniture, such as family photographs, would qualify under the *Kimball* rule. *Id.,* at 932. *Herberg* predated *Mieske* (the film case) by one year. *Mieske* cited to *Herberg* and *Kimball. Id.,* at 44-45 (followed by definition of permissible "sentimental value"). *McCurdy v. Union Pac. R. R. Co.,* 68 Wn.2d 457 (1966), held that certain items (such as those referenced in *Kimball,* but not limited thereto) fell within the presumptive no-market value category. *Id.,* at 468. *Mieske* expanded upon *McCurdy* by invoking *Restatement of Torts* § 911 (1939) to identify the class of items for which there is only an intrinsic value. *Id.,* at 44. The Alaska Supreme Court also followed this logic, noting it was a stance taken by "a number of courts and the Restatement (Second) of Torts[.]" *Landers v. City of Anchorage,* 915 P.2d 614, 618 (Ak.1996)(fn. omitted).[7]

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[5] A "good" is anything that is movable at the time of its identification in a contract for sale, and includes the unborn young of animals. RCW 62A.2-105(1). Cats and other animals, like horses, fit squarely within the statutory definition of a "good." *Graham v. Notti,* 147 Wash.App. 629 (III, 2008) (applying UCC to Pomeranian); *Travis v. Washington Horse Breeders Ass'n,* 111 Wn.2d 396, 401 (1988). As "goods," the only question is whether they are "household" or "non-household" goods. RCW 62A.9-109 previously categorized "goods" as "consumer goods," "equipment," "farm products," and "inventory." RCW 62A.9-109(1) stated that "goods are 'consumer goods' if they are used or bought for use primarily for personal, family or household purposes.'" *Commercial Credit Equipment Corp. v. Carter,* 83 Wn.2d 136, 138 (1973)(expensive hobby items, including airplane, were "consumer goods," not "equipment." RCW 62A.9-109(1) has been since repealed. However, the definition of "consumer goods" is retained in identical form at RCW 62A.9A-102(23) and incorporated by reference at RCW 62A.2-103(3).

[6] In every circuit that has considered the question, including the Ninth, domestic animals are "effects" under the Fourth Amendment. In 2005, the Ninth Circuit reiterated this doctrine, noting, "We have recognized that dogs are more than just a personal effect. *See Miller v. Clark Cy.,* 340 F.3d 959, 968 n.13 (9th Cir.2003)." *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose,* 402 F.3d 962, 975 (9th Cir.(Cal.)2005).

[7] The "number of courts" referenced by *Landers* included a footnote to four decisions, two of which were from Washington – viz., *Herberg v. Swartz,* 89 Wn.2d 916 (1978), and *McCurdy v. Union Pacific R.R. Co.,* 68 Wn.2d 457

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Although immaterial given the foregoing *per se* rules under Washington State law and the Restatement commentators, Mr. Anderson can easily prove lack of market value by his own testimony. Fair market value is defined as:

> **Neither a panic price, auction value, speculative value, nor a value fixed by depressed or inflated prices**. We have defined it as the amount of money which a purchaser willing, but not obliged, to buy the property would pay an **owner willing, but not obligated, to sell it,** taking into consideration **all uses to which the property is adapted and might in reason be applied.**

Donaldson v. Greenwood, 40 Wn.2d 238 (1952)(emphasis added). Mr. Anderson would never have been being "willing" to sell Chucky, since he was a family member, Further, there is no way any jury would find that Chucky, who was hypothermic, in shock, and septic, had a fair market or replacement value at the time he died.

Specifically, Chucky offered therapeutic, hedonic, and recreational value to Mr. Anderson, who is not married and has no children. He also relied upon Chucky as his tried and true hunting companion, whom he took out 200 days per year, from the age of six months, and with whom he won several competitions. Chucky also enhanced the value of other activities and locations, and made "coming home" a more enriching experience. *See* Daniel M. Warner, *No Place of Grace: Recognizing Damages for Loss of Home-Place*, 8 Wis. Envtl. L.J. 3 (Spr. 2002)(seeking to extent loss of consortium to loss of home and to compensate for disruption of relationship to same).

Chucky enhanced the value of the Mr. Anderson's relationships and built bonds to others. Adjunct Harvard Law Professor Steven Wise stated that "the wrongful killing of one's companion animal may threaten the way in which an owner constitutes herself: in losing her

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(1966). Thus, other states have interpreted Washington common law in a manner consistent with the notion that even if there exists a market value, where the "value to the owner" denotes the existence of factors apart from those entering into exchange value that cause the article to be more desirable to the owner than to others, "it would be unjust to limit the damages for destroying or harming [these] articles to the exchange value." *Id.* (quoting *Restatement (2nd) of Torts* § 911).

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companion animal, she loses a vital part of herself." 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, 67-68 (1998). Each act of positive and loving reinforcement, command, massage of the ear, rub on the back, activity shared with others and in new locations, what one may call "investments" over the period of care increase Chucky's value the way aging wine's maturation creates a more developed and multi-layered bouquet, its flavor becomes more satisfying, and its quality rises. One New York court reasoned that a good dog's value increases rather than falls with age and training. "The dog's age is not a depreciation factor in the court's calculations, for 'manifestly, a good dog's value increases rather than falls with age and training.'" *Brousseau v. Rosenthal*, 110 Misc.2d 1054 (N.Y. City Civ. Ct. 1980)(quoting *Stettner v. Graubard*, 82 Misc.2d 132 (Town Ct.1975)).

These labors of socialization, individualized training, and reciprocation made Chucky more "functional" and "useful" to Mr. Anderson and, thus, dramatically increased his intrinsic value. He was a "work of art," and Mr. Anderson the artist, whose strokes on canvas or cuts in a slab of bronze transformed him into the animal he became. However, this masterpiece may revert to its raw state if ignored or mistreated. Mr. Anderson did not allow this to happen, as he provided veterinary care as needed. Chucky cannot be replaced as easily as one removes a SIM card from one cell phone into another. This argument simply does not jibe with human-animal experience. There no fair market value for a pet who has been kept as a family member by a particular individual. The animal's value is optimized for personal use, like specially manufactured property or a stamp printed to advertise services of one individual with little or no use to anyone else.

Chucky imprinted on Mr. Anderson. To create a new "stamp," as it were, would require an investment beyond just buying a generic model and would turn on the impossible task of

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reenacting over a decade of environmental variables and genetic characteristics. While most toaster ovens function according to rigorous specifications established both by law and manufacturer guidelines, consumers and retailers alike rely on quality controls that ensure that Toaster 1 and Toaster 1,000,001 will operate within the same tight margin of performance. However, dogs and cats are not like toasters. Though breeders may hope to create the perfect specimen, even geneticists cannot guarantee that a cloned animal will behave identically to its progenitor. The age-old debate of nurture versus nature applies with equal vigor to humans and nonhumans alike. The jury should be charged that Chucky's value is intrinsic to Mr. Anderson.

c. Prejudgment Interest, Veterinary Bills, and Mileage

Division III of the Court of Appeals, in *Walla Walla Fire Protection Dist. No. 5, v. Washington Auto Carriage, Inc.*, 50 Wash.App. 355 (1988) described the circumstances for recovering prejudgment interest:

> Prejudgment interest is allowed when: (1) an amount claimed is "liquidated", or (2) when the amount of an "unliquidated" claim is for an amount due upon a specific contract for the payment of money, and the amount due may be determined by computation with reference to a fixed standard contained in the contract without reliance on opinion or discretion. **A claim is liquidated when the evidence furnishes data which, if believed, makes the exact computation of the amount possible without resort to opinion or discretion.** "A dispute over the claim, in whole or in part, does not change the character of a liquidated claim to unliquidated." *Hansen v. Rothaus, supra* at 472, 730 P.2d 662 (citing *Prier v. Refrigeration Eng'g Co.*, 74 Wash.2d 25, 33, 442 P.2d 621 (1968)). However, where the exact amount of the sum cannot be definitely fixed from the proven facts, disputed or undisputed, but must depend on the opinion or discretion of the judge or jury, then the claim is unliquidated. *Hansen v. Rothaus, supra* 107 Wash.2d at 473, 730 P.2d 662 (quoting *Prier*, 74 Wash.2d at 33, 442 P.2d 621).

Id., at 358 (emphasis added). "A claim is unliquidated if the facts proved did not permit an exact sum to be fixed." *McConnell v. Mothers Work, Inc.*, 131 Wash.App. 525, 536 (III, 2006). While it is true that medical bills pertaining to human treatment may typically be unliquidated, as noted

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in *Hansen*, the Supreme Court allowed that in some circumstances vessel repair bills and unpaid wages could be deemed liquidated. *Hansen v. Rothaus,* 107 Wn.2d 468, 475, 477 (1986)(deeming certain vessel repair bills liquidated); *see also Washington Auto Carriage*, at 358 (noting that parties agreed to cost of chassis, cost to attach firefighting equipment to chassis; fair market value of equipment on truck at time of fire, towing charges, and salvage value – all of which were deemed by the court as "liquidated").

The distinction turns on whether the factfinder must use discretion to determine "the *measure* of damages" (in which case it is unliquidated), rather than determining whether damages should be awarded in whole or in part yet where the damages can be determined "by reference to an objective source such as fair market value" (in which case it is liquidated.) *Aker Verdal A/S v. Neil F. Lampson, Inc.,* 65 Wash.App. 177, 190 (1992). Indeed, "even though the defendant [may dispute] whether some repairs were necessary and/or whether it caused some or all of the damage, the sum is nevertheless liquidated." *Id.,* at 191.

Given that property principles apply to the dog at issue, it follows that a vessel repair bill is more akin to a "dog repair bill" than medical bills for human health care. In this respect, the veterinary hospital is like an auto mechanic. The bills have been set forth in invoice form. No opinion or discretion is required in determining the value (as might be required for general damages). *See also McConnell,* at 525 (employees' unpaid hours were liquidated damages and prejudgment interest proper since jury had necessary data to make factual determination set out in the evidence). "Prejudgment interest may be properly awarded from the date a claim becomes liquidated." *Id.,* at 359. Plaintiffs are compensated for the "use value" of the money representing their damages "for the period of time from his loss to the date of judgment." *Id.,* at 360 (quoting *Hansen v. Rothaus,* 107 Wn.2d 468, 473 (1986)). Mr. Anderson is entitled to interest at 12%

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interest per annum since Mar. 10, 2014 on the veterinary bills incurred to save Chucky's life (which Dr. Krippaehne has indicated were reasonable, medically necessary, and usually and customarily priced), and mileage to and from Mr. Anderson's home.

d. Emotional Distress

Emotional distress damages follow from the torts of conversion and fraud as a matter of century-old law. *Sherman v. Kissinger,* 146 Wash.App. 855, fn. 8 (I, 2008)(accord relative to *Birchler v. Costello Land Co.,* 133 Wn.2d 106, 116 (1997) and *Cagle v. Burns & Roe, Inc.*, 106 Wn.2d 911, 916 (1986)(court has liberally construed damages for emotional distress as being available merely upon proof of an intentional tort; general damages for intentional torts to property consistent with modern rule)); *Nord v. Shoreline Sav. Ass'n,* 116 Wn2.d 477, 482-85 (1991)(neither severity nor medical evidence required to recover general damages). Mr. Anderson's continues to suffer extreme mental anguish from the events of March 2014, as will be borne out at trial.

CERTIFICATE OF SERVICE

I certify that on Jul. 11, 2016, I caused a true and correct copy of the foregoing to be served on Daniel Stowe via email by stipulation.

Respectfully submitted this Jul. 11, 2016.

ANIMAL LAW OFFICES

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