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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10 TERRENCE ING,

11 Plaintiff,

12 v.

13 AMERICAN AIRLINES, a corporation doing
business in the State of California; and DOES 1
14 through 20, inclusive,

15 Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES

(unlimited jurisdiction)

Jury Trial Demanded

16
17 **INTRODUCTION**

18 This is an action filed by Plaintiff Terrence Ing against American Airlines for the death of
19 Plaintiff's dog, Willie. Plaintiff and Willie flew from New York to San Francisco. Upon arrival in
20 San Francisco, Plaintiff retrieved Willie from the cargo area. Willie was alive, but in physical
21 distress. American Airlines' employees took Willie from Plaintiff and placed Willie in the
22 inaccessible cargo area and prevented Plaintiff from taking Willie to a veterinarian. Although the
23 Animal Welfare Act requires airlines to provide necessary medical care to animals that they
24 transport, American Airlines did not have any veterinarian on-site, or protocol to deal with animal
25 emergencies, to provide Willie with care. Instead, American Airlines employees told Plaintiff that
26 he would have to find a veterinarian that would come to the airport and provide Willie with care in
27 the cargo room. By the time Plaintiff arranged for veterinarians to come to the airport and treat
28 Willie, he had already died.

1 **PARTIES**

2 1. Plaintiff TERRENCE ING (“Plaintiff”) was at all times herein mentioned a resident of San
3 Francisco County, California, and the co-owner of Willie, a male, two-year old, English Bulldog.

4 2. At all times mentioned herein, Defendant AMERICAN AIRLINES (“Defendant”) was a
5 corporation qualified to do business and doing business in the State of California, and was a carrier
6 engaged in the business of airline transportation.

7 3. At all times mentioned, all Defendants and each of them, were agents and or employees of
8 all other Defendants, and were acting in the course and scope of their authority as agents and
9 employees with the consent and ratification of all Defendants.

10 4. Defendants DOES 1 through 20, inclusive, are sued under fictitious names. Their true
11 names and capacities are unknown to Plaintiff. When their true names and capacities are
12 ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein.
13 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants
14 is responsible in some manner for the occurrences herein alleged, and that Plaintiff’s damages as
15 herein alleged were proximately caused by those Defendants.

16 **JURISDICTION**

17 5. This court has jurisdiction over these claims under California Code of Civil Procedure
18 sections 88, 410.10, and 410.50. Venue in this Court is proper because the acts complained of
19 occurred in San Francisco County.

20 **ALLEGATIONS**

21 6. On or about August 2, 2005, Plaintiff transported his dog Willie, a male, two-year old,
22 English Boxer, on American Airlines Flight #59 from New York’s JFK International Airport
23 (“JFK”) to San Francisco’s International Airport (“SFO”).

24 7. Before the flight, Willie was examined by a qualified veterinarian and approved for air
25 travel.

26 8. American Airlines’ policy dictates that snub-nosed dogs may not travel when the
27 temperature rises above seventy-five degrees.

28 9. American Airlines was made aware that Willie was a snub-nosed dog.

1 10. When flight #59 took off from JFK the temperature was eighty-four degrees.

2 11. Upon arriving at SFO, Plaintiff went to the baggage area to pick up Willie and return home.

3 12. American Airlines' employees asked Plaintiff to enter the cargo room.

4 13. Upon entering the cargo room, Plaintiff found a number of employees surrounding Willie's

5 kennel where Willie was still locked inside.

6 14. Plaintiff cut the ties to Willie's kennel to find him alive, but in physical distress.

7 15. Plaintiff frantically asked for employees to call a veterinarian. He was informed that a

8 veterinarian would arrive in five minutes.

9 16. Plaintiff later found out that a veterinarian was never called.

10 17. Plaintiff repeatedly asked to take Willie to a veterinarian and was refused.

11 18. American Airlines employees transferred Willie to a cargo hangar where the Customer

12 Service Manager admitted he did not know the protocol for this situation and went on to joke with

13 his manager about Willie over the phone.

14 19. American Airlines' employees told Plaintiff that he was responsible for getting a

15 veterinarian to come to the airport. Plaintiff called all of the veterinarians in the area that he could

16 possibly contact.

17 20. Pursuant to Federal law, airlines must determine if a dog is in obvious physical distress and

18 the airlines must arrange for any needed veterinary care as soon as possible. (9 Code of Federal

19 Regulations, Chapter 1, section 3.17(b); *see also Federal Register*, Vol. 55, No. 32, February 15,

20 1991, P. 6426-6505 (stating that "[i]f the animal is in obvious distress, then the carrier must arrange

21 for any needed veterinary care.")) The airlines have this duty so long as they maintain physical

22 custody of the dog. (9 Code of Federal Regulations, Chapter 1, section 3.17(e).)

23 21. Furthermore, employees of the airlines that handle or care for the transported animals must

24 be "supervised by an individual who has the knowledge, background, and experience in proper . . .

25 care of dogs . . . to supervise others." (9 Code of Federal Regulations, Chapter 1, section 3.12.)

26 22. After a dozen calls and approximately five hours, Plaintiff was able to locate a pet

27 ambulance service that was able to respond to the emergency.

28 23. When the pet medics arrived, Willie was already dead.

1 24. The pet medics stated that "if veterinary care had been readily available [at the airport], it
2 may have made a difference in the outcome for [Willie]. Rapid access to medical care may have
3 prolonged his life"

4 25. Willie would not have died had American Airlines followed their established procedures
5 and followed federal procedures to provide safe travel for companion animals and necessary care
6 for animals in obvious physical distress.

7 **FIRST CAUSE OF ACTION**

8 *(Negligence)*

9 26. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.

10 27. Defendant had a duty to Plaintiff to respect Plaintiff's property and the value of Willie's
11 life. This duty included providing safe transport and veterinary care. Specifically, this duty
12 prevented Defendant from allowing Willie to be transported when the temperature was unsafe.
13 Furthermore, this duty required Defendant to provide or arrange for prompt veterinary care when
14 Willie showed signs of physical distress.

15 28. Defendant breached this duty by transporting Willie when temperatures were too high and
16 by not providing veterinary care or allowing Plaintiff to seek veterinary care for Willie.

17 29. Defendant's acts caused the death of Willie and thereby a total loss to Plaintiff of the value
18 of Willie.

19 30. Plaintiff has suffered economic and non-economic damages as more specifically set forth in
20 the prayer below.

21 **SECOND CAUSE OF ACTION**

22 *(Gross Negligence)*

23 31. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.

24 32. Defendant had a duty to Plaintiff to respect Plaintiff's property and the value of Willie's
25 life. This duty included providing safe transport and veterinary care. Specifically, this duty
26 prevented Defendant from allowing Willie to be transported when the temperature was too hot.
27 Furthermore, this duty required Defendant to provide or arrange for prompt veterinary care when
28 Willie showed signs of physical distress.

1 33. Defendant's breaches of these duties demonstrate a complete absence of care for Plaintiff's
2 property rights or the value of Willie's life. Furthermore, Defendant's conduct was an extreme
3 departure from the ordinary standard of conduct that is expected by a reasonable person.

4 34. Defendant's acts were done against Plaintiff's will and in disregard of humanity.

5 35. As a result of the grossly negligent conduct as alleged, Plaintiff has suffered economic and
6 non-economic damages as more specifically set forth in the prayer below.

7 **THIRD CAUSE OF ACTION**

8 *(Trespass to Chattel)*

9 36. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.

10 37. Defendant knew or had reason to know that Willie belonged to Plaintiff.

11 38. Defendant intentionally, or recklessly without regard for Plaintiff's rights, failed to provide
12 safe transport and veterinary care for Willie thereby causing Willie's death. Furthermore,
13 Defendant prevented Plaintiff from accessing his property.

14 39. Defendant's acts were done without Plaintiff's permission and in disregard of humanity.

15 40. Defendant's unauthorized acts resulted in Willie's death and thereby a total loss to Plaintiff
16 of the value of Willie.

17 41. Plaintiff has suffered economic and non-economic damages as more specifically set forth in
18 the prayer below.

19 **FOURTH CAUSE OF ACTION**

20 *(Conversion)*

21 42. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.

22 43. Defendant's acts interfered with Plaintiff's ownership rights in Willie.

23 44. Defendant's interference with Plaintiff's ownership of Willie was intentional.

24 45. Defendant's intentional interference with Plaintiff's ownership of Willie resulted in Willie's
25 death and thereby a total loss to Plaintiff of the value of Willie.

26 46. Plaintiff has suffered economic and non-economic damages as more specifically set forth in
27 the prayer below.

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FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

- 47. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.
- 48. Defendant’s acts were extreme and outrageous conduct.
- 49. Defendant’s acts were done with reckless disregard for the probability of causing, emotional distress to Plaintiff.
- 50. As a direct result of Defendant’s extreme and outrageous conduct in not providing or allowing Plaintiff to seek veterinary care, Plaintiff has suffered severe emotional distress.
- 51. Plaintiff has suffered economic and non-economic damages as more specifically set forth in the prayer below.

SIXTH CAUSE OF ACTION

(Breach of Bailment Contract)

- 52. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.
- 53. Plaintiff bailed his property, Willie, to Defendant for transport.
- 54. Defendant accepted Plaintiff’s property and agreed to transport Willie in a safe manner that complied with all federal regulations and American Airlines’ procedures, and return Willie to Plaintiff.
- 55. Defendant failed to comply with American Airlines’ procedures and federal regulations regarding the safe transport and care of animals and therefore returned Willie to Plaintiff in a damaged form.
- 56. Defendant’s breach of bailment resulted in Willie’s death and thereby a total loss to Plaintiff of the value of Willie.
- 57. Plaintiff has suffered economic and non-economic damages as more specifically set forth in the prayer below.

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1 **SEVENTH CAUSE OF ACTION**

2 *(Breach of Contract)*

3 58. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.

4 59. Plaintiff contracted with Defendant to transport his dog in a safe manner that complied with
5 all federal regulations and American Airlines' regulations.

6 60. Defendant failed to comply with federal aviation regulations and animal welfare code
7 regulations, as well as there own policies regarding animal transportation.

8 61. Defendant's breach of contract resulted in Willie's death and thereby a total loss to Plaintiff
9 of the value of Willie.

10 62. Plaintiff has suffered economic and non-economic damages as more specifically set forth in
11 the prayer below.

12 **EIGHTH CAUSE OF ACTION**

13 *(Negligence Per Se based on violation of 9 Code of Federal Regulations Chapter 1, sections*

14 *3.17(b), (e) and 3.12)*

15 63. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.

16 64. Defendant had a duty to arrange for veterinary care as soon as possible when Willie showed
17 signs of obvious physical distress. This duty is codified as 9 Code of Federal Regulation Chapter 1,
18 section 3.17(b). Defendant had this duty so long as they maintained physical custody of Willie. (9
19 Code of Federal Regulations, Chapter 1, section 3.17(e).) Defendant's employees that handle or
20 care for the transported animals must be "supervised by an individual who has the knowledge,
21 background, and experience in proper . . . care of dogs . . . to supervise others." (9 Code of Federal
22 Regulations, Chapter 1, section 3.12.)

23 65. Plaintiff was within the class of persons for whose protection these regulations were
24 adopted. The regulations were adopted to ensure that prompt veterinary care is provided to a sick
25 or injured animal for the benefit of the animal and the animal's owner. In this case, Plaintiff was
26 injured because prompt veterinary care was not provided and therefore Plaintiff's dog Willie died.
27 Furthermore, these regulations were adopted to ensure that airline employees and/or supervisors
28 have the knowledge to properly care for a sick or injured dog. Defendant's employees did not

1 know what to do with Willie once they saw that he was in physical distress. Defendant's
2 employees' and supervisors' ignorance in knowing how to care for Willie, or even knowing how to
3 get a veterinarian to assist, resulted in Willie's death.

4 66. Willie's death was an injury of the type of which said regulations were designed to prevent.
5 The regulations were adopted to avoid situations wherein sick or injured animals are not provided
6 with veterinary care while in the custody of the airline carrier. In this case, Willie died as a result
7 of Defendant not arranging for prompt veterinary care.

8 67. Plaintiff's damages are legally and directly caused by the violations.

9 68. Defendant's violation of the transportation guidelines resulted in Willie's death and thereby
10 a total loss to Plaintiff of the value of Willie.

11 69. Plaintiff has suffered economic and non-economic damages as more specifically set forth in
12 the prayer below.

13 **NINTH CAUSE OF ACTION**

14 *(Violation of California Code of Civil Procedure Section 3340)*

15 70. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.

16 71. California Code of Civil Procedure section 3340 states:

17 For wrongful injuries to animals being subjects of property,
18 committed willfully or by gross negligence, in disregard of
19 humanity, exemplary damages may be given.

20 72. Defendant's engaged in gross negligence as described in paragraphs 1-25 and 31-35.

21 73. Defendant's acts were done in disregard of humanity because Defendant failed to provide or
22 arrange for veterinary care as federal law requires. Furthermore, Defendant prevented Plaintiff
23 from accessing his property and taking Willie to a veterinarian. Defendant engaged in this conduct
24 while knowing that Willie was suffering from physical distress.

25 74. Plaintiff has suffered economic and non-economic damages as more specifically set forth in
26 the prayer below.

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1 **ELEVENTH CAUSE OF ACTION**

2 *(Violation of Business and Professions Code 17203, et seq.)*

3 75. Paragraphs 1-25 are incorporated herein by reference as though fully set forth.

4 76. Defendant engages in unfair competition and unlawful conduct by transporting live animals
5 without complying with federal regulations that ensure the safe transport of these animals.
6 Specifically, Defendant does not provide for prompt veterinary care when animals that they
7 transport show signs of physical distress, as required by 9 Code of Federal Regulations Chapter 1,
8 section 3.17(b) and (3). In addition, Defendant’s employees and supervisors are untrained and
9 unqualified in providing care for animals in physical distress and/or arranging for said care, as
10 required by 9 Code of Federal Regulations Chapter 1, section 3.12.

11 77. As a result of Defendant’s unlawful conduct, Plaintiff has suffered economic injury due to
12 the costs of transport and loss of value of his dog. Plaintiff has also suffered emotional distress and
13 a complete loss of his “property.”

14 78. Plaintiff has suffered economic and non-economic damages as more specifically set forth in
15 the prayer below.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 18 a. For compensatory damages in an amount according to proof sufficient to
19 compensate Plaintiff for the peculiar value of Willie, pursuant to California Civil
20 Code section 3355, or any other applicable code section or common law doctrine;
- 21 b. For mental, physical and emotional pain and suffering in an amount according to
22 proof;
- 23 c. For exemplary damages pursuant to California Civil Code section 3340, or any other
24 applicable code section or common law doctrine, in an amount according to proof;
- 25 d. For reasonable costs and attorneys’ fees of this action, pursuant to the private
26 attorney general doctrine or any other applicable code section or common law
27 doctrine;

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- e. For a declaration that Defendant’s conduct is not in accordance with Federal law, in that Defendant has a duty, not the pet owner, to provide or arrange for prompt veterinary care when the animals they transport are in physical distress and the animal is in Defendant’s custody;
- f. For a declaration that Defendant cannot prevent a pet owner from taking possession of their animal in order to take the animal to a veterinarian, after the flight is completed and the animal is showing signs of physical distress;
- g. For injunctive relief, prohibiting Defendant from transporting live animals without the ability to provide or arrange for prompt veterinary care when the animals they transport are in physical distress; and
- h. For such and further relief as the Court may deem proper.

JURY DEMAND

Plaintiff hereby demands trial by jury.

Respectfully submitted,

EVANS & PAGE

Dated: March 29, 2006

By:
Corey A. Evans
Attorney for Plaintiff

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