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L.A.M.C.
VAN NUYS BRANCH

1 MICHAEL ROTSTEN SBN #45861
2 16133 Ventura Boulevard
3 Suite 700
4 Encino, Ca 91436-2431
5 (818) 789-0256

6 Attorney for Plaintiff
7 RICHARD B. RAPPAPORT

8 IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL
9 DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA
10 (VAN NUYS BRANCH) **95E09139**

11 RICHARD B. RAPPAPORT,
12 Plaintiff,

13 vs.

14 MAX E. McELROY, D.V.M.
15 SHERWOOD VETERINARY CLINIC, Inc.,
16 and DOES 1 through 30, Inclusive,
17 Defendants.

CASE NO.

COMPLAINT FOR DAMAGES

- 1. Negligence;
- 2. Trespass To Chattel;
- 3. Intentional Spoilation Of Evidence;
- 4. Negligent Spoilation Of Evidence;
- 5. Conversion;
- 6. Civil Code 3340.

18 Plaintiff RICHARD B. RAPPAPORT, hereinafter referred to as
19 "Plaintiff" alleges as follows:

20 PARTIES

21 1. Plaintiff is and at all times herein mentioned was a
22 resident of the City and County of Los Angeles, California.
23 Plaintiff was the owner of a male exotic Serval Cat named "Cher
24 Khan." (Hereinafter referred to as "Khan.")

25 2. Defendant, Max E. McElroy, D.V.M., is a veterinarian
26 duly licensed to practice veterinary medicine and surgery in the
27 State of California. At all times relevant to this action,
28 Defendant was engaged in the practice of veterinary medicine at

1 Sherwood Veterinary Clinic, Inc., in Sherman Oaks, California and
2 held himself out as possessing that degree of knowledge, skill
3 and care ordinarily possessed and exercised by veterinarians in
4 the same or similar locality within the State of California.

5 3. Plaintiff is informed and believes, and based upon such
6 information and belief, allege that defendant Sherwood Veterinary
7 Clinic, Inc., (hereinafter referred to as "Clinic") is a business
8 organization, form unknown licensed to do business under the laws
9 of the State of California, with its principal place of business
10 at 13510 Ventura Blvd., Sherman Oaks, California 91423.

11 4. Plaintiff is unaware of the true names and capacities,
12 whether individual, corporate, associate, or otherwise, of
13 defendants sued herein as DOES 1-30, inclusive, and therefore
14 sues those defendants by such fictitious names. Plaintiff will
15 amend this complaint to allege their true names and capacities
16 when ascertained. Plaintiff is informed and believes and thereon
17 alleges that each of the fictitiously named defendants are
18 legally responsible or negligent in some manner for the
19 occurrences herein alleged, and that Plaintiff's injuries and
20 damages as herein alleged were directly and legally caused by
21 that act or negligence.

22 5. At all times herein mentioned, each defendant was the
23 agent, joint venturer and employee of each of the remaining
24 defendants, and in doing the things herein alleged, was acting
25 within the course and scope of such agency, joint venture and
26 employment with the advance knowledge, acquiescence or subsequent
27 ratification of each and every remaining defendant.

28 6. At all times relevant to this action, Plaintiff was a

1 client at the "Clinic" and Plaintiffs' cat 'Khan," was under the
2 care and control of defendants, and each of them. The defendants,
3 and each of them, held themselves out to be experts in the
4 examination, treatment and care of Exotic cats.

5 FACTS

6 7. Plaintiff was the owner, possessor, and keeper of a
7 male Serval exotic cat, named "Cher Khan."

8 8. Plaintiff had obtained "Khan" for commercial purposes
9 and soon developed a close bond with the cat whereby "Khan" was
10 also the companion pet of the Plaintiff and an important member
11 of Plaintiffs' family. Defendants, and each of them knew or
12 should have known of Plaintiffs' close attachment to "Khan" and
13 of "Khan's" special value to Plaintiff.

14 9. On or about September 24, 1994, Plaintiff presented
15 "Khan" to Defendant "McElroy" at defendants "Clinic" for a check
16 up. Plaintiff was advised that the cat was healthy, but pointed
17 out apparent flea droppings in the neck area. Defendant "McElroy"
18 proceeded to treat the fleas with a product called Spotton and
19 dispensed additional Spotton for later use. Plaintiff was not
20 offered a disclaimer regarding the use of Spotton nor advised
21 that the product was not to be used on felines.

22 10. At all times mentioned in this complaint, defendants,
23 and each of them, held themselves out to be experts in the
24 treatment and care of exotic cats.

25 11. On or about October 5, 1994, at approximately 8:30 p.m.
26 "Khan" began to exhibit signs of extreme weakness and could not
27 walk on his own but a few feet. Plaintiff immediately brought
28 "Khan" to the 24-hour Emergency Animal Clinic located at 5152

1 Sepulveda Blvd, Sherman Oaks, California. Plaintiff brought and
2 showed the treating veterinarian the prescribed Spotton. "Khan"
3 was treated and kept overnight for observation. However, "Khans"
4 condition deteriorated do to the use of Spotton.

5 12. On or about October 6, 1994, because defendants held
6 themselves out as experts in the examination and treatment of
7 exotic cats, Plaintiff picked up "Khan" while he was still alive
8 and brought him back to defendant "McElroy" and defendants
9 "Clinic" for additional treatment.

10 13. On or about October 7, 1994, while in the care and
11 custody of defendants, and each of them, "Khan" died.

12 14. Plaintiff requested a necropsy, to determine the cause
13 of the cat's death, and defendant "McElroy" assured the plaintiff
14 that he would perform the necropsy and return the cat's body
15 thereafter.

16 15. Thereafter, on or about October 28, 1994, November 1,
17 1994, November 3, 1994, and November 5, 1994, Plaintiff called
18 the defendant, "Clinic" requesting the results of the necropsy.
19 On each date, Plaintiff was told that he would be given the
20 results via a return phone call. The Plaintiff never received a
21 return call or the necropsy results.

22 16. On or about November 7, 1994, Plaintiff went to the
23 defendant's "Clinic" requesting the information on the necropsy
24 and his records. At that time, defendant "McElroy" advised the
25 Plaintiff that "Khans" body was missing. The records were not
26 provided to Plaintiff.

27 17. On or about November 9, 1994, Plaintiff went back to
28 the defendant "Clinic" and obtained a copy of the records

1 regarding "Khan." The medical records did not contain any
2 documentation of a necropsy or of any results thereof. The
3 Plaintiff never received any necropsy report nor the cat's body
4 back.

5 18. On or about December 20, 1994, pursuant to the
6 provisions of Section 364 of the California Code of Civil
7 Procedure, Plaintiff caused to be served on each of the
8 defendants a notice of Plaintiffs' intention to commence this
9 action.

10 FIRST CAUSE OF ACTION

11 Veterinary Malpractice - Negligence

12 (Against All Defendants)

13 19. The allegations of paragraphs 1 through 18 are
14 realleged and incorporated by reference herein.

15 20. Defendants, and each of them, established a special
16 relationship with Plaintiff on or about September 24, 1994, when
17 "Khan" was presented to defendants for a routine check up. For
18 valuable consideration, defendants were employed by Plaintiff,
19 and agreed and undertook to treat and care for "Khan." Pursuant
20 to this employment, defendants, and each of them, rendered
21 professional services in the treatment and care of Plaintiffs'
22 Serval cat, "Khan."

23 21. At all times mentioned in this complaint, defendants
24 and each of them, negligently failed to possess and exercise, in
25 both diagnosis and treatment, that reasonable degree of knowledge
26 and skill that is ordinarily possessed and exercised by experts
27 in the same or similar locality in similar circumstances, in
28 that, among other things, defendants, and each of their acts or

1 omissions fell below the standard of care.

2 22. As part of the services rendered for this
3 consideration, defendants took possession and control of
4 Plaintiffs' personal property, "Khan" and undertook to safely
5 treat and care for that personal property.

6 23. Defendants, and each of them, had exclusive control and
7 custody of Plaintiffs' Serval cat and all instrumentalities used
8 in the treatment and care of "Khan."

9 24. Defendants, and each of them, breached their duty of
10 care to Plaintiff by using the product Spotton for the treatment
11 of fleas on a Serval cat. Spotton is a product that is strictly
12 used on cattle and is not approved for any other animal.
13 Moreover, it is well established that Spotton is considered toxic
14 to felines.

15 25. Defendants, and each of them, further breached their
16 duty by failing to inform Plaintiff of the risks of the use of
17 Spotton on felines.

18 26. Defendants, and each of them, further breached their
19 duty by failing to perform a necropsy, losing the cats body, and
20 failing to preserve the cat's body pursuant to the specific
21 request of the Plaintiff.

22 27. Defendants, and each of them, so carelessly,
23 unskillfully, negligently and by gross negligence treated and
24 cared for "Khan," that Plaintiff was caused to and did suffer
25 injuries and damages hereinafter alleged. In so acting,
26 defendants failed to use the degree of knowledge, skill and
27 diligence ordinarily possessed and exercised by veterinarians in
28 the care and treatment of exotic cats, and failed to use the

1 degree of knowledge, skill and diligence possessed and exercised
2 by veterinarians who hold themselves out as experts in the
3 examination, treatment, and care of exotic cats, in Los Angeles,
4 county, California

5 28. As a direct and legal result of the carelessness and
6 negligence of defendants, and each of them, "Khan" died while
7 under the exclusive custody and control of defendants, and each
8 of them.

9 29. As a direct and legal result of the carelessness and
10 negligence of defendants, and each of them, Plaintiff has
11 suffered lost time and wages from work, loss of use and
12 companionship of his cat, the cost and expense of replacing and
13 training another exotic Serval cat, and other general and special
14 damages in an amount according to proof.

15 30 . As a further direct and legal result of the
16 carelessness and negligence of defendants, and each of them,
17 Plaintiff suffers and continues to suffer extreme mental,
18 physical and nervous pain and suffering and severe emotional
19 distress.

20 FURTHER FACTS IN SUPPORT OF INJURY TO ANIMALS BY GROSS
21 NEGLIGENCE, CIVIL CODE 3340

22 31. The actions of the defendants, and each of them,
23 including, but not limited to, representing themselves as experts
24 in the care and treatment of exotic cats; applying a product
25 commonly known as Spotton which is to be used on bovine only, is
26 not approved for any other animal and is toxic when used on
27 felines. Additionally, the defendants, and each of them failed
28 to heed the warnings as to the use of this product on cats as

1 indicated by the manufacturer as well as in veterinary medical
2 literature; or otherwise expected to be known by practicing
3 veterinarians both of ordinary skill and those holding themselves
4 out as experts in the care and treatment of exotic cats, and
5 failed to advise Plaintiff of the associated risks of using
6 Spotton on felines.

7 32. The defendants, and each of them knew or should of
8 known, that the application of this product to Plaintiffs' cat
9 would result in serious injury and/or death of the animal. The
10 conduct of the defendants, and each of them, breached their duty
11 of care to Plaintiff and acted carelessly, unskillfully, with
12 gross negligence, in disregard for humanity, and falls below any
13 minimum standard of care and treatment of an animal by a
14 veterinarian practicing in the community. Defendants' actions,
15 and each of them, were the sole cause of "Khans" death.

16 33. As a further direct and legal result of defendants, and
17 each of their gross negligence in disregard of humanity,
18 Plaintiff is entitled to exemplary damages pursuant to Civil Code
19 Section 3340.

20 SECOND CAUSE OF ACTION

21 Trespass to Chattel

22 (Against All Defendants)

23 34. The allegations of paragraphs 1-33 are realleged and
24 incorporated herein by reference.

25 35. Plaintiff brought to the Defendants, and each of them,
26 his exotic Serval cat for a general examination.

27 36. Defendants, and each of them, negligently failed to
28 advise and warn Plaintiff of the possible consequences and

1 dangers involved in applying Spotton on felines. Defendants, and
2 each of them failed to make a reasonable disclosure of the
3 information necessary for Plaintiff to make an intelligent and
4 informed choice about the care and treatment that defendants, and
5 each of them administered to "Khan." Had defendants, and each of
6 them, adequately informed Plaintiff of the possible consequences
7 and dangers of the care and treatment administered, Plaintiff
8 would not have consented to that care and treatment.

9 37. The defendants applied a product onto Plaintiff's cat
10 and sent the Plaintiff home with more Spotton and advised
11 Plaintiff to continue using such product without Plaintiff's
12 knowledge or consent to apply a product likely to cause death or
13 great bodily injury to Plaintiff's cat.

14 38. Plaintiff's cat died as a result of the use of such
15 product, and Plaintiff never received his cat back to do with it
16 as he saw fit.

17 39. As a direct and legal result of defendants, and each of
18 their unconsented to actions, Plaintiff suffered lost time and
19 wages from work, loss of use and companionship of his cat, the
20 cost and expense of replacing and training another exotic Serval
21 cat, and other general and special damages in an amount according
22 to proof.

23 FACTS IN SUPPORT OF WILLFUL INJURY TO ANIMALS,
24 CIVIL CODE SECTION 3340

25 40. The actions of the defendants, and each of them,
26 including, but not limited to, representing themselves as experts
27 in the care and treatment of exotic cats; wilfully applying a
28 product commonly known as Spotton which is to be used on bovine

1 only, is not approved for any other animal and is toxic when used
2 on felines. Additionally, the defendants, and each of them
3 wilfully failed to heed the warnings as to the use of this
4 product on cats as indicated by the manufacturer as well as in
5 veterinary medical literature or otherwise expected to be known
6 by practicing veterinarians, and wilfully failed to advise
7 Plaintiff of the associated risks of using Spotton on felines.

8 41. The defendants, and each of them wilfully applied this
9 product to Plaintiffs' cat, in reckless disregard for the
10 consequences knowing that such application would result in
11 serious injury and/or the death of the animal. The conduct of the
12 defendants, and each of them, was willful, in disregard for
13 humanity. Defendants' actions, and each of them, was the sole
14 cause of "Khans" death.

15 42. As a further direct and legal result of defendants, and
16 each of their willful acts, in disregard of humanity, Plaintiff
17 is entitled to exemplary damages pursuant to Civil Code Section
18 3340.

19 THIRD CAUSE OF ACTION

20 Intentional Spoliation of Evidence

21 (Against All Defendants)

22 43. The allegations of paragraphs 1 through 40 are
23 realleged and incorporated by reference herein.

24 44. Plaintiff possessed a claim for damages against the
25 defendants, and each of them.

26 45. Defendants, and each of them, knew of the existence of
27 Plaintiffs' potential claim for damages against them.

28 46. Defendants, and each of them, knew of the existence of

1 the body of "Khan" and was aware that it might constitute
2 evidence in a potential lawsuit involving Plaintiff.

3 47. Defendants, and each of them, engaged in acts intended
4 to cause the destruction, damage, loss or concealment of the body
5 of "Khan."

6 48. Defendants, and each of their acts caused the
7 destruction, damage, loss or concealment of the potential
8 evidence.

9 49. As a direct and legal result of defendants, and each of
10 them, Plaintiff sustained damage, namely Plaintiffs' opportunity
11 to prove his claim that the defendants, and each of them caused
12 the death of his cat. Further, the Plaintiff suffered severe
13 emotional distress as a result of the defendant's conduct.

14 FOURTH CAUSE OF ACTION

15 Negligent Spoliation of Evidence

16 (Against All Defendants)

17 50. The allegations of paragraphs 1 through 40 are
18 realleged and incorporated by reference herein.

19 51. Plaintiff possessed a claim for damages against the
20 defendants, and each of them.

21 52. Defendants, and each of them, knew or reasonably should
22 have known of the existence of Plaintiffs' potential claim for
23 damages against them.

24 53. Defendants, and each of them, knew or reasonably should
25 have known of the existence of the body of "Khan" and was aware
26 that it might constitute evidence in a potential lawsuit
27 involving Plaintiff.

28 54. Defendants, and each of them, knew or should have known

1 that if they did not act with reasonable care to preserve the
2 body of "Khan," the potential evidence could be destroyed,
3 damaged, lost or concealed.

4 55. Defendants, and each of them, failed to act with
5 reasonable care causing the destruction, damage, loss or
6 concealment of such evidence.

7 56. As a direct and legal result of defendants, and each of
8 them, Plaintiff sustained damage, namely Plaintiffs' opportunity
9 to prove his claim that the defendants, and each of them, caused
10 the death of his cat. Further, the plaintiff suffered severe
11 emotional distress as a result of the defendant's conduct.

12 FIFTH CAUSE OF ACTION

13 Conversion

14 (Against All Defendants)

15 57. The allegations of paragraphs 1 through 54 are
16 realleged and incorporated by reference herein.

17 58. Defendants, and each of them, agreed with Plaintiff to
18 keep the body of "Khan" for the purpose of performing a necropsy
19 and return the body to him to Plaintiff for burial, thereafter.
20 Thereby the defendants, and each of them, had a duty to keep the
21 body safe and to preserve it as evidence and not lose it.

22 59. Upon information and belief, defendants, and each of
23 them, wilfully appropriated the body of Plaintiffs' cat for their
24 own use or the use of another, to avoid its use as evidence
25 and/or take advantage of its value as an exotic pelt.

26 PRAYER FOR RELIEF

27 WHEREFORE, Plaintiff prays for judgment against defendants,
28 and each of them collectively for the sum of \$25,000.00 for

1 general, and special damages, as well as interest and costs of
2 suit, including but not limited to:

3 1. The replacement/market value of Plaintiffs' property,
4 "Khan," in an amount according to proof;

5 2. Plaintiff's loss of commercial use of "Khan," in an
6 amount according to proof;

7 3. Plaintiff's loss of companionship of "Khan" as a pet in
8 an amount according to proof;

9 4. Veterinary and incidental expenses in an amount
10 according to proof;

11 5. Lost wages and other sundry expenses in an amount
12 according to proof;

13 6. Mental, physical and nervous pain and suffering and
14 severe emotional distress and incidental sundry expenses in an
15 amount according to proof;

16 7. Exemplary damages pursuant to Civil Code Section 3340
17 in an amount according to proof;

18 8. Interest on the damages incurred according to law;

19 9. Costs of suit herein incurred according to law and
20 proof; and

21 10. Such other and further relief as the Court may deem
22 just and proper.

23 11. Plaintiff remits to the Jurisdiction Limit, if any of
24 this Court.

25 Dated: September 25, 1995

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Michael Rotsten, Attorney for
Plaintiff, RICHARD B. RAPPAPORT



ANIMAL RIGHTS LAW OFFICE NEWSLETTER

NEWS FROM ARLO (818) 789-0256

Vol. 1 No. 3

FEBRUARY, 1996

VETERINARIAN PAYS FOR KILLING A CAT!!

AN INSURANCE COMPANY FOR A S.F. VALLEY VETERINARIAN PAYS \$15,000 FOR THE DEATH OF A CAT IN SETTLEMENT OF A VETERINARY MALPRACTICE CASE

A veterinarian uses "Spotton"; a bovine medication, to eradicate fleas on a cat even though the product warning states that the product is toxic to felines. In a few days the cat dies. The Board of Examiners in Veterinary Medicine cites the doctor for negligence and comments on how bad it was for the doctor to use the product on a cat. The cat's owner hires ARLO and sues the vet.

Attorney Michael Rotsten, founder of the Animal Rights Law Office (ARLO), based in Encino, California, has been contending that owners of animals can recover damages in excess of the market value of the animal itself, when someone injures or kills an animal.

This belief is proving true though some groups, including PETA, ALDF,

and Lewis and Clark Law School have been advising people that cases against veterinarians are not worth more than a trip to Small Claims Court. However, there are a few States, as New York, Florida, and Hawaii that allow emotional distress damages and other general damages for the injury to or loss of an animal due to the wrongdoing of another. ARLO is showing California courts how to follow the trend

Animals as property

Attorney Rotsten suggests that "the payment of substantial damages for harm to animals and their owners will help put a stop to the lack of respect for animal life. If people have to pay more than a few dollars for their wrongdoing they will think twice before so doing".

There is a moral to the story. The owner questioned the veterinarian about the product's use and was told that "Spotton" can be used on cats, under the Dr's direction. Not so says the Vet Board.

Always question the Dr., though in many cases medications are safe when correctly used.

"ARLO" TAKES ON LAW ENFORCEMENT FOR THE SHOOTING OF DOGS

Two cases on the horizon include the shooting of two German Shepard

dogs by the San Diego Sheriff's Department, Vista Substation. The owners claim that the dogs were friendly and not doing anything when they were shot to death by Deputy Sherrifs called to the dog owners property, by the owners, to check out a suspicious package thrown onto the property by some passerby.

The other case involves the Los Angeles Police Department. They shoot to death a Rottweiler belonging to residents of the East San Fernando Valley. An officer contends it was necessary to kill the dog after a bite to the officer.

The owner contends that the force used was not necessary and that the dog was shot in the back while walking back home, next door to where the shooting took place. The owners in both cases suggest that the officers involved had no training on how to deal with dogs and over reacted.

Attorney Michael Rotsten will be working these two cases. However, Attorney Joanne E. Thompson, of San Diego, will be working on the San Diego case with him, as associate counsel. We will keep you apprised, as the cases unfold.

ARLO