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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 CITY AND COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

10
11 SHARON SHUMATE,
12 Plaintiff,

13 vs.

14 CECILE MOURAUX, an individual; JEAN-
15 PIERRE MOURAUX, an individual; both doing
business as HAPPY PETS INN, and DOES 1
16 THROUGH 25, inclusive,
17 Defendants.

Case No.: **309844**

FIRST AMENDED COMPLAINT FOR:
BREACH OF CONTRACT AND
NEGLIGENCE

Demand for Jury Trial

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19 Plaintiff SHARON SHUMATE [hereinafter "Plaintiff"] alleges:

20 **PRELIMINARY ALLEGATIONS**

21 1. Sharon Shumate [hereinafter Plaintiff Shumate] is and at all times mentioned below
22 was a single female and a resident of the City and County of San Francisco, State of California
23 and the owner of a pure-bred cocker spaniel dog named Daisy [hereinafter "Daisy"]. See
24 attached "Exhibit A."

25 2. Plaintiff Shumate acquired Daisy approximately ten years ago when Daisy was a nine-
26 week-old puppy. Plaintiff Shumate, at all times an unmarried individual, viewed Daisy as a
27 wonderful companion and considered Daisy more a part of her family rather than a pet. Plaintiff

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1 Shumate was close to Daisy and over the years pampered her and provided Daisy with love and
2 attention.

3 3. At all times Plaintiff Shumate kept Daisy indoors because of the inherent dangers to
4 Daisy should she be allowed to run free or unattended.

5 4. From the time Plaintiff Shumate acquired Daisy as a puppy, Daisy was never out of
6 Plaintiff's control, premises, or residence, unless Daisy was leashed.

7 5. Plaintiff Shumate is informed and believes that Defendant Cecile Mouraux
8 [hereinafter Defendant Cecile] was at relevant times herein mentioned, a female individual
9 residing in the State of California and doing business in the City and County of San Francisco as
10 the "Happy Pets Inn."

11 6. Plaintiff is informed and believes that Defendant Jean-Pierre Mouraux [hereinafter
12 Defendant Jean-Pierre] was at relevant times herein mentioned, a male individual residing in the
13 State of California and doing business in the City and County of San Francisco as the Happy Pets
14 Inn.

15 7. The true names and capacities of DOES 1 THROUGH 25, inclusive, [hereinafter
16 "DOE Defendants"], are unknown to Plaintiff Shumate. Plaintiff Shumate will amend this
17 complaint to insert their true names and capacities when ascertained. Plaintiff Shumate is
18 informed and believes, and thereon alleges, that each fictitiously named Defendant is liable to
19 Plaintiff Shumate for the acts, events, and occurrences alleged herein as a result of said
20 Defendants' relation to each Defendant, and each Defendants' participation in said acts, events,
21 or occurrences.

22 8. Each fictitiously named DOE Defendant is liable to Plaintiff for the acts, events and
23 occurrences alleged herein as a result of said DOE Defendant's relation to each remaining
24 Defendant, or because of each DOE Defendant's participation in said acts, events, or
25 occurrences. Because Plaintiff Shumate is ignorant of each DOE Defendant's identity,
26 relationship, interest, or capacity at this time, said persons and/or entities are being sued as DOE
27 Defendants. When Plaintiff Shumate ascertains the true identities, relationships, interests, or

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1 capacities of said DOE Defendants, Plaintiff Shumate will amend this Complaint to allege said
2 formation.

3 9. Plaintiff is informed and believes that at relevant times mentioned in this complaint,
4 Defendant Cecile Mouraux, Jean-Pierre Mouraux , and Defendants DOES 1 THROUGH 25,
5 inclusive, were the venturer, partner, joint-venturer, managing agent, supervisor, or employee of
6 each remaining Defendant, and in doing things alleged, were acting within the course and scope
7 of such relationship stated herein, or with permission or consent of each remaining Defendant.

8 10. Plaintiff is informed and believes that at relevant times mentioned in this complaint
9 each Defendant was responsible for the wrongful acts of each remaining Defendant because each
10 Defendant ratified each remaining Defendant's wrongful conduct alleged.

11 11. Plaintiff is informed and believes that at relevant times mentioned herein each
12 Defendant had knowledge of, or opportunity to learn of, each remaining Defendant's
13 misconduct. Despite this, each Defendant continued business relationships (alleged herein) with
14 each remaining Defendant, or otherwise engaged in wrongful conduct against Plaintiff Shumate.

15 12. Defendant Cecile Mouraux, Defendant Jean-Pierre Mouraux, and each Defendant
16 operated a pet boarding and sitting business called the "Happy Pets Inn," described by
17 Defendants as a "bed and breakfast for pets" and "the ultimate alternative for spoiled or sensitive
18 pets." As such, in December 1998 Defendants, and each of them, solicited Plaintiff Shumate to
19 arrange for Defendants to care for Daisy for a period of five days. Defendants entered into a
20 contract with Plaintiff Shumate and were bound to safely care for Plaintiff Shumate's dog Daisy.

21 **FIRST CAUSE OF ACTION**

22 **(Breach of Contract)**

23 13. Plaintiff incorporates Paragraphs 1 through 12 of Plaintiff's Preliminary Allegations
24 and realleges those paragraphs as though set forth herein in full.

25 14. In late-1998, Plaintiff Shumate spoke with Defendant Jean-Pierre Mouraux regarding
26 in-home pet care for Daisy. Defendant Jean-Pierre gave Plaintiff Shumate detailed papers
27 describing Defendants' Happy Pets Inn as "a bed and breakfast for pets" that would provide

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1 Daisy with "personal care in a secure atmosphere." A true and correct copy of the material
2 Defendant Jean-Pierre handed to Plaintiff Shumate is attached hereto as "Exhibit B."

3 15. In January 1999, in reliance on Defendants' oral and written representations made in
4 Defendants' materials, Plaintiff Shumate telephoned Defendant to inquire whether Happy Pets
5 Inn could care for Daisy for several days in early 1999.

6 16. In response to Plaintiff Shumate's inquiry, Defendant told Plaintiff that Happy Pets
7 Inn would care for Plaintiff Shumate's dog Daisy at Happy Pets Inn and that the Happy Pets Inn
8 "Shuttle" would pick up Daisy to take her to the Inn [a service described in the materials
9 Defendant Jean-Pierre handed to Plaintiff Shumate; See Exhibit B].

10 17. On or about December 29, 1998 Defendant Jean-Pierre handed Plaintiff Shumate
11 documents including a letter, detailed information about Defendants' services, letters of
12 recommendation from Defendants' customers, and a page titled "Contract." Defendant Jean-
13 Pierre gave copies of these documents to Plaintiff Shumate. True and correct copies of these
14 documents are attached hereto as "Exhibit C."

15 18. On or about December 29, 1998, Plaintiff Shumate reviewed the materials in
16 Defendant Jean-Pierre's presence and signed Defendants' contract. Defendants' shuttle then
17 transported Daisy to Defendants' Happy Pets Inn.

18 19. On or about January 4, 1999 Defendants' Shuttle returned Daisy to Plaintiff
19 Shumate.

20 20. In mid-January 1999, Plaintiff Shumate again called Happy Pets Inn to arrange for
21 Happy Pets Inn to care for Daisy while Plaintiff was out of town.

22 21. On or about January 15, 1999, Defendant Jean-Pierre picked up Daisy from Plaintiff
23 Shumate's home and transported Daisy to the Happy Pets Inn via Defendants' Shuttle.

24 22. On January 17, 1999, Defendant Jean-Pierre returned Daisy to Plaintiff Shumate's
25 home. When Defendant Jean-Pierre removed Daisy from shuttle, Plaintiff Shumate noticed that
26 Daisy behaved abnormally, specifically noticing that Daisy was crouching low to the ground,
27 that she appeared to be cowering, and that Daisy was not squealing and barking, as was Daisy's
28 typical playful behavior.

1 23. From January 17, 1999 [at the time Defendant Jean-Pierre returned Daisy to Plaintiff
2 Shumate], Daisy's physical condition declined. Plaintiff observed unusual symptoms including
3 neck and back sensitivity, whimpering, inability lie down, blood in the feces, diarrhea, slow and
4 lethargic appearance, walking very slowly, inability to climb stairs, inability to get out of her dog
5 bed, and barking when being touched [as if she was in pain or hyper-sensitive to Plaintiff's
6 touch].

7 24. On or about January 20, 1999, Plaintiff Shumate telephoned Defendant Cecile
8 Mouraux to inquire whether anything had happened to Daisy while she was in Defendants' care.
9 In a sharp tone, Defendant Cecile defensively denied that anything had happened to Daisy while
10 she was in Defendants' care.

11 25. During the evening on January 21, 1999, Plaintiff Shumate noticed that Daisy was
12 limping and appeared to be in pain.

13 26. On or about January 22, 1999 [just five days after being returned by Defendants'
14 Shuttle, Plaintiff Shumate took Daisy to her regular veterinarian, Dr. Lum, for extensive tests to
15 determine the cause of dog Daisy's symptoms. Because the test results would not be available
16 for several days, Dr. Lum allowed Plaintiff Shumate to take Daisy home and prescribed pain
17 medication for Daisy.

18 27. On or about January 23, 1999, Daisy's condition worsened. When Plaintiff Shumate
19 returned from work, she found Daisy sitting on the kitchen floor in a puddle of urine and feces,
20 unable to walk. Plaintiff Shumate immediately took her dog Daisy to an all-night emergency
21 veterinary hospital where Daisy remained until January 25, 1999.

22 28. On or about January 25, 1999, Daisy's condition continued to worsen and the
23 veterinarian transferred Daisy to veterinary surgical clinic.

24 29. On or about January 26, 1999, veterinarians at the surgical clinic performed a
25 surgical procedure on Daisy to determine the cause of Daisy's symptoms.

26 30. On or about January 26, 1999, the surgical veterinarian told Plaintiff Shumate that
27 Daisy had suffered multiple broken ribs. The surgical veterinarian told Plaintiff Shumate to keep

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1 Daisy in a confined space, not to let Daisy walk, and to surround her with pillows to prevent
2 further injury.

3 31. Knowing that nothing had happened to Daisy at Plaintiff's home to cause such
4 injuries, Plaintiff Shumate called Defendants to obtain information that might help the
5 veterinarians treat Daisy.

6 32. On or about January 26, 1999, Plaintiff Shumate called Defendant Cecile to inquire
7 as to the cause of Plaintiff's dog Daisy's broken ribs. Defendant Cecile denied any knowledge
8 or responsibility. When Plaintiff Shumate asked who could have had contact with Daisy,
9 Defendant Cecile stated words to the effect that "nothing could have happened to Daisy at Happy
10 Pets Inn."

11 33. Plaintiff Shumate continued to care for Daisy and took time off from work so that
12 she could be with Daisy.

13 34. In the early afternoon of February 3, 1999, when Plaintiff Shumate returned home,
14 she was horrified to discovery Daisy lying on the kitchen floor unable to move, her jaw in a
15 locked position, and her eyes rolled back into her head. Immediately, Plaintiff Shumate took
16 Daisy to her regular veterinarian, who told her to rush Daisy to the emergency veterinary
17 hospital.

18 35. Plaintiff Shumate stayed with Daisy at the emergency veterinary clinic until
19 approximately 9:00 p.m., at which time she was told to leave Daisy in their care and go home.
20 About four hours later, at approximately 1:00 a.m., Daisy died.

21 36. During the morning of February 4, 1999, Plaintiff Shumate telephoned Defendant
22 Cecile to tell her Daisy died and to inquire what caused Daisy's injuries. Defendant Cecile
23 denied Happy Pets Inn caused injury to Daisy.

24 37. In an attempt to determine Daisy's injuries and cause of death, on her own volition
25 and expense, Plaintiff ordered an autopsy of Daisy. On or about March 8, 1999, John Peuroi,
26 DVM, MPVM. [who conducted the autopsy] informed Plaintiff Shumate that Daisy's injuries
27 and death were caused by a severe trauma and that Daisy had twelve broken ribs, a liver tear,
28 blood around the kidneys, and brain swelling.

1 38. On or about March 8, 1999, the autopsy veterinarian told Plaintiff Shumate that
2 Daisy's trauma and resulting injuries occurred in mid-January, at or around the time Daisy was
3 under Defendants' care. The autopsy veterinarian opined to Plaintiff Shumate that had the
4 treating veterinarian known about these injuries earlier, they could have saved Daisy's life.

5 39. At no time when the injuries occurred had Plaintiff Shumate engaged in any conduct
6 that might have caused Daisy's injuries, nor was Daisy exposed to any events that would have
7 caused said injuries.

8 40. Defendants' acts of failing to properly care for Daisy and causing injury to her
9 constituted a breach of the contract between the parties.

10 41. As a result of Defendant's breach, Plaintiff Shumate has been damaged in an amount
11 to be proven at trial. Defendants' failure to care for Daisy and breach of the parties' contract
12 resulted in damage to Plaintiff, including financial loss, missing time from work, significant
13 veterinary expenses for treatment and procedures, professional autopsy expenses,
14 document/record costs, and relocation costs resulting from Plaintiff Shumate's involuntarily
15 having to move from the apartment where she lived with Daisy.

16 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 17 A. For compensatory damages;
- 18 B. All consequential and incidental losses together with prejudgment interest
19 pursuant to California Civil Code § 3287;
- 20 C. For attorneys fees and costs if allowed by law;
- 21 D. For restoration damages;
- 22 E. For prejudgment interest and post-judgment interest as permitted by law; and
- 23 F. For such other and further relief as the court deems proper.

24 **SECOND CAUSE OF ACTION**

25 **(Negligence)**

26 42. Plaintiff incorporates Paragraphs 1 through 12 of Plaintiff's Preliminary Allegations
27 and Paragraphs 13 through 41 of Plaintiff's First Cause of Action and realleges those paragraphs
28 as though set forth herein in full.

1 43. Defendants held themselves out as a business providing care for pet owners. To gain
2 business, profit, and income, Defendants solicited for new customers by addressing customer
3 needs and concerns.

4 44. Defendants made representations to address pet owners' fears, including Plaintiff
5 Shumate, by holding themselves out as caretakers who would provide pets with safe, secure, and
6 comfortable quarters while in Defendants' care. See attached "Exhibit B."

7 45. In making these representations and accepting money for their caretaker services,
8 Defendants had a duty to provide pets with safe, secure, and comfortable quarters while in
9 Defendants' care and prevent negligent injury to owners' pets, including to Plaintiff Shumate's
10 dog Daisy. As a direct and legal cause of Defendants' negligent acts, Daisy sustained severe
11 injuries resulting in death.

12 46. On or about March 8, 1999, Plaintiff Shumate discovered that Defendants, and each
13 of them, breached their legal duty of care based upon an autopsy that was performed on Daisy.
14 The autopsy indicated that the severe trauma and resulting injuries suffered by Daisy occurred in
15 mid-January, when Daisy was in Defendants' care. Defendants' acts were not in comport with
16 the standard of care exercised by a person or ordinary prudence.

17 47. In addition, Defendants are presumed to be negligent in their care of Daisy because:

18 47.A. The injuries suffered by Daisy were of a kind that do not occur in the absence of
19 someone's negligence;

20 47.B. The injuries suffered by Daisy were caused by an agency or
21 instrumentality in Defendants' exclusive control; and

22 47.C. The injuries suffered by Daisy were not due to any voluntary **action or**
23 contributory act on the part of Plaintiff Shumate or others **associated with Plaintiff**
24 **Shumate.**

25 48. As a direct and legal result of Defendants' negligence, Plaintiff **Shumate has suffered**
26 physical, emotional, and economic injury in an amount to be proven at trial.

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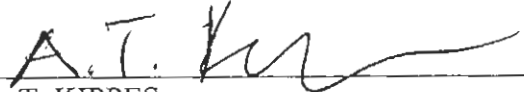
1 WHEREFORE, Plaintiff prays for judgment against Defendant Cecil Mouraux,
2 Defendant Jean-Pierre Mouraux, both doing business as Happy Pets Inn, and each Defendant, as
3 follows:

- 4 A. For compensatory damages;
- 5 B. All consequential and incidental losses together with prejudgment interest
6 pursuant to California Civil Code §§ 3287 and/or 3288;
- 7 C. For attorneys fees and costs where allowed by law;
- 8 D. For prejudgment interest and post-judgment interest according to any other
9 provision of law; and
- 10 E. For such other and further relief as the court deems proper.

11 **WHEREFORE, notice is hereby given that Plaintiff demands a jury trial in this civil**
12 **action.**

13 DATE: May 2, 2000

MORTIMER LAWYERS & COUNSELORS

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15 A. T. KIPPES
16 Attorneys for Plaintiff Sharon Shumate

