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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-
PIERRE MOURAUX, an individual; both doing
15 business as HAPPY PETS INN, and DOES 1
THROUGH 25, inclusive,

16 Defendants.
17

Case No.: **309844**

SECOND AMENDED COMPLAINT FOR:
BREACH OF CONTRACT AND
NEGLIGENCE

Demand for Jury Trial

18
19 Plaintiff SHARON SHUMATE [hereinafter "Plaintiff"] alleges:

20 **PRELIMINARY ALLEGATIONS**

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

24 2. Plaintiff Shumate acquired Daisy approximately ten years ago, when Daisy was a
25 nine-week-old puppy. At all times alleged herein, Plaintiff Shumate thought of Daisy as a
26 wonderful companion and family member, rather than a pet or dog. Plaintiff Shumate and Daisy
27 were extremely close. Evidence will show that during Daisy's entire life, Plaintiff pampered her
28 and provided Daisy with devoted love and attention.

1 3. At all times, Plaintiff Shumate kept Daisy indoors because Plaintiff was aware of the
2 inherent dangers to Daisy should she be allowed to run free, unattended, or outside.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 23. From January 17, 1999 [at the time Defendant Jean-Pierre returned Daisy to Plaintiff
28 Shumate], Daisy's physical condition dramatically worsened. Plaintiff observed in Daisy

1 unusual symptoms including neck and back sensitivity, whimpering, inability lie down, blood in
2 the feces, diarrhea, slow and lethargic appearance, walking very slowly, inability to climb stairs,
3 inability to get out of her dog bed, and barking when being touched [as if she was in pain or
4 hyper-sensitive to Plaintiff's touch].

5 24. Three days after Daisy returned from Happy Pets Inn, on or about January 20, 1999,
6 Plaintiff Shumate telephoned Defendant Cecile Mouraux to inquire whether anything had
7 happened to Daisy while she was in Defendants' care. In a sharp tone, Defendant Cecile
8 defensively denied that anything had happened to Daisy while she was in Defendants' care.

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

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

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

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

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

24 30. On or about January 26, 1999, the surgical veterinarian told Plaintiff Shumate that
25 Daisy had suffered multiple broken ribs. The surgical veterinarian told Plaintiff Shumate to keep
26 Daisy in a confined space, not to let Daisy walk, and to surround her with pillows to prevent
27 further injury.

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1 31. Knowing that nothing had happened to cause such injuries to Daisy at Plaintiff's
2 home, while in Plaintiff's care, or upon Daisy's return by Happy Pets Inn on January 17, Plaintiff
3 Shumate called Defendants to obtain information that might help the veterinarians treat Daisy.

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

9 33. Plaintiff Shumate took time off from work so to continue to care for Daisy.

10 34. Plaintiff Shumate returned home in the early afternoon on February 3, 1999. She was
11 horrified to discovery Daisy lying on the kitchen floor unable to move, her jaw in a locked
12 position, and her eyes rolled back into her head. Immediately, Plaintiff Shumate took Daisy to
13 her regular veterinarian, who told her to rush Daisy to the emergency veterinary hospital.

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

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

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

25 38. The autopsy/necropsy veterinarian told Plaintiff Shumate that the examination
26 indicated that Daisy's trauma and resulting injuries occurred in mid-January. This meant that the
27 trauma and resulting injuries occurred at or around the time Daisy was under Defendants' care.
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1 The autopsy/necropsy veterinarian further opined that had the treating veterinarian known about
2 these injuries earlier, such knowledge may have helped save Daisy's life.

3 39. At the time Daisy's trauma and injuries occurred, or at any time before then, did
4 Plaintiff Shumate act in any manner, or engage in any conduct, that might have caused, or
5 caused, Daisy's injuries. At no time subsequent to Defendants returning Daisy after the second
6 boarding, was Daisy exposed to any events, acts or persons that would have caused said trauma
7 or injuries.

8 40. Defendants' acts of failing to properly care for Daisy, failing to disclose injury, or
9 causing injury to Plaintiff constituted a breach of the contract between the parties.

10 41. Defendants' failings and breach of the parties' contract resulted in damage to
11 Plaintiff, including financial loss, missed time from work, significant veterinary expenses for
12 treatment and procedures, professional autopsy/necropsy expenses, document/record costs, and
13 relocation costs resulting from Plaintiff Shumate's involuntarily having to move from the
14 apartment where she lived with Daisy.

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

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

23 **SECOND CAUSE OF ACTION**

24 **(Negligence)**

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

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1 43. Defendants held themselves out as a business providing care for pet owners. To
2 obtain business, profit, or income, Defendants solicited for new customers by addressing
3 potential customer's unique needs or concerns.

4 44. Defendants consciously advertised in San Francisco to appeal to the wants and needs
5 of potential customers, including Plaintiff Shumate, by addressing pet owners' fears and
6 concerns. Defendants held themselves out as caretakers who would provide pets with safe,
7 secure, and comfortable quarters while in Defendants' care. See attached "Exhibit B."

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

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

18 47. Defendants were negligent in their care of Daisy because:

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

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

23 47.C. The injuries suffered by Daisy were not due to any act or acts on the part of
24 Plaintiff Shumate, or others associated with Plaintiff Shumate;

25 47.D. The injuries Defendants inflicted on Daisy caused her death;

26 47.E. Daisy's death-causing injuries could only have occurred while Daisy
27 was in Defendants' care and control; and,

28 47.F. Defendants' acts caused Plaintiff physical and emotional injury.

1 53.A. Plaintiff is informed and believes that for the past five years or more,
2 approximately 70% of Defendants' Happy Pets Inn business is obtained from, and conducted
3 with, residents located in the City and County of San Francisco. Plaintiff is informed and
4 believes that Defendants have operated Happy Pets Inn, and other businesses, in the City and
5 County of San Francisco without licenses the City and County requires Defendants to have
6 possessed, or currently possess. Plaintiff is informed and believes that Defendants have not
7 been, or are currently not, permitted to conduct business in the City and County of San Francisco
8 because they have not been, or currently are not, licensed by the City and County to conduct said
9 business.

10 Plaintiff is informed and believes that Defendants' unlicensed operation of Happy Pets
11 Inn, and other businesses, in the City and County of San Francisco constitute unlawful or unfair
12 business practices in violation of California Business and Professions Code Section §§17200, et
13 seq. and that such unlawful or unfair practice have resulted in Defendants avoiding the City and
14 County's laws and regulations designed to prevent injury to Plaintiff and other members of the
15 public and that said violations have in fact caused injury to Plaintiff and others. Plaintiff is
16 informed and believes that operating unlicensed businesses in the City and County of San
17 Francisco has rendered, and renders, all contracts between Defendants' Happy Pets Inn, and
18 Defendants' other businesses, void, voidable or unenforceable. Plaintiff is informed and believes
19 that Defendants' conduct described in this paragraph constitute violations of California public
20 policy.

21 53.B. Plaintiff is informed and believes that Defendants have engaged, or continue to
22 engage, in unlawful or unfair conduct by having entered into, or entering into, unlawful or unfair
23 written contracts for Defendants' Happy Pets Inn services. Plaintiff is informed and believes that
24 the contracts drafted by Defendants have contained, or currently contain, a void, unenforceable,
25 unlawful or unfair provision that states Happy Pets Inn, Defendants' other businesses, and its
26 owners are not liable for injury or death to animals or humans while staying on the premises or
27 visiting. Plaintiff is informed and believes that pursuant to California's Civil Code, said contract

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1 provision is unlawful, unfair, void, or unenforceable. Plaintiff is informed and believes that
2 Defendants' conduct in this regard is a violation of California public policy.

3 53.C. Plaintiff is informed and believes that Defendants have engaged in, and continue to
4 engage in, unlawful or unfair guiling tactics with the intent of having Plaintiff and other
5 members of the public sign Defendants' unlawful or unfair contract without questioning or
6 understanding the unlawful or unfair liability waiver provision. Plaintiff is informed and
7 believes that Defendants' conduct in this regard is a violation of California public policy.

8 53.D. Plaintiff is informed and believes that Defendants have engaged in, and continue
9 to engage in, unlawful or unfair, conduct by coercing Plaintiff and other members of the public
10 to sign Defendants'-provided contract containing an unfair or unlawful provision excusing
11 Defendants from any and all liability for its wrongful or unlawful conduct. Plaintiff is informed
12 and believes that Defendants' conduct in this regard is a violation of California public policy.

13 53.E. Plaintiff is informed and believes that Defendants have engaged in unlawful or
14 unfair conduct by holding themselves out as an extraordinary provider of pet care, yet have relied
15 upon, and continue to rely upon, an unlawful or unfair contract provision, for which
16 consideration was not exchanged, so Defendants could avoid, and have avoided, any and all
17 liability for wrongful, unfair or unlawful conduct, such as that committed against Plaintiff or
18 other members of the general public.

19 53. F. Plaintiff is informed and believes that Defendants have engaged in unlawful or
20 unfair conduct by Defendants' wrongful reliance on said unlawful or unfair provision so to
21 defend against lawsuits or claims, such as Plaintiff's or others, with the intent of depriving
22 Plaintiff or others of just compensation or remedy against Defendants' wrongful, unfair, or
23 unlawful conduct, and in fact causing, Defendants have caused Plaintiff to incur significant
24 attorneys' fees and costs to oppose Defendants' attempts to defeat Plaintiff's claims. Plaintiff is
25 informed and believes that Defendants' conduct in this regard is a violation of California public
26 policy.

27 54. As alleged herein, Plaintiff and other members of the public have each been harmed,
28 or continue to be harmed, by Defendants' unlawful or unfair business practices.

1 55. Plaintiff and other members of the public have been damaged, lost money and/or
2 personal property, or will suffer damage, because of Defendants' unlawful or unfair business
3 practices.

4 56. Defendants' unlawful or unfair business practices outlined above entitle Plaintiff or
5 other similarly situated persons or business entities to an accounting from Defendants so that the
6 extent of Defendants' unlawful or unfair monetary gain or profits can be determined.

7 57. As a result of Defendants' unlawful or unfair business practices, Plaintiff and the
8 general public are entitled to an injunction issued against Defendants, pursuant to California
9 Business and Professions Code §§17200, et seq. to prevent Defendants from engaging in the
10 continued unlawful or unfair business practices alleged herein. Plaintiff and the general public
11 are also entitled to an order requiring Defendants to disgorge the ill-gotten gains obtained by
12 engaging in these unlawful or unfair business practices and to provide restitution to all persons
13 who have been harmed as a result of Defendants' unlawful or unfair business practices, including
14 but not limited to, all persons who have contracted with Defendants during the applicable
15 limitations period.

16 58. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and her counsel,
17 according to proof at trial, are entitled to an award of reasonable attorneys' fees and costs for
18 bringing this action against Defendants.

19 WHEREFORE, Plaintiff seeks judgment against Defendant Cecile Mouraux and
20 Defendant Jean-Pierre Mouraux d/b/a/ Happy Pets Inn, and each Defendant, as follows:

- 21 A. For restitution of monies in an amount to be proven at trial;
- 22 B. For a financial accounting from Defendants, and each of them;
- 23 C. For the disgorgement of unlawful profits in an amount to be proven at trial;
- 24 D. For an injunction to be issued against Defendants ordering Defendants to cease
25 all unlawful or unfair conduct alleged herein;
- 26 E. For prejudgment interest and post-judgment interest according to any other
27 provision of law;
- 28 F. For an award of attorneys' fees and costs as allowed by law; and,

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G. For such other equitable and further relief as the Court deems proper.

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

DATE: December 11, 2000

MORTIMER LAWYERS & COUNSELORS



MICHAEL MORTIMER
Attorneys for Plaintiff Sharon Shumate

