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

MARILYN DANTON,

Plaintiff,

v.

ST. FRANCIS 24 HOUR ANIMAL  
HOSPITAL, P.C., a Washington professional  
services corporation (UBI 602-029-072); and  
DOES 1-10;

Defendants.

NO. 06-2-01172-8

DEFENDANT'S MOTION IN LIMINE  
RE TELEVISION BROADCAST

**I. INTRODUCTION AND RELIEF REQUESTED**

Defendant St. Francis 24 Hour Animal Hospital, P.C. ("St. Francis") moves the Court, before voir dire of the jury, for an order as follows:

1. To instruct the attorney for Marilyn Danton ("Plaintiff") not to interrogate witnesses concerning the items set out on the following pages, or to mention to the jury in any manner those items, without first obtaining permission of the Court outside the presence and hearing of the jury; and
2. To instruct the attorney for Plaintiff personally to admonish his client and witnesses to refrain from mentioning to the jury in any manner the items set out on the

1 following pages, without the attorney first obtaining permission from the Court outside  
2 the presence and hearing of the jury.

3 This motion is made on the following grounds:

4 (a) The matters set out on the following pages are immaterial and  
5 inadmissible. Were any of such matters made known to the jury, it would be improper  
6 and prejudicial, even if the Court were to sustain an objection and instruct the jury not to  
7 consider such facts for any purpose. In all probability, any such situation could result in  
8 grounds for a mistrial in spite of attempts by the Court to cure the situation. Ordering the  
9 jury to disregard interrogation, comments, or offers in front of the jury would not cure  
10 such prejudice, but rather reinforce the impact of such prejudicial matters on the minds of  
11 the jurors.

12 (b) The granting of this motion cannot be error because it merely requires  
13 permission to be asked before prejudicial information is suggested to the jury. The  
14 motion here asks only that counsel advise the Court outside the presence of the jury, at  
15 such time as he intends to go into the questionable items, so the Court may make its  
16 ruling at that time on the proffered question, remark, testimony, or exhibit. The Court in  
17 this way will be best able to fulfill its function in keeping the record free of error and  
18 prejudice.

19 St. Francis requests that the Court rule on the following issue:  
20

21 Plaintiff intends to offer into evidence an October 14, 2005 television broadcast of  
22 two local news stories concerning the loss of her cat. The broadcast, and any reference to  
23 the broadcast, should be excluded.  
24  
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1 **II. ISSUE PRESENTED**

2 Whether the Court should grant St. Francis's Motions in Limine with respect to  
3 the item identified above?

4 **III. LEGAL ARGUMENT AND AUTHORITY**

5 Pretrial motions to exclude evidence are designed to simplify and streamline trials  
6 and to avoid the prejudice that occurs when a party is forced to object in front of the jury  
7 to the introduction of evidence. *Fenimore v. Drake Constr.*, 87 Wn.2d 85, 89, 549 P.2d  
8 43 (1976). Motions in limine avoid such prejudice and simplify the trial by precluding  
9 irrelevant evidence, or overly prejudicial evidence. *See In Re Deming*, 10 Wn.2d 82, 736  
10 P.2d 639 (1987); ER 403; 5A K. Teglund, *Wash. Prac., Evidence*, § 9, at 18 (3d ed.  
11 1989).

12 In Plaintiff's list of proposed ER 904 Exhibits, Plaintiff listed the following:

14 22.	15 <b>Name Or Description of Document:</b> Video from Television Broadcast 16 referencing matter of Moochie (see CD sent to opposing counsel with responses 17 to defendant's 1 <sup>st</sup> discovery requests; see also CD sent to plaintiff's counsel 18 from defense counsel in response to plaintiff's 1 <sup>st</sup> discovery requests) 19 <b>Dated:</b> As indicated (circa 10/14/05) 20 <b>Name Of Author Or Maker:</b> KGW-TV of Portland, OR 21 <b>Address, City, State &amp; Zip:</b> See website 22 <b>Telephone:</b> See website 23 * NOTE: Shortened clip(s) of the referenced selections will be produced shortly. 24 Until then, defendant should assume that Ms. Danton is referring to only those 25 selections of the CDs that cover the news story of Moochie's escape.
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21 Defendant has objected to admission of the above exhibit under ER 904, and now  
22 seeks an Order in Limine precluding Plaintiff from offering the exhibit at trial or  
23 referencing the exhibit in any manner.

24 Evidence Rule 403 provides that,

1 Although relevant, evidence may be excluded if its probative value is  
2 substantially outweighed by the danger of unfair prejudice, confusion of  
3 the issues, or misleading the jury, or by considerations of undue delay,  
4 waste of time, or needless presentation of cumulative evidence.

5 With regard to the news stories, there is no question that Plaintiff wants to  
6 introduce them for the purpose of sensationalizing the facts of this case. Plaintiff's  
7 motivation is improper, and the information contained in the news stories, to the extent it  
8 is relevant, can be presented to the jury by alternate means without referencing the news  
9 stories themselves.

10 To assist the Court in ruling on this motion, Defendant has transcribed the news  
11 stories in their entirety herein:

12 **1) Newschannel 8, October 14, 2005, 5:00 pm**

13 A Vancouver woman cut her vacation short after her veterinarian called to  
14 say the cat he was supposed to be taking care of was gone. Moochie, a  
15 three year-old Siamese mix was staying in the kennels of the St. Francis  
16 Animal Hospital in Vancouver. About five days into his stay, Moochie  
17 disappeared. Staffers say he was there around midnight. When they went  
18 back to check at 5 am, his cage was open and Moochie was gone. His  
19 owner flew back immediately.

20 Marilyn Danton: "They told me someone would be with him 24 hours a  
21 day, when I boarded him there. And, um, if they were, they must have  
22 been looking the other way then. I don't know how he could have gotten  
23 out of the building without somebody noticing it."

24 Marilyn and the vet's office have posted hundreds of flyers around  
25 Vancouver. They're offering a reward for Moochie's safe return.

**2) Newschannel 8, October 14, 2005, 6:00 pm**

A Vancouver woman is heart-broken after an animal hospital lost her cat  
while she was on vacation. News Channel 8's Andrea Cantu joins us now.  
What happened?

Well, staff at the St. Vincent's 24 Hour Animal Hospital in Vancouver say  
the cat somehow got out of his cage during the night. They thought he

1 was hiding in the building but after two weeks, they say he somehow  
2 escaped.

3 Marilyn Danton: "Yeah, he's my little baby."

4 Moochie, a 15 pound Siamese mix helped Marilyn Danton get over her  
5 empty nest syndrome after her children grew up and moved away. Her  
6 nest is once again empty. Moochie is missing.

7 Marilyn Danton: "I couldn't believe it. I said, how, how could he get out  
8 of there? You know, that's impossible. Well, we don't know. That was  
9 the answer—we don't know."

10 Danton left three year-old Moochie at the St. Francis Animal Hospital in  
11 Vancouver while she went away on a week-long vacation. She  
12 immediately flew home when the hospital called to say he'd disappeared.

13 Marilyn Danton: "Around midnight, he was there. When whoever  
14 checked on him at 6 am checked, he wasn't there."

15 Dr. Michael Baker says he and his staff remain baffled. No other animal  
16 has been able to escape and to leave the building is astonishing.

17 Dr. Michael Baker: "No one saw him leave. But we've just been through  
18 the clinic so many times and aggressively. We have been working with  
19 the neighbors."

20 Danton says the staff has not been helpful. She's spending all her free  
21 time looking for Moochie.

22 Marilyn Danton: "I'm just heartbroken. You know, it's really hard."

23 She's even spent the night in a field near the hospital hoping Moochie will  
24 find her.

25 Marilyn Danton: "I put him there for his safety. I could have left him at  
home. Now I wish I would have left him at home."

Marilyn's posted nearly 600 flyers and has placed ads in the Vancouver  
newspaper. She says she'll never stop looking until her baby comes home.  
Dr. Baker says his staff is sick over losing Moochie. Danton, Moochie's  
owner, says she is considering legal action. If you've seen Moochie, his  
most distinctive markings is a white stripe down his nose and white paws.  
You can email us at [newstips@kgw.com](mailto:newstips@kgw.com). Tracy back to you.

1 The news stories constitute hearsay under Evidence Rule 801(c) in that they  
2 contain statements, other than one made by the declarant while testifying at the trial or  
3 hearing, offered in evidence to prove the truth of the matter asserted. "Statement" is  
4 defined as an oral or written assertion or nonverbal conduct of a person, if intended as an  
5 assertion. *See Evidence Rule 801(a)*. The definition includes tape recorded assertions.  
6 *Brown v. Spokane County Fire Protection District*, 100 Wn.2d 188, 668 P.2d 571 (1983).

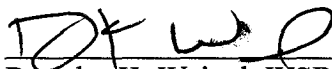
7 Plaintiff's statements in the news stories are self-serving and inadmissible.  
8 Statements by a party are admissible only when offered *against* that party. Evidence  
9 Rule 801(d)(2) does not allow a party to introduce his or her own out-of-court statement  
10 through the testimony of other witnesses. If the rule were otherwise, a party could simply  
11 tell his or her own story out of court, and then present it through the testimony of other  
12 witnesses without taking an oath and without facing cross-examination. *State v. Finch*,  
13 137 Wn.2d 792, 975 P.2d 967 (1999) (defendant not allowed to call witness to recount  
14 exculpatory out-of-court statement by defendant); *see also* 5D K. Teglund, *Wash. Prac.*,  
15 *Courtroom Handbook on Washington Evidence*, 372 (2007 ed.).

16  
17 **IV. PROPOSED ORDER**

18 A proposed order is attached hereto.

19 DATED this 6<sup>th</sup> day of August, 2007.

20 FLOYD & PFLUEGER, P.S.

21  
22   
23 Douglas K. Weigel, WSBA #27192  
24 Attorneys for Defendant St. Francis 24 Hour  
25 Animal Hospital, P.C.