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2 In addition, every twenty-four hours, staff members check temperature, heart rate, respiratory
3 rate, capillary refill time, and mucous membrane condition.

4 On the night of September 28, 2005, St. Francis employee Jennifer Arionus checked on
5 Moochie at 11:19 p.m. Ms. Arionus found Moochie in his cage and noted that he was bright,
6 alert, and responsive, and that he had not vomited, defecated, or urinated since last checked.
7 Ms. Arionus refreshed Moochie's food and water and changed his litter box. Ms. Arionus
8 specifically recalls that Moochie was in his cage when she completed her check, with the cage
9 door completely shut and the latch securely closed.
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11 At 5:00 a.m. on September 29, 2005, St. Francis employee Claudette Fleming (Pickard)
12 discovered that the door to Moochie's cage was open. Ms. Pickard assumed that Moochie had
13 been discharged but soon learned that this was not the case. The clinic was immediately and
14 exhaustively searched, but Moochie was not found. Plaintiff was contacted by St. Francis and
15 notified that Moochie was missing. On the morning of September 30, 2005, Plaintiff arrived at
16 the clinic to assist in the search for Moochie. St. Francis' search efforts included searching the
17 premises, setting a live trap in the clinic parking lot, twice driving to the location of a phone call
18 "tip," putting a copy of plaintiff's "Lost Cat" notice up in the clinic lobby, and calling the
19 newspaper to post a lost animal notice. To date, Moochie has not been found.
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21 After Moochie disappeared, Plaintiff told St. Francis that Moochie could open cupboard
22 doors and that he enjoyed hiding in cupboards and boxes and under the bed. If this information
23 been conveyed to St. Francis prior to Moochie's disappearance, a note would have been placed
24 in his patient file so that all St. Francis staff members would have been aware of the risk of
25 Moochie opening his cage and escaping.

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2 St. Francis has been boarding animals since it opened in 2000. Moochie is the first and
3 only animal to escape from St. Francis.

4 II. EVIDENCE

5 A. Trial Witnesses

6 Defendant anticipates calling the following witnesses:

- 7 1. Michael Baker, DVM
- 8 2. Jennifer Arionus
- 9 3. Claudette Fleming (Pickard)
- 10 4. Marilyn Danton

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12 In addition to the above witnesses, Defendant may also call St. Francis employees
13 Tiffany Cantonwine, Emily Bennie, and Cathy Maxwell. Plaintiff will likely call former St.
14 Francis employee Vicky Melcher and Cathy Wasson, who gave Moochie to Plaintiff and later
15 assisted in the search. Ted Danton will not be called as a witness by either party.

16 B. Trial Exhibits

17 Defendant anticipates offering into evidence a VSSI, Inc. cage, substantially similar in
18 size and condition to the cage used for boarding Moochie in September 2005. The cage will be
19 available for inspection by Plaintiff prior to commencement of trial.

20 III. LIABILITY

21 A. Court Rulings

22 Plaintiff filed a Motion for Summary Judgment on Liability. That Motion, based on the
23 theory of *res ipsa loquitor*, was denied. Plaintiff's claims for Loss of Companionship (Third
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2 Claim for Relief) and Breach of Fiduciary Duty (Fifth Claim for Relief) were dismissed by the
3 Court.

4 B. Outstanding Issues

5 Defendant admits that all St. Francis employees were acting in the course and scope of
6 employment so Plaintiff's allegations of *Respondeat Superior* (First Claim for Relief) are moot.

7 Based on the foregoing admission, Plaintiff has agreed to withdraw her claims for negligent
8 hiring and supervision.

9 Defendant denies that it was Negligent (Fourth Claim for Relief) and further denies
10 liability for Breach of Bailment Contract (Second Claim for Relief).

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12 **IV. DAMAGES**

13 A. Court Rulings

14 The Court ruled that Plaintiff cannot recover damages for "loss of use," "emotional
15 distress," or pre-loss damages. The Court further ruled that intrinsic value is an appropriate
16 measure of damages, but that Defendant will be permitted to argue for replacement cost.

17 With regard to intrinsic value, the Court ruled that no damages shall be awarded for
18 "unusual sentimental value" to the Plaintiff or a "fanciful price" which Plaintiff, for her own
19 special reason, might place on Moochie. *Mieske v. Bartell Drug Co.*, 92 Wn.2d 40 (1979).

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21 B. Outstanding Issues

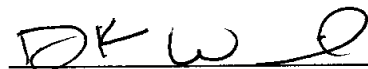
22 The central issues with regard to damages will be: (1) crafting an appropriate jury
23 instruction to take into consideration both replacement value and intrinsic value; (2) determining
24 what constitutes "excessive" or "unusual" sentimental value; and (3) determining what
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2 testimony will be allowed concerning Plaintiff's relationship with Moochie in light of the
3 dismissal of her loss of use claim.

4 Defendant alleges that Plaintiff failed to mitigate her damages. It is well-established that
5 an injured person may not recover damages proximately caused by that person's unreasonable
6 failure to mitigate. See *Fox v. Evans*, 127 Wn.App. 300, 111 P.3d 267 (2005), citing *Sutton v.*
7 *Shufelberger*, 31 Wn.App. 579, 582, 643 P.2d 920 (1982). The evidence will show that
8 Plaintiff's search efforts were unreasonable in both duration and scope, and the costs associated
9 with these efforts are not recoverable.
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12 DATED this 14th day of August, 2007.

13 FLOYD & PFLUEGER, P.S.

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15 

16 Douglas K. Weigel, WSBA #27192
17 Attorneys for Defendant St. Francis 24 Hour
18 Animal Hospital, P.C.