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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
George M. McFaddin, Jr., Circuit Court Judge

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Appellate Case No. 2024-001363

Sarah Rock,

Appellant,

v.

Dog Daze of Charleston,  
LLC and Charlie Freeman,

Respondents.

**AMICUS BRIEF**  
**IN SUPPORT OF APPELLANT**

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### **SPECIFIC ISSUES ADDRESSED**

- I. Did the Circuit Court err in granting summary judgment on the basis that South Carolina law does not permit a dog owner to recover emotional distress damages caused by the tortious loss of or harm to a dog?
  
- II. Did the Circuit Court err in granting summary judgment on the basis that South Carolina law does not permit a dog owner to recover actual value damages caused by the tortious loss of or harm to a dog?

### **STATEMENT OF THE CASE**

Pursuant to SCACR 208(b)(6), ALDF adopts and incorporates by reference the Statement of the Case as set forth in Appellant's Brief.

### **STANDARD OF REVIEW**

Pursuant to SCACR 208(b)(6), ALDF adopts and incorporates by reference the Standard of Review as set forth in Appellant's Brief.

## INTRODUCTION

This is a story about Xumi and Ruben, two rescue dogs cherished by Appellant Sarah Rock. It is a story with themes most Americans can intimately relate to—the irreplaceable bonds we forge with our companion animals, the lengths we go to ensure their wellbeing, and the grief we endure when they pass, regardless of their price or pedigree. When that grief is the result of a legal violation by one entrusted with their care—like how Respondents’ negligence as a boarding facility for “four-legged family member[s]”<sup>1</sup> caused Xumi’s death and Ruben’s injury—courts have confronted the incongruence between archaic legal rules and our emotional, familial attachments to our companion animals.

Over time, many courts arriving at a just valuation in pet loss cases have moved away from the longstanding rule that dogs possess only economic worth—a shift likely influenced by judges reflecting on their own experiences with companion animals and recognizing that the common law must evolve to honor the special nature of the human-animal bond when it is wronged. Like others before it, this Court is empowered to usher the state’s common law into harmony with the values of everyday South Carolinians who view their dogs as family and grieve them as such.

Drawing from its ample experience advocating for the noneconomic valuation of companion animals, ALDF aims to assist this Court in understanding that assessing the bond between companion dogs and their humans with antiquated common law rules is no longer sustainable or just in a modern society. As Ms. Rock

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<sup>1</sup> *Our Philosophy*, DOG DAZE BOARDING (last visited Jan. 21, 2025), <https://dogdazeboarding.com/> [<https://perma.cc/B7TP-BRPE>].

establishes in her initial brief, none of the cases relied on by Respondents and the Circuit Court preclude this Court from holding that South Carolina law allows for the recovery of emotional distress and actual value damages for the negligent loss of a companion animal.<sup>2</sup> Thus, this Court can and should consider persuasive authority from other jurisdictions that have moved the common law forward to align with the contemporary view that the value of companion animals to their owners is inimitable and primarily noneconomic.

To this end, Section I outlines the compelling societal and legal mores that establish why South Carolina common law is ready to evolve on this issue. Next, Section II turns to persuasive authority from other jurisdictions to argue for allowing a plaintiff to recover emotional distress damages when their companion animal is tortiously injured or killed. Lastly, Section III establishes why the market value approach to companion animals invariably fails to make plaintiffs whole. Instead, assessing the actual value of animals as inimitable personal property is entirely compatible with South Carolina common law, which already applies this analysis to inanimate objects. Even if the Court rules that emotional distress damages are not independently available, it should recognize that actual value damages are recoverable and that a key piece of evidence for this analysis is the emotional distress that a plaintiff suffers due to the injury or loss of their companion animal.

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<sup>2</sup> ALDF incorporates Appellant’s definition of “emotional distress” to include “all the non-economic damages resulting from the negligent killing of or harm to a pet dog, including emotional distress, anguish, pain, suffering, depression, anxiety, trauma, loss of companionship, and loss of emotional support.” Appellant’s Initial Brief (AIB) at 3 n.1.

The arguments ALDF advances here will not cause an upheaval of the legal status of companion animals. Instead, a ruling for Ms. Rock would allow for a gradual elevation of companion animals' status within the existing property regime and better achieve the compensation goals of tort law.

### **ARGUMENT**

#### **I. This Court Is Empowered to Allow Noneconomic Damages in Companion Animal Tort Cases to Align South Carolina Common Law with Compelling Societal and Legal Mores.**

Both society and South Carolina law—beyond the tort realm—recognize companion animals as personal property that is uniquely living, breathing, and capable of forming emotional bonds with humans. This recognition provides a strong impetus for the Court to modernize the common law and allow noneconomic damages for the tortious loss or injury of a companion animal.

##### **A. The reciprocal devotion between humans and their companion dogs is an undeniable social reality.**

Companion dogs are family members—we love them, they love us, and we grieve their loss just as deeply. See Michael Cleary et al., *Grieving the Loss of a Pet: A Qualitative Systematic Review*, 46 DEATH STUDS. 2167 (2022), <https://pubmed.ncbi.nlm.nih.gov/33881389> [<https://perma.cc/8SYW-8V3L>] (“Animal owners who experience the death of a beloved family pet or companion animal may experience feelings of grief and loss that are synonymous with the death of a human.”); see also Zachary Paterick, Timothy Paterick, & Sandy Sanbar, *A Stepping Stone Toward Companion Animal Protection Through Compensation*, 22 ANIMAL L. REV. 79, 84 (2015) (“The results [of an MRI study] indicated that dogs have the ability

to experience positive emotions, like love and attachment, and suggested that dogs have a level of sentience and awareness.”). This profound emotional connection with dogs is neither frivolous nor new. *See, e.g.,* Lilian Bodson, *Motivations for Pet-Keeping in Ancient Greece and Rome*, in COMPANION ANIMALS AND US: EXPLORING THE RELATIONSHIPS BETWEEN PEOPLE AND PETS, 33 (Podberscek et al. eds., 2000) (describing the Ancient Roman custom of dedicating burial epitaphs to dogs, including one that “addressed his dead companion: ‘I am in tears, while carrying you to your last resting place as much as I rejoiced when bringing you home in my own hands fifteen years ago.’”).

With approximately 82 million families in the United States owning and caring for a companion animal, most Americans have experienced the joys of this mutual devotion and the heartbreak of loss. *Industry Trends and Stats*, AM. PET PRODS. ASS’N (last visited Jan. 27, 2025), <https://americanpetproducts.org/industry-trends-and-stats> [<https://perma.cc/W4US-KES9>]. A 2024 survey confirms that the prevalence of self-identifying “pet parents” continues to rise, with “82% of pet owners [stating], ‘My pet(s) is/are like my own child.’” *The State of Pets: Unpacking America’s Pet Preferences*, THE HARRIS POLL 3 (2024), <https://theharrispoll.com/wp-content/uploads/2024/10/State-of-Pets-October-2024.pdf> [<https://perma.cc/5S8V-PBUU>]. Notably, 63% of pet owners would “give years of [their] life to their pet(s) if they could live longer,” underscoring the force of the human-animal bond and the devastation pet owners experience when a beloved companion animal dies. *Id.* at 9.

Indeed, even Respondents recognize that this emotional connection translates into substantial financial investments—a dynamic that underpins their business model: “we provide the best possible care for your four-legged family member.” *Our Philosophy*, DOG DAZE BOARDING (last visited Jan. 21, 2025), <https://dogdazeboarding.com/> [<https://perma.cc/B7TP-BRPE>]. Respondents’ dog boarding business belongs to a multi-billion-dollar pet industry that continues to skyrocket as Americans devote increasing financial resources to ensure the wellbeing and longevity of their companion animals.<sup>3</sup> From 24-hour emergency veterinary clinics to dog day cares, this industry would not thrive nor continue to expand without the unparalleled value Americans place on their individual dogs.

**B. South Carolina law affirms that the primary nature of the human-companion animal bond is emotional and deserving of legal protection.**

That dogs are an emotional anchor for millions of families, shaping the economy from the local to national level, matters for the law. It matters because interactions between animal-related businesses and pet owners have proliferated in ways unimaginable to the judicial architects of the common law’s framework for tort compensation. Among those interactions are the conflicts that arise when boarding facilities and other pet industry actors tortiously injure or kill a customer’s companion animal. Where tort law has been reticent, other areas of South Carolina

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<sup>3</sup> In 2023, American spent \$147 billion on pets in the U.S. market, including pet food and treats (\$64.4 billion), supplies, live animals, and over the counter medicine (\$32 billion), vet care and product sales (\$38.3) and other services such as pet insurance, boarding, and grooming (\$12.3 billion). This figure represents a \$10.2 billion increase from 2022. In comparison, U.S. pet industry expenditures in 2018 totaled \$90.5 billion. AMERICAN PET PRODS. ASS’N, *supra*.

law have responded to the elevated role of the dog and cat in the modern American family by allowing pet owners to ensure their wellbeing in times of crisis and uncertainty—not because they have economic value, but because they are cherished.

For instance, South Carolina’s Protection from Domestic Abuse Act permits a judge to issue a protective order that prohibits “harm or harassment . . . against any pet animal owned, possessed, kept, or held by: the petitioner; any family or household member designated in the order; or the respondent if the petitioner has a demonstrated interest in the pet animal.” S.C. Code § 20-4-60(C)(8). South Carolina’s Family Court specifically allows petitioners to request that the court “issue an order” making the respondent “forbidden to abuse, harm, or molest, or threaten to abuse, harm or molest any pet animal owned, possessed, kept, or held by Petitioner/Victim.” Form SCCA 425 – Petition for Order of Protection, SC COURTS (rev. Mar. 2019), <https://www.sccourts.org/forms/pdf/SCCA425.pdf> [https://perma.cc/8KZL-ZVFQ]. This protection evidences a recognition by both the legislature and courts that harm to a companion animal can inflict severe emotional distress on its owner, even though that animal is still classified as personal property under the Act, rather than a “household member.” S.C. Code § 20-4-20(b).<sup>4</sup>

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<sup>4</sup> See, e.g., Phil Arkow & Tracy Coppola, *Expanding Protective Orders to Include Companion Animals* 4 (2007), <https://www.sheriffs.org/sites/default/files/Expanding%20Protective%20Orders%20to%20Include%20Companion%20Animals.pdf> [https://perma.cc/UQ95-DUUH] (“When victims seeking shelter leave pets behind, abusers often retaliate by torturing or killing the pets. Twelve independent surveys have reported that between 18% and 48% of battered women have delayed their decision to leave, or have returned to their batterer, out of fear for the welfare of their pets or livestock.”); Emilie B. Ridge, *Protecting Animals: Domestic Abuse and Animal*

Moreover, South Carolina allows pet owners to establish a trust for the care of their companion animal, just like they can for other family members. “A trust may be created to provide for the care of an animal or animals alive or in gestation during the settlor’s lifetime, whether or not alive at the time the trust is created.” S.C. Code § 62-7-408(a). The law further ensures judicial oversight by providing that “a person concerned for the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.” *Id.* § 62-7-408(b). In doing so, South Carolina empowers courts to enforce the noneconomic interest a human guardian has in ensuring that their animals are provided for when they pass, going so far as to provide standing to a surviving family member or friend invested in the animal’s continued wellbeing.

These examples establish why this Court is empowered to allow the recovery of emotional distress and actual value damages in pet loss cases to align with South Carolina society. *See Marcum v. Bowden*, 372 S.C. 452, 455, 458, 643 S.E.2d 85–86, 88 (2007) (“creat[ing] tort liability [for social hosts serving alcohol to underage guests] where formerly there was none” by acknowledging that “[t]he common law changes when necessary to serve the needs of the people [and][w]e have not hesitated to act

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*Abuse Linked*, ANIMAL LEGAL & HIST. CTR. (2008), <https://www.animallaw.info/article/detailed-discussion-protecting-animals-domestic-abuse-and-animal-abuse-linked> [<https://perma.cc/ZTG8-JGG3>] (“For many battered women, their companion animals are a source of comfort. They provide the women with emotional support and affection that is not found elsewhere in the violent relationship. Recognizing this aspect of support, the abuser will harm or kill the animal to further isolate their victim and increase her dependence on the abuser. More often than not, victims cannot bear to leave their once source of security.”) (internal citations omitted).

in the past when it has become apparent that the public policy of this State is offended by outdated rules of law”). Indeed, as Ms. Rock illustrates, South Carolina courts can update the common law without waiting for the legislature to speak directly to an issue when a rule of law is outdated and incompatible with modern life. *See* AIB at 10–11 (noting that South Carolina courts have removed common-law marriage and criminal conversation and alienation of affection from the common law without legislative intervention); *see also State v. Horne*, 282 S.C. 444, 447, 319 S.E.2d 703, 704 (1984) (“This Court has the right and the duty to develop the common law of South Carolina to better serve an ever-changing society as a whole. The fact that [a] particular issue has not been raised or ruled on before does not mean we are prevented from declaring the common law as it should be.”); *Johnson v. S. State Ins. Co.*, 288 S.C. 239, 242, 341 S.E.2d 793, 795 (1986) (“This Court has consistently spearheaded changes in the law.”).

Here, where tortious conduct remains largely governed by the common law, this Court has authority to allow recovery of noneconomic damages in cases involving the wrongful injury or death of companion animals. *See Denson v. Nat'l Cas. Co.*, 439 S.C. 142, 148, 886 S.E.2d 228, 231 (2023) (“Ordinarily the scope of the tort duty of care . . . is given by the common law.”). Allowing noneconomic damages in cases like this would be a recognition of the substantial emotional bonds between humans and their companion animals which permeate American society—households, the economy, and even family and probate courts. As demonstrated below, this Court

should exercise this authority to hold that Ms. Rock is entitled to emotional distress and actual value damages.

**II. This Court Is Empowered to Allow Recovery of Emotional Distress Damages for the Negligent Injury or Death of a Companion Animal.**

South Carolina has not yet addressed whether emotional distress damages are recoverable for the negligent injury or death of a companion dog. *See* AIB at 7. Thus, this Court has the authority to follow the compelling public policy interests elucidated above and align the common law with widely held social mores on companion animal ownership. The Court should also look to persuasive authority from other jurisdictions that permit emotional distress damages in pet loss cases.

Several jurisdictions permit the recovery of emotional distress damages for the negligent loss of a dog, charting a path forward that affirms the elevated status of companion animals in modern society within the property regime. Ms. Rock's appellant brief cites a number of these cases. AIB at 7–8. Here, ALDF aims to highlight cases that reflect Ms. Rock's traumatic experience to establish why she should also be entitled to emotional distress damages.

In *Campbell v. Animal Quarantine Station*, Hawaii's Supreme Court upheld the trial court's award for mental distress to five members of a family for the tortious death their nine-year-old boxer, Princess. 63 Haw. 557, 632 P.2d 1066 (1981). While being transported to an animal hospital by quarantine personnel, Princess died after being confined in an unventilated van under the hot sun for at least an hour. *Id.* at 558, 632 P.2d at 1067. The trial court awarded plaintiffs \$1,000 for their "severe emotional distress" after finding "that the entire family was preoccupied with

Princess' death for two to three weeks after hearing the news, suffering serious emotional distress." *Id.* at 558–59, 632 P.2d at 1067. Significantly, the family did not have to witness her death to recover for this distress; they were informed of her passing over the phone by a veterinarian. *Id.* at 561–62, 632 P.2d at 1069.

The *Campbell* court built its forward-looking holding on precedent that allowed recovery for severe emotional distress under a negligent destruction of property cause of action. *Id.* at 559–60, 632 P.2d at 1068. The court also acknowledged a Florida appellate decision that held a jury properly considered the plaintiffs' mental suffering in determining an award for the negligent burning of a dog with a heating pad following an operation since the animal hospital's behavior demonstrated "great indifference to the property of the plaintiffs." *Id.* at 564 n.6, 632 P.2d at 1071 n.6 (quoting *Knowles Animal Hosp., Inc. v. Wills*, 360 So.2d 37 (Fla. App. 1978) (per curiam)). Permitting recovery of emotional distress damages is equally appropriate here, where Respondents exhibited substantial indifference to the wellbeing of Ms. Rock's dogs despite being entrusted with their care.

Similarly, in *Barrios v. Safeway Insurance Co.*, the Louisiana Court of Appeals upheld a jury award for the "severe loss and severe emotional distress" plaintiff suffered after defendant's insured ran over and killed his family's twelve-year old Labrador retriever. 97 So. 3d 1019, 1023 (La. Ct. App. 2012). The court reconciled the property status of dogs with the importance of fully compensating a plaintiff for the mental anguish of losing their pet in a traumatic accident:

Although a pet is considered corporeal movable property in Louisiana, clearly, pets are not inanimate objects. This Court takes judicial notice

of the emotional bond that exists between some pets and their owners and the “family” status awarded some pets by their owners. In the present matter, the trial judge based her award of \$5,000.00 each to the Barrioses on her finding that they had a close family-like relationship with Yellow; that the dog was a part of their lives for approximately twelve years and that his loss caused them psychic trauma.

*Id.* at 1023–24. The court rejected the defendant’s argument that the plaintiff’s family should not be permitted to recover emotional distress damages since they were not present at the scene of the accident and did not seek assistance from a medical or mental health professional. *Id.*

Like the plaintiffs in *Campbell* and *Barrios*, Ms. Rock was devastated upon learning of Xumi’s death and Ruben’s injury from Respondents. She even turned to trauma-centered therapy such as Eye Movement Desensitization and Reprocessing to help her cope with the abrupt loss of these familial bonds. *See* Dep. of Sarah Rock, ROA 52. This Court should allow her to recover emotional distress damages. In short, “crude application of the principles of the common law must yield to common sense.” *State v. Langford*, 55 S.C. 322, 324, 33 S.E. 370, 371 (1899).

### **III. This Court Is Empowered to Assess the Actual Value of a Companion Animal as Special Property and Consider Noneconomic Evidence of Emotional Distress.**

The South Carolina Supreme Court has held that where property “has no actual market value . . . the owner is entitled to recover its actual or reasonable value, or its special value to him.” *Nelson v. Coleman Co.*, 249 S.C. 652, 659, 155 S.E.2d 917, 921 (1967). An application of this valuation rule to the tortious injury or loss of companion animals is long overdue given that it has been applied to mere “[h]ousehold goods and wearing apparel.” *Id.* Going forward, South Carolina courts

should use an animal's special actual value, rather than its market value, to make plaintiffs whole. Even if emotional distress damages are not independently recoverable, Ms. Rock's emotional distress should be a central type of evidence for a trier of fact to assess the special value of Xumi and Ruben.

**A. The market value rule does not make Ms. Rock whole because companion animals are non-fungible living beings with inimitable value to their owners.**

In 2025, the market value approach is an archaic formula that fails to account for the emotional relationship between a human and their companion animal. *See, e.g., Zager v. Dimilla*, 138 Misc. 2d 448, 450, 524 N.Y.S.2d 968, 969 (Justice Ct. 1988) (acknowledging the impossibility of reducing the bond between a human and a dog to monetary terms). Courts' continued adherence to this rule out of an unwillingness to alter the common law falls short of compensating pet owners. *See* Margit Livingston, *The Calculus of Animal Valuation: Crafting a Viable Remedy*, 82 NEB. L. REV. 783, 847 (2004) ("Given the significance of companion animals in our lives, the market value standard of recovery is grossly undercompensatory."); *see also* Kelly Wilson, *Catching the Unique Rabbit: Why Pets Should Be Reclassified as Inimitable Property Under the Law*, 57 CLEV. ST. L. REV. 167, 183 (2009) ("With so many previously owned pets being abandoned and put to death, there can hardly be a market in which courts can fairly assess a market value . . . suggest[ing] a serious need to update and reconfigure the valuation process in pet loss cases.").

The South Carolina Supreme Court's *Nelson* framework, accordingly, should guide Ms. Rock's recovery of Xumi's and Ruben's actual value. Were the Court to

maintain the market value rule, Appellant would only recover a pittance for either dog because she adopted Xumi and Ruben—mixed-breed dogs—from animal shelters. *See* Dep. of Sarah Rock, ROA 66–67. Moreover, a fair market valuation would consider Xumi worthless as a senior dog of approximately eight years at the time of her death. Sebastien Gay, *Companion Animal Capital*, 17 ANIMAL L. REV. 77, 78 (2010) (noting that “the resale value of an adult dog is only slightly greater than zero.”); *see* *Martinez v. Robledo*, 210 Cal. App. 4th 384, 390, 147 Cal. Rptr. 3d 921, 925 (Ct. App. 2012) (emphasis in original) (“There can be little doubt that most pets have minimal to no market value, particularly elderly pets. As amicus curiae [ALDF] notes, while people typically place substantial value on their *own* animal companions, . . . there is generally no market for *other people’s* pets.”).<sup>5</sup>

Companion dogs are irreplaceable to their owners, and actual special-value damages account for this important reality—one that drives grieving pet owners like Ms. Rock to pursue litigation despite the emotional and financial toll. Jurisdictions that permit noneconomic damages recognize this. *See, e.g., Rabideau v. City of Racine*, 243 Wis. 2d 486, 491–92, 627 N.W.2d 795, 798 (2001) (“A companion dog is not a fungible item, equivalent to other items of personal property . . . [t]his term inadequately and inaccurately describes the relationship between a human and a

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<sup>5</sup> *See, e.g., Morgan v. Kroupa*, 167 Vt. 99, 102–03, 702 A.2d 630, 632–33 (1997) (explaining how a mixed-breed dog does lack meaningful market value—“like most pets, its worth is not primarily financial, but emotional; its value derives from the animal’s *relationship* with its human companions”); *Ammon v. Welty*, 113 S.W.3d 185, 187 (Ky. Ct. App. 2002) (noting that an unregistered mixed-breed dog has no market value).

dog.”); *McDougall v. Lamm*, 211 N.J. 203, 225, 48 A.3d 312, 325 (2012) (“[O]ur courts recognize that pets have a value in excess of that which would ordinarily attach to property, because unlike other forms of personal property, they are not fungible. [We] therefore have permitted pet owners to be awarded costs in excess of the animal’s value that represent . . . damages based on the intrinsic value of the pet . . .”).

Applying this valuation metric to Xumi and Ruben would permit a jury to assess these companion dogs as Ms. Rock’s inimitable property, instead of as readily replaceable with a dog of the same breed. Kelly Wilson, *supra*, at 171 (conceiving of pets as “inimitable property” which “takes into consideration the live, conscious, and unique qualities of pets that distinguish them from other sorts of inanimate property”; *id.* at 183 (“To be inimitable is to be so rare as to surpass or defy imitation . . . to be without compare.”). Indeed, were dogs mere fungible items, boarding facilities would not institute rigorous safety protocols to avoid incidents like the one that claimed Xumi’s life and injured Ruben. Yet, if damages for breaching their duty to pet owners remain minimal, such facilities will accept paying out minor damages—such as the market value of a senior shelter dog—as a mere cost of doing business. *See Zachary Paterick et al.*, *supra*, at 91 (“[T]ort law is failing to properly apportion fault and forcing [plaintiff] owners to subsidize the defendant’s negligence.”).

South Carolina jurisprudence recognizes that one reason for making a defendant liable in tort for injuries from a breach of duty is to prevent such injuries from occurring in the first place. *See, e.g., Simmons v. Tuomey Reg’l Med. Ctr.*, 341 S.C. 32, 49, 533 S.E.2d 312, 321 (2000) (stating that “the desire to give parties with

crucial duties a keen incentive to do everything possible to avoid violating those duties” is an “important aspect of tort law”); *Brown v. Anderson County Hosp. Ass’n*, 268 S.C. 479, 487, 234 S.E.2d 873, 877 (1977) (“Immunity fosters neglect and irresponsibility, while liability encourages the exercise of due care.”), *superseded by statute on other grounds as stated in Simmons*, 341 S.C. 32, 533 S.E.2d 312. Underlying this justification is the deterrence goal of tort law: that potential wrongdoers will avoid wrongful behavior if the benefits of that behavior are outweighed by the costs imposed by the payment of damages. *See, e.g., Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92, 504 S.E.2d 318, 320 (1998) (“Imposing liability on a tavern owner for continuing to serve an intoxicated person who later injures others serves public policy by imposing upon the tavern owner a duty to use judgment and discretion.”); *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1993) (stating that threat of tort action is necessary to ensure that insurance companies will act reasonably), *superseded by statute on other grounds as stated in Duncan v. Provident Mut. Life Ins. Co. of Phila.*, 310 S.C. 465, 427 S.E.2d 657 (1993).

Accordingly, awarding actual damages in pet loss cases would ensure South Carolina courts are fulfilling the deterrence and compensatory aims of tort law:

Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred.

*Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005) (internal citations omitted); *see, e.g., Brousseau v. Rosenthal*, 110 Misc. 2d 1054, 1055,

443 N.Y.S.2d 285, 286 (Civ. Ct. 1980) (“Although the courts have been reluctant to award damages for the emotional value of an injured animal, . . . the court must assess the dog’s actual value to the owner in order to make the owner whole.”). A ruling in favor of Ms. Rock would not trigger a radical overhaul of companion animal’s property status. Rather, Appellant’s ask here is sensible and comports with justice—to recognize that a companion animal’s special actual value is a sound measure of damages in light of *Nelson* and the overwhelming reality that society treasures dogs for their inherent, noneconomic worth. When courts impose the market value rule in pet loss cases, it sends a message to plaintiff pet owners, and society, that their grief over a companion animal is meaningless. South Carolina law can continue to regard animals as property while evolving to recognize their special value to owners who relate to them as family members.

**B. Many U.S. jurisdictions acknowledge the unique property status of companion animals by allowing damages that exceed market value.**

South Carolina courts can confidently apply *Nelson* to companion animals by looking to other jurisdictions that have recognized the availability of actual value damages in pet loss cases.

For instance, in *Anzalone v. Kragness*, the plaintiff’s cat was attacked and killed by a rottweiler while boarded at an animal hospital due to an employee’s failure to secure a door separating the animals. 826 N.E.2d 472, 473 (Ill. App. Ct. 2005). The lower court dismissed the plaintiff’s complaint because her valuation of her pet’s worth exceeded its market value. *Id.* at 474–75. The Illinois Appellate Court reversed,

acknowledging precedent that used an actual value “approach to the valuation of a pet as a unique item of personal property.” *Id.* at 477. This precedent “held that the value to the pet owner may ‘include some element of sentimental value in order to avoid limiting the [owner] to merely nominal damages.’” *Id.* (quoting *Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E.2d 1084, 1087 (Ill. App. Ct. 1987)). The court also noted that “[t]he Restatement [(Second) of Torts] and most jurisdictions take a position that in such cases it would be unjust to limit the damages to the fair market value and, instead, use the so-called ‘value to the owner’ (also known as ‘actual value to the owner’ or ‘actual value’) as the measure of damages.” *Id.*<sup>6</sup> Following *Jankoski* and *Anzalone*, Illinois courts have continued to apply an actual value analysis to dogs as special property. *See Leith v. Frost*, 899 N.E.2d 635, 641 (Ill. App. Ct. 2008) (holding that proper measure of damages was actual value where defendant’s dog attacked plaintiff’s dog). Here, where controlling South Carolina precedent also permits special actual value damages, the Court must recognize Ms. Rock’s right to recover her companion dogs’ intrinsic noneconomic worth.

Moreover, courts allowing for damages beyond market value have not been deterred by concerns about the difficulty of quantifying the special value of a

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<sup>6</sup> *See also, Corso v. Crawford Dog and Cat Hosp., Inc.*, 415 N.Y.S.2d 182 (N.Y. City Civ. Ct., 1979) (“In ruling that a pet such as a dog is not just a thing I believe the plaintiff is entitled to damages beyond the market value of the dog. A pet is not an inanimate thing that just receives affection[;] it also returns it.”); *Mitchell v. Heinrichs*, 27 P.3d 309, 313–14 (Alaska 2001) (adopting actual value measure of damages when defendant shot and killed plaintiff’s dog); *Hyland v. Borrás*, 719 A.2d 662, 663–64 (N.J. Super. Ct. App. Div. 1998) (distinguishing companion animals from other personal property and finding that market value fails to take into account the “length and strength of the owner’s attachment to the animal.”).

companion animal. *See, e.g., Sherman v. Kissinger*, 195 P.3d 539, 547-48 (Wash. Ct. App. 2008) (affirming plaintiff’s ability to recover the intrinsic value of her dog and reasoning that “difficulty of assessment is not cause to deny damages to a plaintiff whose property has no market value”); *Brousseau*, 110 Misc. 2d at 1055, 443 N.Y.S.2d at 286 ([T]he fact that Ms. Brousseau’s dog was . . . mixed breed and thus had no ascertainable market value need not limit plaintiff’s recovery to a merely nominal award. An element of uncertainty in the assessment of damages or the fact that they cannot be calculated with absolute mathematical accuracy is not a bar to plaintiff’s recovery.”).

Assessing the special value of a companion animal to establish damages is administratively feasible. A court may consider elements of the plaintiff’s personal relationship with their companion animal before they were killed or injured, which are able to be easily assessed by juries “on both a subjective level by focusing on how the particular pet owner and pet interact, and on an objective level by focusing on whether the claims and arguments advanced by the pet owner are reasonable and typical of other similarly situated pet owners in society.” Kelly Wilson, *supra*, at 194.<sup>7</sup>

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<sup>7</sup> Such factors could include: “Length of time the pet has been residing with the owner”; “Examples of the personal preferences and behavioral traits exhibited by the pet”; “Special training or special uses of the pet”; “Evidence of the familial-type attachment between the owner and the pet including: photos of the pet paid to be taken or snapshots displayed, extraneous expenditures (treats, massages, birthdays, holidays, etc.), sleep patterns (special bed or with owner)”; “Participation in family activities: attending family vacations, shopping trips, or other outings”; “Ability of the pet to provide protection, or feelings of safety and wellbeing for the owner”; “Ability of the pet to provide comfort, depression reduction or antianxiety effects, or other therapeutic effects”; “Other aspects of the unique personality of the animal.” Kelly Wilson, *supra*, at 194. For example, a trier of fact could measure the reduction

Next, even if emotional distress damages in pet loss cases are not allowed, courts should award actual damages based on the extent of a plaintiff's emotional distress following the sudden and traumatic loss of companionship she endures. *See Brousseau*, 110 Misc. 2d at 1056, 443 N.Y.S.2d at 286 (“[P]laintiff testified that she experienced precisely the kind of psychological trauma associated with the loss of a pet . . . loss of companionship is a long recognized element of damages in this state . . . the court must consider this as an element of the dog’s actual value to this owner.”). Thus, the Court should hold that the Circuit Court should have considered Ms. Rock’s emotional distress as evidence of the actual value of Xumi and Ruben. *See generally* Dep. of Sarah Rock, ROA 39–113 (describing the emotional consequences of Xumi’s passing and Ruben’s injury, including seeking mental health assistance); Aff. of Dr. Irvine ¶ 18, ROA 248 (describing how sudden and violent death of a pet can result in heightened trauma symptoms including grief, anger, and distress).

Lastly, awarding noneconomic damages for the tortious loss of a pet would not burden courts with frivolous litigation. *See Campbell*, 63 Haw. at 564, 632 P.2d at 1071 (“[T]he fears of unlimited liability have not proved true.”). There are safeguards courts can employ to ensure plaintiffs bring meritorious claims. *See* Lauren Sirois, *Recovering for the Loss of a Beloved Pet: Rethinking the Legal Classification of Companion Animals and the Requirements for Loss of Companionship Tort Damages*,

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in Ruben’s actual value by taking into the account the depression she suffered after sustaining injuries and witnessing Xumi’s death, all which have impacted Appellant’s relationship with her. *See* AIB 248, Aff. of Dr. Irvine ¶ 19 (“Ms. Rock’s relationship with Ruben has been changed by Xumi’s death. Bringing a new dog into the home would not restore the kind of relationship that Ms. Rock had with the dogs together.”).

163 U. Pa. L. Rev. 1199, 1237–38 (2015) (proposing that courts impose a high burden of proof on a plaintiff to establish the length and significance of their relationship with their companion animal). To ALDF’s knowledge, none of the five states that permit intrinsic value damages in pet loss cases have reversed course to reinstate the market value rule, underscoring that allowing noneconomic damages does not inundate courts with meritless litigation. Moreover, the availability of actual damages in pet loss cases could reduce the incidence of litigation by having an important deterrent effect that ensures boarding facilities maintain high standards of care.

### **CONCLUSION**

ALDF respectfully urges the Court to exercise its authority and duty to acknowledge the intrinsic value that South Carolinians place on their companion animals. Accordingly, the Court should reverse the Circuit Court’s Orders, which improperly rejected the availability of emotional distress and actual value damages, and ensure that Ms. Rock is made whole for Xumi’s death and Ruben’s injury.

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Respectfully submitted,

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