

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

JUSTICE, an American Quarter)	
Horse, by and through his)	
Guardian, Kim Mosiman,)	Washington County Circuit Court
)	Case No. 18CV17601
Plaintiff-Appellant,)	
)	CA No. A169933
v.)	
)	
GWENDOLYN VERCHER,)	
)	
Defendant-Respondent.)	

APPELLANT’S OPENING BRIEF AND EXCERPT OF RECORD

Appeal from the Order of the Circuit Court for
Washington County Entered December 26, 2018 by the
Honorable John S. Knowles, Pro Tem Circuit Court Judge

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	v
INTRODUCTION	1
STATEMENT OF THE CASE.....	2
A. Nature of the Action and Relief Sought.....	2
B. Nature of the Order to be Reviewed	2
C. Basis of Appellate Jurisdiction.....	3
D. Timing of this Appeal	3
E. Questions Presented on Appeal.....	3
F. Summary of Argument.....	4
G. Summary of Material Facts	5
ASSIGNMENTS OF ERROR	9
I. FIRST ASSIGNMENT OF ERROR: The trial court erred when it “grant[ed] with prejudice defendant’s motion to dismiss based on a lack of standing for Justice the horse.” (ER 15).....	9
II. SECOND ASSIGNMENT OF ERROR: The trial court erred by entering an order and final judgment dismissing Justice’s complaint with prejudice. (ER 17-20)	9
A. Preservation of First and Second Assignments of Error	9
B. Standard of Review for First and Second Assignments of Error.....	10
C. Argument for First and Second Assignments of Error	10
1. As a direct bearer of legal rights under Oregon’s animal cruelty statute, Justice has the legal status to	

maintain a negligence per se claim under the common law.....	10
a. Justice is a legal person with respect to the animal cruelty statute because he personally bears rights under that law.....	12
i. The definition of a legal person includes any entity with legally protected rights to whom others owe a duty of care.....	12
ii. Justice and other nonhuman animals directly bear legal rights under Oregon’s animal cruelty statute.	14
iii. The circuit court’s conclusion that Justice lacks standing because he is incapable of accepting legal responsibilities is unfounded.....	18
b. Forcing a victim of animal cruelty to bear the costs of their injuries rather than the abuser violates the primary purpose of tort law: to compensate victims who have suffered from another’s wrongdoing.	21
c. The circuit court’s “floodgates” concern is not an appropriate reason to sustain the demurrer because it is legally irrelevant and not a practical concern.....	25
d. Justice is the real party in interest for damages caused by the severe neglect that he suffered.	28
CONCLUSION.....	31

TABLE OF AUTHORITIES

CASES

<i>Bagely v. Mt. Bachelor, Inc.</i> , 356 Or 543, 340 P3d 27 (2014)	21, 22
<i>Berman v. Allan</i> , 80 NJ 421, 404 A2d 8 (1979)	21
<i>Buchler v. Oregon Corrections Div.</i> , 316 Or 499, 853 P2d 798 (1993)	23
<i>Cain v. Rijken</i> , 300 Or 706, 717 P2d 140 (1986)	23
<i>Canadian Aviator v. U.S.</i> , 324 US 215 (1945).....	13
<i>Cetacean Community v. Bush</i> , 386 F3d 1169 (9th Cir 2004)	18
<i>Couey v. Atkins</i> , 357 Or 460, 355 P3d 866 (2015)	12
<i>Davis v. Bostick</i> , 282 Or 667, 580 P2d 544 (1978)	26, 27
<i>Doyle v. City of Medford</i> , 356 Or 336, 337 P3d 797 (2014)	23
<i>Dubiver v. City & S. Ry. Co.</i> , 44 Or 227, 75 P 693 (1904)	19
<i>Feehely v. Rogers</i> , 159 Or 361, 80 P2d 717 (1938)	29
<i>Grandy v. Williams</i> , 147 Or 409, 34 P2d 622 (1934)	19, 24
<i>Growers Refrigeration Co. v. Pac. Elec. Contractors, Inc.</i> , 165 Or App 274, 996 P2d 521 (2000)	29

<i>Hansen v. Anderson</i> , 113 Or App 216, 831 P2d 717 (1992)	10
<i>Hungerford v. Portland Sanitarium & Benev. Ass'n</i> , 235 Or 412, 384 P2d 1009 (1963)	22
<i>Jensen v. Alley</i> , 128 Or App 673, 877 P2d 108 (1994)	29
<i>Jones v. Mitchell Bros. Truck Lines</i> , 273 Or 430, 541 P2d 1287 (1975)	19
<i>Metro. Prop. & Cas. v. Harper</i> , 168 Or App 358, 7 P3d 541 (2000)	29, 31
<i>Nearing v. Weaver</i> , 295 Or 702, 670 P2d 137 (1983)	23
<i>Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery</i> , 31 NY3d 1054, 100 NE3d 846 (2018)	20
<i>Santa Clara City v. S. Pac. Railroad Co.</i> , 118 US 394 (1886).....	13
<i>Sears v. James</i> , 47 Or 50, 82 P 14 (1905)	29
<i>Smith v. Truck Ins. Exch., Inc.</i> , 242 Or App 202, 255 P3d 615 2011)	29
<i>State v. Fessenden</i> , 258 Or App 639, 310 P3d 1163 (2013)	17
<i>State v. Fessenden</i> , 355 Or 759, 333 P3d 278 (2014)	17
<i>State v. Hershey</i> , 286 Or App 824, 401 P3d 256 (2017)	17, 18
<i>State v. Hershey</i> , 362 Or 281, 409 P3d 1044 (2017)	17

<i>State v. Hess</i> , 273 Or App 26, 359 P3d 288 (2015)	10, 11, 16, 17, 18, 29
<i>State v. Hess</i> , 358 Or 529, 367 P3d 529 (2016)	10, 16
<i>State v. Magana</i> , 265 Or App 416, 335 P3d 318 (2014)	16
<i>State v. Nix</i> , 251 Or App 449, 283 P3d 442 (2012)	16
<i>State v. Nix</i> , 355 Or 777, 334 P3d 437 (2014)	11, 15, 16, 17, 18, 20, 29
<i>State v. Nix</i> , 356 Or 768, 345 P3d 416 (2015)	11
<i>Stringer v. Car Data Systems, Inc.</i> , 314 Or 576, 841 P2d 1183 (1992)	10, 25
<i>Tomlinson v. Metro Pediatrics, LLC</i> , 362 Or 431, 412 P3d 133 (2018)	21
<i>Tomlinson v. Metro. Pediatrics, LLC</i> , 275 Or App 658, 366 P3d 370 (2015)	21, 24

CONSTITUTIONAL AND STATUTORY PROVISIONS

ORCP 26	29
ORS 130.185	8, 24
ORS 130.85	5, 30
ORS 137.109	11
ORS 161.295	19
ORS 167.305	15
ORS 167.305-167.390	27
ORS 167.315	27

ORS 167.322.....	15, 27
ORS 167.325.....	27
ORS 167.330.....	10, 15
ORS 167.335.....	28
ORS 167.355.....	27
ORS 19.205.....	3
ORS 19.255.....	3
ORS 609.990.....	21

TEXTS

Margaret Davies, <i>Property: Meanings, Histories, Theories</i> (2008).....	14
Ngairé Naffine, <i>Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person</i> (2009)	14
Ngairé Naffine, <i>Legal Persons as Abstractions: The Extrapolation of Persons from the Male Case</i> , in <i>Legal Personhood: Animals, Artificial Intelligence and the Unborn</i> (Visa A.J. Kurki & Tomasz Pietrzykowski eds. 2017).....	13, 18
<i>Purpose of tort law</i> , 74 Am Jur 2d Torts § 2	21
<i>Restatement (Second) of Torts</i> § 903 (1979)	25
Richard Tur, <i>The "Person" in Law</i> , in <i>Persons and Personality: A Contemporary Inquiry</i> (Arthur Peacocke & Grant Gillett eds. 1987).....	13
Visa A.J. Kurki, <i>Why Things Can Hold Rights: Reconceptualizing the Legal Person</i> , in <i>Legal Personhood: Animals, Artificial Intelligence and the Unborn</i> (Visa A.J. Kurki & Tomasz Pietrzykowski eds. 2017).....	14

TREATISES

Dan B. Dobbs, <i>The Law of Torts</i> §§ 4, 9, 11 (2001)	22
--	----

Sir John William Salmond, <i>Salmond on Jurisprudence</i> § 61 (P.J. Fitzgerald ed. 12th ed 1966)	13
William L. Prosser, <i>Law of Torts</i> §§ 12, 51 (4th ed 1978)	27

OTHER AUTHORITIES

Bryant Smith, <i>Legal Personality</i> , 37 Yale LJ 283 (1928)	13
Cass R. Sunstein, <i>Standing for Animals (with Notes on Animal Rights)</i> , 47 UCLA L Rev 1333, 1335 (2000).....	18
Jeffrey A. Parness et al., <i>Monetary Recoveries for State Crime Victims</i> , 58 Clev. St. L. Rev. 819 (2010).....	12
Margaret Jane Radin, <i>Compensation and Commensurability</i> , 43 Duke L J 56 (1993)	25
Marin K. Levy, <i>Judging the Flood of Litigation</i> , 80 U Chi L Rev 1007 (2013)	27
Valerie J. Vollmar, <i>The Oregon Uniform Trust Code and Comments</i> , 42 Willamette L Rev 187 (2006).....	30

INTRODUCTION

This case involves Justice, a horse who suffered extreme pain, distress, and permanent injury due to the criminal neglect of Defendant Gwendolyn Vercher. Vercher denied Justice adequate food and shelter for months, abandoning him to starve and freeze in violation of this state's animal cruelty statute. This neglect left Justice debilitated and emaciated. He continues to suffer from this neglect, including serious injuries to his penis that will require Justice have special and expensive housing and medical care for the remainder of his life. The associated costs of care impair his ability to find permanent housing through adoption.

Kim Mosiman, through her nonprofit sanctuary Sound Equine Options, subsequently took custody and guardianship over Justice. Mosiman filed this common law negligence per se claim on Justice's behalf against the person who neglected him, seeking damages related to his injuries.

The circuit court's subsequent dismissal of Justice's claim on the basis that nonhuman animals lack the requisite legal status to maintain a civil action cannot be reconciled two well-established legal rules: first, that animals who suffer cruelty are crime victims and second, that victims of crimes are entitled to civil recovery for their injuries. Animal cruelty victims should not be forced to rely on the prospective charity of others to pay for their injuries. This state's animal cruelty statute is among the most progressive in the nation, and Oregon courts recognize that the legislature's

intention in passing the law regards the individual animals themselves as victims of cruelty. As a direct bearer of legal rights under the animal cruelty statute, Justice qualifies—at least in a limited sense—as a legal person. In keeping with the fundamental premise of tort law that victims (or their caretakers) should not have to pay for injuries caused by wrongdoers, this Court should allow Justice’s negligence per se claim to proceed.

STATEMENT OF THE CASE

A. NATURE OF THE ACTION AND RELIEF SOUGHT

Justice’s guardian Kim Mosiman filed this common law negligence per se claim on Justice’s behalf to recover damages for extreme pain, distress, and permanent injury caused by Defendant Vercher’s failure to provide adequate food and shelter in violation of Oregon’s animal cruelty laws. This action seeks economic damages for past and future costs of unique housing, medical, and socialization care, which Justice will need for the rest of his life, as well as non-economic damages for pain and suffering, reasonable attorneys’ fees, costs and disbursements, and any other relief that the court may deem proper.

B. NATURE OF THE ORDER TO BE REVIEWED

This is an appeal from the circuit court’s entry of general judgment dismissing Justice’s complaint with prejudice. Order (ER 17); General Judgment (ER 18-20). The circuit court entered and noticed its general judgment on December 26, 2018,

following an opinion letter granting Vercher's motion to dismiss after briefing and a hearing on the matter. Opinion Letter (ER 15-16).

C. BASIS OF APPELLATE JURISDICTION

This Court has jurisdiction over the appeal pursuant to ORS 19.205(1) which authorizes appeals of any general judgment, such as the one entered by the circuit court dismissing Justice's complaint with prejudice.

D. TIMING OF THIS APPEAL

On December 26, 2018, the circuit court entered and provided notice of its general judgment dismissing the complaint with prejudice. General Judgment (ER 18-20). On January 22, 2019, Plaintiff filed a notice of appeal in this Court; this notice was filed within 30 days of the date of entry of the general judgment, as required by ORS 19.255(1). The same date, Plaintiff served the notice of appeal on all counsel by United States Postal Service certified or registered mail with return receipt requested.

E. QUESTIONS PRESENTED ON APPEAL

1. Does Justice, a nonhuman victim of criminal animal cruelty, possess the requisite legal status to pursue a tort claim to recover damages for injuries stemming from the cruelty that he suffered?

2. Did the circuit court err by issuing an order and final judgment granting Defendant Vercher's motion to dismiss?

F. SUMMARY OF ARGUMENT

Justice's complaint satisfies all the elements of a prima facie negligence per se claim under the common law because he suffered serious and permanent injuries as a result of Vercher's neglect of him in violation of the animal cruelty statute, and Justice belongs to the class of persons intended to be protected by that law.

As an animal cruelty victim, Justice possesses standing to advance a negligence per se claim predicated on animal cruelty violations. The term "person" in law describes an entity with legally protected rights to whom others owe a duty of care. Justice and other nonhuman animals are entities who individually bear legally protected rights under Oregon's animal cruelty law. Therefore, Justice and other nonhuman animals qualify as legal persons at least with respect to their rights under the animal cruelty law.

In keeping with the fundamental tenant that the primary purpose of tort law is compensating plaintiffs for the injuries they have suffered wrongfully at the hands of others, animal cruelty victims such as Justice have a right under the common law to recover damages for injuries that they suffered as a result of animal cruelty violations. Animal cruelty victims should not be forced to rely on the charity of others to pay for damages caused by the criminal acts of another.

Justice is the real party in interest in this case because he will be benefitted by a judgment in his favor. Any damages recovered in this action will be deposited into

the Justice Equine Trust, of which Justice is the sole beneficiary with legally enforceable property rights. *See* ORS 130.85; Complaint ¶¶ 4, 35 (ER 3, 8). A trust that covers Justice's additional costs of care will guarantee he is able to receive the expensive lifelong care that he requires to be made whole. Complaint ¶¶ 31, 34 (ER 3, 8).

G. SUMMARY OF MATERIAL FACTS

This case involves Justice, a horse who suffered extreme pain, distress, and permanent injury due to the criminal neglect of Defendant Vercher. Complaint ¶¶ 1, 12, 16 (ER 4-5). These injuries include a frostbitten and prolapsed penis (Complaint ¶¶ 1, 18, 48 (ER 1, 5-6, 11-12)), and will require special and expensive medical care and housing for the remainder of his life. Complaint ¶¶ 29-31, 33-34 (ER 7-8). As a result, Justice's future is uncertain; his ongoing care is dependent on the charity of others, but there is no guarantee those funds can flow indefinitely. Complaint ¶¶ 4-5 (ER 3). Finding a permanent home for Justice is more difficult due to the substantial additional costs caused by Vercher's neglect. Complaint ¶ 34 (ER 8).

Justice was subject to severe neglect under the custody and control of Vercher for at least several months leading up to March 2017. *See* Complaint ¶¶ 10-14 (ER 4-5). During this time, Vercher denied Justice adequate food and shelter, abandoning him to starve and freeze. Complaint ¶¶ 10-21 (ER 4-5).

In March 2017, Vercher surrendered Justice to the nonprofit horse rescue

Sound Equine Options after several complaints from a concerned neighbor about Justice's condition. Complaint ¶¶ 11-14 (ER 4-5). Sound Equine Options, through its Executive Director Kim Mosiman, sent Justice to an equine hospital for urgent veterinary care and hospitalization. Complaint ¶ 14 (ER 5).

The hospital documented severe neglect. Complaint ¶¶ 15-24 (ER 5-7). The hospital observed that Justice was lethargic and weak and had difficulty walking. Complaint ¶ 15 (ER 5). The hospital further found that Justice was 300 pounds underweight, and scored just a 1 out of 9 on the Henneke Horse Body Condition Scale ("BCS"). A BCS of 1 indicates extreme emaciation, whereas a healthy horse scores between 4 and 6. Complaint ¶¶ 12, 16 (ER 4-5).

Justice's penis was swollen, traumatized, infected, and prolapsed, with a moderate amount of necrotic tissue that had to be removed. Complaint ¶ 17 (ER 5). Justice was unable to retract his penis to its normal position inside its sheath, likely due to his severely debilitated body condition. *Id.* The prolonged penile prolapse had prevented drainage of the tissue, which then caused swelling and eventually frostbite due to exposure to chronic cold temperatures. Complaint ¶¶ 17-18 (ER 5-6). Justice's prolapsed penis was the most severe case the veterinarian who saw him at the hospital has ever treated. Complaint ¶ 18 (ER 5-6).

The hospital also documented that Justice suffered from lice and rain rot, a bacterial skin infection that irritates a horse's hair and skin and may result in a

continuous painful sheet of scabbing. Complaint ¶ 19 (ER 6). Lice and rain rot are common in neglected horses and may generally be avoided with good grooming and adequate nutrition. *Id.*

Justice began his long road to recovery over the months following his rescue by Mosiman and Sound Equine Options. Complaint ¶¶ 21-25 (ER 6-7). He gained weight, and the lice and rain rot conditions improved. Complaint ¶ 23 (ER 6). However, he showed signs of distress such as stall-circling, a form of compulsive behavior resulting from anxiety. *Id.*

Justice's penis may remain semi-prolapsed permanently. Complaint ¶¶ 26, 30 (ER 7-8). Due to his extensive injuries, Justice will require costly care that he otherwise would not need, including unique sheltering needs, medications, and socialization training. Complaint ¶ 31 (ER 8).

Given the length of time it takes to sustain the degree of damage Justice did, it appears he had been suffering from a prolapsed penis for several months prior to receiving treatment at the hospital. Complaint ¶ 28 (ER 7). Further, given the extent of Justice's emaciation—over 300 pounds underweight—Justice had been starving for several months prior to receiving treatment. *Id.* During these months Justice would have been in significant pain and chronically hungry. *Id.*

On July 10, 2017, Vercher pled guilty to neglect of Justice in the first degree. Complaint ¶ 32 (ER 8). Pursuant to her criminal plea agreement, Vercher agreed to

pay restitution to Sound Equine Options for the costs of Justice's care incurred prior to July 6, 2017. Complaint ¶ 33 (ER 8). Vercher's plea agreement does not include restitution for any of the cost of Justice's care after July 6, 2017. *Id.*

On August 22, 2017, Mosiman created the Justice Equine Trust pursuant to ORS 130.185. Complaint ¶ 35 (ER 8). Justice is the sole beneficiary of that trust. *Id.* Mosiman created the trust in order to provide, in whole or in part, for Justice's care from July 6, 2017 until the end of Justice's life with any funds obtained in this action against Vercher. *Id.*

On May 1, 2018, Mosiman filed this common law negligence per se action on Justice's behalf seeking damages for the lifelong injuries caused by Vercher's criminal neglect—to guarantee those injuries would never go untreated for lack of funds, regardless of who Justice's future guardian might be. Complaint (ER 1-13). The complaint alleged that the elements of a negligence per se claim were satisfied here on the basis that Vercher caused serious and permanent injuries to Justice by neglecting him in violation of the animal cruelty statute, and that Justice is within the class of persons intended to be protected by that law. Complaint ¶¶ 12-31, 34, 48-51 (ER 4-8, 11-12).

Vercher filed a motion to dismiss the complaint. *See* Opinion Letter at 1 (ER 15). After briefing and a hearing on that motion, the circuit court issued an opinion letter granting the motion to dismiss on the basis that nonhuman animals “lack[] the

legal status or qualifications necessary for the assertion of legal rights and duties in a court of law.” Opinion Letter (ER 15). The entry of general judgment and timely notice of appeal initiating this appeal followed. General Judgment (ER 18-20).

ASSIGNMENTS OF ERROR

I.

FIRST ASSIGNMENT OF ERROR:

The trial court erred when it “grant[ed] with prejudice defendant’s motion to dismiss based on a lack of standing for Justice the horse.” (ER 15)

II.

SECOND ASSIGNMENT OF ERROR:

The trial court erred by entering an order and final judgment dismissing Justice’s complaint with prejudice. (ER 17-20)

A. PRESERVATION OF FIRST AND SECOND ASSIGNMENTS OF ERROR

Vercher moved to dismiss the complaint on August 14, 2018, on the basis that Justice does not have standing to maintain a lawsuit. *See* Opinion Letter (ER 15). Plaintiff argued in a written opposition brief and at a hearing that Justice is a legal person with the ability to defend his rights in court because he individually bears legal rights under the state’s animal cruelty law. *See id.*

Following the hearing and briefing, the circuit court issued an opinion letter on September 17, 2018, granting Vercher’s motion to dismiss “based on a lack of standing for Justice the horse.” Opinion Letter at 1 (ER 15). The circuit court formalized that opinion by entering an order against Justice on December 24, 2018, and general judgment on December 26, 2018. Order (ER 17); General Judgment (ER

18-20). This appeal followed.

B. STANDARD OF REVIEW FOR FIRST AND SECOND ASSIGNMENTS OF ERROR

A circuit court’s dismissal of a complaint is reviewed for errors of law. *Hansen v. Anderson*, 113 Or App 216, 218, 831 P2d 717 (1992). Courts must “accept all well-pleaded allegations of the complaint as true and give plaintiffs the benefit of all favorable inferences that may be drawn from the facts alleged.” *Stringer v. Car Data Systems, Inc.*, 314 Or 576, 584, 841 P2d 1183 (1992).

C. ARGUMENT FOR FIRST AND SECOND ASSIGNMENTS OF ERROR

- 1. As a direct bearer of legal rights under Oregon’s animal cruelty statute, Justice has the legal status to maintain a negligence per se claim under the common law.**

There was no genuine dispute at the circuit court level that Justice’s claim satisfies the four elements of the common law’s negligence per se test.¹ Instead, the circuit court justified its dismissal of Justice’s case “based on a lack of standing for

¹ Justice’s claim satisfies all the prima facie elements of a common law negligence per se claim: (1) Vercher violated the animal cruelty statute by failing to provide Justice minimum care under ORS 167.330(1) (Complaint ¶ 48 (ER 11-12)); (2) Justice sustained serious and permanent injuries as a result of that neglect (Complaint ¶¶ 12-31, 34, 48-49 (ER 4-8, 12)); (3) Justice is in the class of persons intended to be protected by the animal cruelty law because nonhuman animals are the recognized victims of animal cruelty (*State v. Hess*, 273 Or App 26, 35-36, 359 P3d 288 (2015), *rev den*, 358 Or 529, 367 P3d 529 (2016); Complaint ¶ 50 (ER 12)); and (4) Justice suffered injuries such as starvation and frostbite that are of the type the animal cruelty statute was enacted to prevent (Complaint ¶ 51 (ER 12)).

Justice”, claiming that as a nonhuman animal Justice “lacks the legal status or qualifications necessary for the assertion of legal rights and duties in a court of law.” Opinion Letter at 1 (ER 15).

Justice possesses the requisite legal status to pursue his negligence per se claim because he personally bears rights under the animal cruelty statute. Justice’s status as a direct bearer of legal rights is the logical outgrowth of the Supreme Court’s groundbreaking decision in *State v. Nix*, which held that nonhuman animals qualify as “victims” of animal cruelty crimes. 355 Or 777, 779, 334 P3d 437 (2014), *vac’d on procedural grounds*, 356 Or 768, 345 P3d 416 (2015); *Hess*, 273 Or App at 35-36 (adopting the holding and reasoning in *Nix*). In *Nix*, the Court concluded that in enacting the anticruelty law, the legislature primarily intended to protect *animals themselves* from unjustified suffering, rather than to protect human interests such as animal ownership or public morals. *Id.* at 779. The implication of *Nix* is that animals, as sentient beneficiaries of statutory protections, have *substantive* legal rights to be free from cruelty. And as victims of crimes, animals have *procedural* legal rights that can be vindicated through civil actions, including common law claims for negligence per se. *See* ORS 137.109 (recognizing the preexisting “right of a person injured by a defendant’s commission of a crime . . . to sue and recover damages from the defendant in a civil action”); Jeffrey A. Parness et al., *Monetary Recoveries for State Crime Victims*, 58 Clev. St. L. Rev. 819, 841 (2010) (“A

victim's claim against a criminal typically arises under common law tort.”).

- a. Justice is a legal person with respect to the animal cruelty statute because he personally bears rights under that law.**
 - i. The definition of a legal person includes any entity with legally protected rights to whom others owe a duty of care.**

Whether Justice has the legal status or qualifications necessary to maintain a negligence per se action is fundamentally a question about whether he is a legal person with respect to the animal cruelty statute. Justice's negligence per se claim arises from common law, so there is no statutory definition of “person” to interpret. And while there is case law holding that individual animals are themselves the “victims” of animal cruelty, there is no case law that squarely addresses whether animals are legal persons under the cruelty laws of Oregon or anywhere else. This is a case of first impression. In the absence of any case law on the subject, this Court should consult the jurisprudential scholarship on the issue. *See Couey v. Atkins*, 357 Or 460, 355 P3d 866 (2015) (extensively citing scholarship throughout analysis about the justiciability of a plaintiff's claim).

Jurisprudential scholarship on personhood concludes that the word “person” is best understood as a legal term as any entity with legally protected rights to whom others owe a duty of care. Noted judge and legal scholar John Salmond, in his treatise on jurisprudence noted that “a person is any being whom the law regards as capable

of rights or duties...whether a human being or not[.]” Sir John William Salmond, *Salmond on Jurisprudence* § 61 (P.J. Fitzgerald ed. 12th ed 1966). Bryant Smith, in his classic treatment of legal personhood, wrote that “[t]o confer legal rights or to impose legal duties . . . is to confer legal personality.” Bryant Smith, *Legal Personality*, 37 Yale LJ 283, 283 (1928). Contemporary scholars concur: “where there is a legal right or duty recognized by criminal law, so there is a legal person, though if the rights are few, the person is a weak one.” Ngaire Naffine, *Legal Persons as Abstractions: The Extrapolation of Persons from the Male Case*, in *Legal Personhood: Animals, Artificial Intelligence and the Unborn*, 17 (Visa A.J. Kurki & Tomasz Pietrzykowski eds. 2017); Richard Tur, *The “Person” in Law*, in *Persons and Personality: A Contemporary Inquiry*, 121-122 (Arthur Peacocke & Grant Gillett eds. 1987) (“In a sense . . . , the concept of legal personality . . . is an empty slot that can be filled by anything that can have rights or duties.”). Of course, the law already recognizes nonhuman persons in some contexts: corporations and ships, for example, qualify as entities with legal personality to sue with differing sets of rights and obligations. *See, e.g., Canadian Aviator v. U.S.*, 324 US 215, 224 (1945) (recognizing personhood of ships); *Santa Clara City v. S. Pac. Railroad Co.*, 118 US 394 (1886) (recognizing personhood of corporations).

A major cause of confusion surrounding the (limited) personhood status of animals is the false dichotomy that exists between “persons” and “property.” But

rather than representing two mutually exclusive categories into which all conceivable items and entities may neatly be sorted, the law regularly “blend[s] the two concepts of personality and property,” resulting in “a continuum” with full-fledged personhood on the one end and utter thinghood on the other. Ngaire Naffine, *Law’s Meaning of Life: Philosophy, Religion, Darwin and the Legal Person*, 47 (2009). Margaret Davies concurs that “the distinction between persons and property . . . is not a bright line, but is rather contextual and flexible.” Margaret Davies, *Property: Meanings, Histories, Theories*, 80 (2008). Thus, “an entity can simultaneously be a legal person for some purposes and a nonperson for others.” Visa A.J. Kurki, *Why Things Can Hold Rights: Reconceptualizing the Legal Person*, in *Legal Personhood: Animals, Artificial Intelligence and the Unborn*, 85 (Visa A.J. Kurki & Tomasz Pietrzykowski eds. 2017). Corporations provide one example of this dual status; they are both persons with limited legal rights and property that can be bought and sold.

Thus, notwithstanding their property status, animals like Justice qualify as legal persons at least for limited purposes under the animal cruelty statute because, as discussed in the next section, they individually bear legal rights under that law.

ii. Justice and other nonhuman animals directly bear legal rights under Oregon’s animal cruelty statute.

Individual animals are the subjects of legal rights under the animal cruelty

statute, and that law imposes duties on humans to act or refrain from acting in ways that violate those rights.

Oregon law establishes an affirmative duty to provide animals like Justice with adequate food, potable water, shelter, and veterinary care, and to refrain from inflicting unjustified violence. *See, e.g.*, ORS 167.330(1)(a) (prohibiting criminally negligent failure to provide minimum care); ORS 167.322 (prohibiting maliciously killing or intentionally torturing an animal).

The legislature amended this state’s animal cruelty statute in 2013 to explicitly highlight that the purpose of the law is to protect animals as “sentient beings capable of experiencing pain, stress and fear” who “should be cared for in ways that minimize pain, stress, fear and suffering.” ORS 167.305(1), (2).

Against this statutory background, this Court and the Oregon Supreme Court recognize that the principal purpose of the animal cruelty statute is to protect animals themselves, and not to protect animal owners or promote public morals. In *State v. Nix*, the Supreme Court of Oregon held that animals themselves are individual “victims” of animal cruelty. 355 Or at 779. Delving into the statutory text and legislative history, the Supreme Court found that the purpose of the animal cruelty statute is to protect animals themselves rather than public or other human interests:

The principal purpose of adopting the legislation that became [the present animal cruelty statute] was to prevent

the suffering of animals. Although early animal cruelty legislation may have been directed at protecting animals as property of their owners or as a means of promoting public morality, Oregon's animal cruelty laws have been rooted—for nearly a century—in a different legislative tradition of protecting individual animals themselves from suffering.

Id. at 796-97. The Supreme Court of Oregon's analysis in *Nix* is consistent with this Court's analysis in the same case, which implicitly held that nonhuman animals protected by the animal cruelty statute comprise "the class of persons whom the legislature intended to directly protect". *State v. Nix*, 251 Or App 449, 454, 462, 283 P3d 442 (2012).

Although the Supreme Court's opinion in *Nix* was subsequently vacated on procedural grounds, its reasoning remains the law of this state since this Court adopted the holding. *Hess*, 273 Or App at 34-35, *rev den*, 358 Or 529; *see also State v. Magana*, 265 Or App 416, 418 n.1, 335 P3d 318 (2014) (courts may rely on or adopt the reasoning of a vacated opinion).

In line with the *Nix* and *Hess* decisions, this Court subsequently recognized animal cruelty victims' elevated legal status in *State v. Hershey* when it held that the emergency aid exception justified a warrantless search and seizure where law enforcement officers believed an animal was threatened with serious physical injury or death. 286 Or App 824, 831-34, 401 P3d 256 (2017), *rev den*, 362 Or 281, 409 P3d 1044 (2017). Under the "emergency aid" rule, warrantless searches and seizures

pass constitutional muster only when officers reasonably believe “that there [is] an immediate need to aid or assist a *person* who has suffered (or is imminently threatened with suffering) serious physical injury or harm.” *Hershey*, 286 Or App at 831 (emphasis added). In *Hershey*, a criminal defendant sought to exclude evidence of animal neglect obtained by law enforcement officers who did not have a search warrant when they seized cows who lacked food and water, and appeared to be near death. *Id.* at 832. Applying this Court’s reasoning in an earlier animal-status case, the *Hershey* court held that law enforcement officers properly used the emergency aid exception in seizing animals threatened with imminent serious physical injury and harm. *Id.* at 833 (citing *State v. Fessenden*, 258 Or App 639, 310 P3d 1163 (2013), *aff’d on other grounds*, 355 Or 759, 333 P3d 278 (2014)), implicitly acknowledging that animals are persons within the meaning of the emergency aid test.

The implication of *Nix*, *Hess*, and *Hershey* is that animals have legal rights and elevated legal status by virtue of the protections they receive under the cruelty statute. These legal rights under the cruelty statute confer on animals a limited form of legal personhood because “where there is a legal right or duty recognized by criminal law, so there is a legal person” Naffine, *Legal Persons as Abstractions* at 17; *see also supra* at I/II.C.1.a.i.

In line with the rationale of *Nix*, *Hess*, and *Hershey*, other courts and legal

scholars have recognized that laws such as the animal cruelty statute provide animals with legal rights. In *Cetacean Community v. Bush*, the Ninth Circuit observed that “[a]nimals have many legal rights, protected under both federal and state laws.” 386 F3d 1169, 1175 (9th Cir 2004). Constitutional scholar Cass Sunstein echoes that observation, stating “it is entirely clear that animals have legal rights, at least of a certain kind.” Cass R. Sunstein, *Standing for Animals (with Notes on Animal Rights)*, 47 UCLA L Rev 1333, 1335 (2000).

Thus, nonhuman animals likewise qualify as legal persons, at least for limited purposes under the animal cruelty statute, insofar as personhood is the legal status required to vindicate one’s rights. The animal cruelty statute’s principal purpose is to protect animals themselves, and thereby bestows legal rights upon animals and creates a corollary duty of care owed to animals by humans. This Court should therefore recognize legal personhood status for Justice with respect to his rights under the animal cruelty statute.

iii. The circuit court’s conclusion that Justice lacks standing because he is incapable of accepting legal responsibilities is unfounded.

In its opinion letter, the circuit court based its holding that Justice does not have standing on the fact that Justice is “incapable of accepting legal responsibilities” because he is an animal. Opinion Letter at 1 (ER 15). This reasoning lacks support in the law because the ability to accept legal responsibilities is not a

necessary condition for being a legal person with standing.

There are many categories of persons who are incapable of accepting legally responsibility but nonetheless bear at least some legal rights under Oregon law. Animals, like young children and severely mentally impaired adults, lack mental competency and thus cannot accept legal duties and liabilities. *Accord Dubiver v. City & S. Ry. Co.*, 44 Or 227, 242, 75 P 693 (1904) (a child under 7 years of age cannot be convicted of a crime because the requisite mental capacity “is almost an impossibility in nature”); ORS 161.295 (a person who “lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law” because of a mental disorder is not criminally liable). Nevertheless, young children and mentally incompetent adults who cannot accept legal responsibilities are still persons with rights who can maintain a lawsuit. *See, e.g., Grandy v. Williams*, 147 Or 409, 417, 34 P2d 622 (1934) (surety bond dispute brought by minor plaintiff); *Jones v. Mitchell Bros. Truck Lines*, 273 Or 430, 432, 541 P2d 1287 (1975) (negligence action on behalf of mentally incapacitated adult for personal injuries she sustained in automobile collision).

Thus, an animal’s inability to accept legal responsibilities is an invalid reason for dismissing Justice’s case. In *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, an Associate Judge of the New York Court of Appeals acknowledged that an animals’ inability to accept legal responsibility is not determinative of their

possession of legal rights:

Even if it is correct, however, that nonhuman animals cannot bear duties, the same is true of human infants or comatose human adults, yet no one would suppose that it is improper to seek a writ of habeas corpus on behalf of one's infant child [] or a parent suffering from dementia[.] In short, being a “moral agent” who can freely choose to act as morality requires is not a necessary condition of being a “moral patient” who can be wronged and may have the right to redress wrong.

31 NY3d 1054, 1057, 100 NE3d 846 (2018) (Fahey J., concurring) (citations omitted).

Even if capability to accept legal responsibility *were* a necessary predicate to legal personhood or standing, nonhuman animals—including Justice—are in fact charged with forms of legal responsibilities. As the Supreme Court of Oregon observed in *Nix*, “there are records of legal proceedings being brought against animals as named parties to legal proceedings as early as the Middle Ages in Europe and as recently as the twentieth century in this country, which reflect that animals often have been treated, as least for some purposes, as persons.” 355 Or at 783 n.3. Nor is legal accountability just a historical artifact, as animals deemed to be a danger to others may be lawfully killed as a consequence. *See, e.g.*, ORS 609.990(6) (authorizing court to order a dog to be killed if they are a “potentially dangerous dog” who inflicts physical injury or menaces a person without provocation).

- b. Forcing a victim of animal cruelty to bear the costs of their injuries rather than the abuser violates the primary purpose of tort law: to compensate victims who have suffered from another’s wrongdoing.**

As recognized by the Supreme Court of this state, the “fundamental purposes of the tort system” include compensating innocent parties, shifting the cost of damages to those responsible, and deterring wrongful conduct. *Bagely v. Mt. Bachelor, Inc.*, 356 Or 543, 552 n.4, 340 P3d 27 (2014) (citations omitted).

Compensation for victims of wrongdoing is the most important of these purposes. In the words of the Court of Appeals, “[t]he primary purpose of tort law is . . . compensating plaintiffs for the injuries they have suffered wrongfully at the hands of others.” *Tomlinson v. Metro. Pediatrics, LLC*, 275 Or App 658, 689, 366 P3d 370 (2015) (quoting *Berman v. Allan*, 80 NJ 421, 425, 404 A2d 8 (1979)), *aff’d*, 362 Or 431, 412 P3d 133 (2018). This view is supported by legal treatises on the subject of torts: “A primary purpose of tort law is that those responsible for the wrong should bear the cost of their tortious conduct. Thus, a principal function of tort law is to compensate a victim for the wrongdoing or unreasonable conduct of the tortfeasor.” *Purpose of tort law*, 74 Am Jur 2d Torts § 2; *see also* Dan B. Dobbs, *The Law of Torts* §§ 4, 9, 11 (2001).

Compensating victims of wrongdoing is so important that the Oregon Supreme Court will even depart from *stare decisis* to fulfill that purpose. *See*

Hungerford v. Portland Sanitarium & Benev. Ass'n, 235 Or 412, 384 P2d 1009 (1963). *Hungerford* involved an action for damages for injuries caused by the negligence of a nurse's aide employed by the defendant-hospital. *Id.* At the time the action was brought, Oregon observed a charitable-immunity exception to the general law of torts, whereby charitable hospitals such as the defendant were immune from negligence actions. *Id.* at 413. In explaining its decision to depart from precedent and strike down the charitable-immunity doctrine, the *Hungerford* Court observed that it is the judiciary's role to ensure common law adherence to the basic purpose of torts to compensate victims of wrongdoing:

[I]n this state, as in most others, the growth of the law of private wrongs has been by judicial decision. [Citation]. Tort law in 1963 differs from tort law in 1863 for the most part because of the work of the courts. . . . When courts have recognized the need for remedies for new injuries, the remedies have been found.

Id. at 416; *see also Bagley*, 356 Or at 560 n.12 (observing that “[t]he beauty and strength of the common-law system is its infinite adaptability to societal change. . . . [I]t is the function of the judiciary to modify the law of torts to fit the changing needs of society”) (quoting *Buchler v. Oregon Corrections Div.*, 316 Or 499, 518-19, 853 P2d 798 (1993) (Peterson, J., concurring)).

Courts have been especially willing to permit victim recovery in tort actions that are tethered to violations of statutory duties, even when some element of a

negligence claim is not otherwise satisfied. *See Nearing v. Weaver*, 295 Or 702, 711–12, 670 P2d 137 (1983). In *Nearing*, a woman and her children sued government officers who failed to enforce a restraining order under the Abuse Prevention Act intended to protect victims of domestic violence such as themselves. *Id.* While the mother did not allege that the defendant officers violated an ordinary duty of care, the Supreme Court of Oregon recognized a new “statutory tort” cause of action despite the lack of either a common law or statutory authorization of such an action. *Id.* at 710-11. In recognizing the judicially-created statutory tort, the *Nearing* court emphasized that the legislature itself created the policy that government officers should enforce restraining orders to protect domestic violence victims, and the court was simply helping to satisfy that objective. *Id.* at 714. Post-*Nearing*, Oregon courts have continued to recognize that the judiciary may create a statutory tort right of action for violation of a statutory duty to protect victims even if no common-law or legislatively created action exists. *Doyle v. City of Medford*, 356 Or 336, 361–63, 337 P3d 797 (2014); *Cain v. Rijken*, 300 Or 706, 717 P2d 140 (1986).

Here, the Court may fulfill the fundamental purpose of tort law to compensate victims of wrongdoing only by granting Justice his figurative day in court. As a result of severe and unlawful neglect, Justice suffered permanent injury that will require lifelong care. Complaint ¶¶ 1, 18-19, 26-31 (ER 1, 5-6, 7-8). The exorbitant cost of this care makes his future uncertain, as it obstructs his ability to find a

permanent home. Complaint ¶ 34 (ER 8). This Court, as it has done in the past, must tend to the common law of torts in this state to ensure that animal cruelty victims such as Justice are not forced to rely on charity, or entirely forgo necessary care and amenities. As in the case of other crimes and wrongs, the cost of making the victim whole should be borne by the wrongdoer. *See Tomlinson*, 275 Or App at 689.

Justice will benefit from compensation in this case even though he is a nonhuman animal. As a threshold matter, incompetence is no bar to a victim's financial recovery in tort cases. *See, e.g., Grandy*, 147 Or at 418 (surety bond dispute brought by minor plaintiff). The complaint seeks payment to the Justice Equine Trust, of which Justice is the sole beneficiary pursuant to ORS 130.185. Complaint ¶ 35 (ER 8). This trust will follow him through any future adoptions, and will continue to benefit him even if his adopter or guardian becomes financially vulnerable. *See id.* The trust funds will be used to pay for special care that is necessary because of the neglect that he experienced. For example, due to his past trauma, Justice cannot tolerate cold temperatures and therefore has "unique sheltering needs" that include a fully enclosed stall with special bedding and heating that costs several times as much as a standard horse stall. *See* Complaint ¶¶ 30-31 (ER 8); *Stringer*, 314 Or at 584 (Courts must "give plaintiffs the benefit of all favorable inferences that may be drawn from the facts alleged."). Justice will also require special medications and socialization training as a result of Vercher's

neglect. Complaint ¶ 31 (ER 8).

Compensation for Justice will fulfill the other purposes of tort law beyond simply paying for his unique costs of care. It is well established that damages for pain and suffering are likewise compensatory, even if it is impossible to exactly measure that suffering as a dollar amount. *See Restatement (Second) of Torts* § 903 (1979). Moreover, tort compensation is an important form of corrective justice with utility beyond what the dollars can pay for on the market. Margaret Jane Radin, *Compensation and Commensurability*, 43 *Duke L J* 56, 57, 60-62 (1993). Tort recovery is not simply “a commensurable quid pro quo for harm, but rather . . . a form of redress: affirming public respect for the existence of rights and public recognition of the transgressor's fault with regard to disrespecting rights.” *Id.* In the context of Justice, a damage award would reflect public approbation for the rights of animals and the social condemnation of cruelty. Thus, awarding damages to a nonhuman animal for pain and suffering likewise advances the policies and principals of tort law.

c. The circuit court’s “floodgates” concern is not an appropriate reason to sustain the demurrer because it is legally irrelevant and not a practical concern.

The circuit court’s concern that allowing Justice’s case to go forward “would likely lead to a flood of lawsuits whereby non-human animals could assert claims we now reserve just for humans and human creations such as businesses and other

entities” (Opinion Letter at 1 (ER 15)) is legally irrelevant and will not occur as a practical matter.

The Oregon Supreme Court expressly rejects such floodgates arguments, especially ones that close the courthouse doors to otherwise meritorious claims. Where the elements of a claim can be met, “the [unlawful] conduct ought to be actionable and not protected by an assumption that *too much justice* might be demanded by [other] injured persons” as a result. *Davis v. Bostick*, 282 Or 667, 671, 580 P2d 544 (1978) (emphasis added). In *Davis*, a woman sued her former husband for engaging in an intentional course of conduct to inflict emotional stress and mental anguish through abuse, defamation, physical threats, and destruction of physical property. *Id.* at 545-46. The ex-husband lost at the trial court and appealed on the basis that permitting a spouse to recover for the intentional infliction of emotional distress that occurred during a marriage would create a flood of post-divorce claims to that effect. *Id.* at 546. The Supreme Court of Oregon rejected the notion that “too much justice” was a bad thing: “It is the business of the law to remedy wrongs that deserve it, even at the expense of a ‘flood of litigation,’ and it is a pitiful confession of incompetence on the part of any court of justice to deny relief on such grounds.” *Id.* (quoting William L. Prosser, *Law of Torts* § 12, 51 (4th ed 1978)); *see also* Marin K. Levy, *Judging the Flood of Litigation*, 80 U Chi L Rev 1007, 1009–10 (2013) (broadly criticizing invocation of floodgates concern for the sole purpose of limiting

judicial work load).

Even if this Court could weigh floodgates concerns in its analysis, such concerns would not support dismissal of Justice's claim because no floodgates would open as a result of allowing compensation for animal cruelty victims.

Any claims would be limited to victims of conduct *already illegal* under Oregon law, i.e. animals abused or neglected in violation of the animal cruelty provisions at ORS 167.305-167.390. It does not follow that animals must receive the entire panoply of rights associated with being a human person; their rights as victims are limited to those crimes. *See supra* at I/II.C.1.a.i. As it stands, the animal cruelty statute imposes a minimal obligation to refrain from actions such as: recklessly causing physical injury to an animal (ORS 167.315), maliciously killing or intentionally torturing an animal (ORS 167.322), negligently failing to provide minimum care to animals in one's custody (ORS 167.325), sexually assaulting an animal (ORS 167.325), and causing animals to fight (ORS 167.355). Moreover, the animal cruelty statute contains exemptions that, even if morally objectionable to some, remove many human uses of animals from liability. *See, e.g.*, ORS 167.335(1)(e) (permitting "killing of livestock"); 167.335(g) (permitting "[l]awful fishing, hunting and trapping activities"); 167.335(i) (permitting "[l]awful scientific or agricultural research or teaching that involves the use of animals"); 167.335(j) (permitting "[r]easonable activities undertaken in connection with the control of

vermin or pests”). Thus, the animal cruelty statute sets a modest standard that prohibits only very egregious harm to animals that is caused with at least criminally negligent—and sometimes greater—mens rea. A ruling in Justice’s favor would not expand the scope of animals’ protections; it would merely allow recovery for violations of substantive legal rights that have already been legislatively conferred.

d. Justice is the real party in interest for damages caused by the severe neglect that he suffered.

The circuit court’s conclusory finding that “Justice is not the real party in interest” (Opinion Letter at 1 (ER 15)) is wrong because Justice is the only entity who sustained an injury as a direct result of the animal cruelty violation. Justice is the sole entity who stands to be made whole. Even though others stepped in to ameliorate the physical and psychological harm that Justice sustained, they are not the victims who are owed compensation under this state’s tort law. Justice’s status as the real party in interest strongly supports the argument that Justice also has standing to seek relief under a common law negligence per se claim. *See Smith v. Truck Ins. Exch., Inc.*, 242 Or App 202, 208, 255 P3d 615 (2011) (finding plaintiff in non-statutory action had standing as “a real party in interest”).

The Oregon Rules of Civil Procedure require that “[e]very action shall be prosecuted in the name of the real party in interest.” ORCP 26. The real party in interest is the one “who has the right” at issue, *Sears v. James*, 47 Or 50, 55, 82 P 14

(1905), and “sustains the direct result of the injury.” *Feehely v. Rogers*, 159 Or 361, 376, 80 P2d 717 (1938) (“he who has the right is the person to pursue the remedy”) (citation omitted).

The purpose of requiring that the real party in interest litigate their own claims is to “assur[e] a defending party that it will be required to defend against a claim only once.” *Metro. Prop. & Cas. v. Harper*, 168 Or App 358, 374, 7 P3d 541 (2000) (citing *Growers Refrigeration Co. v. Pac. Elec. Contractors, Inc.*, 165 Or App 274, 277, 996 P2d 521 (2000)); *see also Jensen v. Alley*, 128 Or App 673, 679, 877 P2d 108 (1994) (“The purpose of the real party in interest requirement is to protect the defendant from being again harassed for the same cause of action.”).

Justice is the real party in interest because he “has the right” at issue and “sustain[ed] the direct result of the injury.” *Truck Ins. Exch*, 242 Or App at 208; *Sears*, 47 Or at 55. *Nix* and *Hess* recognized that individual animals are the direct beneficiaries of the cruelty statute’s protections. 355 Or at 789-90; *Hess*, 273 Or App 26. As such, *theirs* is the real interest at issue when that law is violated.

Justice is the real party in interest in this case because *he*, and only *he*, “sustain[ed] the direct result of the injury,” and only *he* stands to suffer in the event of a judgment against him. The damages he seeks would be deposited into the Justice Equine Trust, of which Justice is the sole beneficiary with enforceable property rights; that money cannot be spent in any way that does not directly benefit him.

Complaint ¶¶ 4, 35 (ER 3, 8); ORS 130.85 (regulating trusts for the care of animals); *see also* Valerie J. Vollmar, *The Oregon Uniform Trust Code and Comments*, 42 Willamette L Rev 187, 257 (2006) (referring to animals as “beneficiaries” under Oregon’s Pet Trust Statute). A trust that covers Justice’s additional costs of care will ensure that his special needs will be satisfied at his permanent home. Complaint ¶ 34 (ER 8).

The charitable individuals currently caring for Justice are *not* among the “class of persons” the Oregon legislature intended to protect under the animal cruelty statute; only Justice is a member of that class. In fact, giving the cause of action to Justice’s caregivers would potentially require Vercher to defend against an indefinite number of claims against an indefinite number of potential future adopters.² *Metro. Prop. & Cas.*, 168 Or App at 374. Moreover, there is no guarantee that damages awarded directly to an animal’s *guardian* would actually be spent on that animal’s care. Awarding damages in *Justice’s* name, to be deposited in a fiduciary trust for *his sole benefit*, is the surest way to ensure he receives the compensation he is entitled to (and to insulate Vercher from multiple claims by different guardians).

² Although permanent placements are preferred with animal adoptions, it is possible that he may be adopted by somebody who may not have custody of Justice for his entire life, thereby creating the prospect of an indefinite number of adopters and guardians.

CONCLUSION

Justice is the victim of animal cruelty with a right to recover damages for ongoing injuries sustained as a result of that cruelty. Justice satisfies all of the elements of a prima facie negligence per se claim under the common law because Vercher's violation of the animal cruelty statute caused his injuries, and as a nonhuman animal, Justice is a member of the class of persons intended to be protected by that law. Justice qualifies as a legal person with respect to the animal cruelty statute because he bears rights under that statute. In order to effectuate the policies underlying the tort system – to compensate victims for their injuries, to shift financial burdens to those who caused them, and to deter harmful behavior – this Court should reverse the circuit court and remand this case for further proceedings.

INDEX TO EXCERPT OF RECORD

Pages	Description	Date
ER 1-14	Complaint	2018-05-01
ER 15-16	Opinion Letter	2018-09-17
ER 17	Order Dismissing Complaint	2018-12-24
ER 18-20	General Judgment and Money Award	2018-12-24
ER 21-23	Register of Actions	2019-07-08

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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON**

JUSTICE, an American Quarter Horse, by
and through his Guardian, Kim Mosiman,

Plaintiff,

v.

GWENDOLYN VERCHER,

Defendant.

) Case No.

) **COMPLAINT – PERSONAL INJURY**
) **(Negligence *Per Se*)**

) CLAIM OVER \$50,000; CLAIM NOT
) SUBJECT TO MANDATORY
) ARBITRATION

) FILING FEE \$560 PER ORS 21.160(1)(c)

) JURY TRIAL REQUESTED

Plaintiff alleges:

INTRODUCTION

1.

This case involves Justice, a horse who suffered extreme pain, distress, and permanent injury due to the criminal neglect of Defendant Gwendolyn Vercher. Disregarding the requirements of Oregon law, Defendant denied Justice adequate food and shelter for months, abandoning him to starve and freeze. As a result of this neglect, Justice was left debilitated and emaciated. He continues to suffer from this neglect, including a prolapsed penis from frostbite. These injuries will require special and expensive medical care for the remainder of his life.



Justice immediately after he was rescued

2.

The Oregon Legislature has expressly recognized that “[a]nimals are sentient beings capable of experiencing pain, stress and fear.” ORS 167.305(1). Similarly, Oregon courts have recognized that animals have their own cognizable legal interests. The Oregon Supreme Court in *State v. Nix*, recognized that animals are properly considered the “victims” of violations of the animal cruelty statutes. 355 Or 777, 797-98, 334 P3d 437 (2014), *vac’d on procedural grounds*, 356 Or 768, 345 P3d 416 (2015); reasoning adopted in *State v. Hess*, 273 Or App 26, 359 P3d 288 (2015), review denied, 358 Or 529, 367 P3d 529 (2016). The Court held that Oregon’s anti-cruelty laws intend to protect animals themselves, because “the legislature’s focus was the treatment of individual animals, not harm to the public generally or harm to the owners of the animals.” *Id.* at 789-90. Similarly, in *State v. Fessenden*, the Court referred to a neglected horse as “the victim of the crime— an animal entitled to statutory protection.” 355 Or 759, 773, 333 P3d 278 (2014).

3.

Oregon courts recognize both that animals are victims and that victims have a right to sue their abusers for the harms they have inflicted. Justice is asking the Court to take these well-

1 established rules to the logical next step and recognize that as a member of the class intended to be
2 protected by Oregon’s anti-cruelty statute, Justice may bring a negligence *per se* claim based on the
3 standard of care in the anti-cruelty statute, ORS 167.305 *et seq.*
4

5 PARTIES

6 4.

7 Plaintiff Justice (formerly known as Shadow) is an American Quarter Horse and Appaloosa
8 cross, currently residing at the Sound Equine Options training barn in Troutdale, Oregon. Justice
9 brings this negligence *per se* claim as a legislatively-recognized “sentient being,” ORS 167.305(1),
10 a “victim” of the defendant’s criminal neglect, and as sole beneficiary of the Justice Equine Trust.
11

12 5.

13 Kim Mosiman is the Executive Director of Sound Equine Options and is Justice’s guardian.
14 She is the person responsible for Justice’s care and well-being. As such, Justice’s interests are
15 represented in this suit by and through Ms. Mosiman pursuant to ORCP 27(A).¹
16

17 6.

18 Defendant Gwendolyn Vercher resides at 34567 SW Firdale Road, Cornelius, Oregon
19 97113.

20 JURISDICTION AND VENUE

21 7.

22 Subject matter jurisdiction is conferred on this Court by ORS 14.030.

23 8.

24 This Court has personal jurisdiction under ORCP 4, as Defendant is a natural person present
25 within this state at the time of service.
26

27 9.

28 Venue is proper in this Court under ORS 14.080 because Defendant resides in Washington
29 County at the commencement of this action.
30

31 _____
32 ¹ Plaintiff is prepared to file a motion for Ms. Mosiman’s appointment as guardian if the Court
finds that is the appropriate procedure in this case.

FACTS

10.

On information and belief, Defendant had custody and control of Justice, then-named Shadow, throughout the period during which he suffered the neglect described herein.

11.

On March 4, 2017, Oregon Horse Rescue (“OHR”) received a phone call from Defendant’s neighbor requesting that OHR take custody of Justice because he was underfed and emaciated.

12.

On March 7, 2017, Defendant, at the urging of the concerned neighbor, took Justice to be examined by Dr. Victor Alexander of Alexander Equine Veterinary Services, Inc. Dr. Alexander observed that Justice’s penis had prolapsed and could not retract because it was so swollen and heavy. According to Dr. Alexander’s report, Justice’s penis was “red [and] “raw” and “oozing serum” and the “skin was chapped and scabbed.” Dr. Alexander scored Justice a 2 out of 9 on the



Justice was found extremely emaciated.

Henneke Horse Body Condition Scale (“BCS”). A BCS score of 2 indicates emaciation, whereas a healthy horse scores between 4 and 6. Dr. Alexander concluded that Justice would need to be housed in a stall or rehomed.

1
2
3 13.

4 On March 13, 2017, David Kelly, Co-Executive Director of OHR, left a voicemail and sent
5 an email to Sound Equine Options (“SEO”) with an urgent request for SEO’s assistance in
6 temporarily housing “a very neglected horse.”

7 14.

8 On March 16, 2017, Defendant surrendered Justice to Ms. Mosiman of SEO, having been
9 persuaded to do so by her neighbor. Ms. Mosiman transported Justice directly to Eagle Fern Equine
10 Hospital (“the Hospital”) for urgent veterinary care and hospitalization.

11 15.

12 Dr. David Asmar of Eagle Fern Equine Hospital examined Justice on March 16, 2017,
13 observing that Justice was lethargic and weak and had significant difficulty walking.

14 16.

15 Dr. Asmar found that Justice was 300 pounds underweight, with a BCS of 1 out of 9,
16 indicating extreme emaciation. When offered food, Justice had an excellent appetite and ate quickly
17 without pausing between bites, behavior commonly observed in starved horses. Given Justice’s
18 severely emaciated condition, Dr. Asmar had to wait two days for Justice to be healthy enough for
19 the sedation required for a more thorough examination.
20
21

22 17.

23 On March 18, 2017, Dr. Asmar examined Justice under sedation. Justice’s penis was
24 swollen, traumatized, infected and prolapsed, with a moderate amount of necrotic tissue that had to
25 be removed. Justice was unable to retract his penis to its normal position inside its sheath, likely
26 due to his severely debilitated body condition. The prolonged penile prolapse had prevented
27 drainage of the tissue, which then caused swelling.
28

29 18.

30 Having been unable to retract his penis and having been exposed to chronic cold
31 temperatures, Justice developed penile frostbite, which led to severe trauma, infection, and scarring.
32

1 A prolapsed penis may cause nerve damage, resulting in permanent penile paralysis. Justice's
2 prolapsed penis is the most severe case Dr. Asmar has ever treated.

3
4 19.

5 During the March 18, 2017 examination, Dr. Asmar noted that Justice also suffered from
6 lice and rain rot, a bacterial skin infection that irritates a horse's hair and skin and may result in a
7 continuous painful sheet of scabbing. Lice and rain rot are common in neglected horses and may
8 generally be avoided with good grooming and adequate nutrition.

9
10 20.

11 On March 20, 2017, Ms. Mosiman contacted Oregon Humane Society ("OHS") to brief it
12 on Justice's history and condition.

13
14 21.

15 During Justice's ten-day hospitalization, Justice's prolapsed penis was placed in a sling to
16 decrease swelling and to prevent further damage to tissue and nerves. The Hospital followed the
17 University of California-Davis protocol for refeeding a starved horse.

18
19 22.

20 By March 26, 2017, Justice had already begun gaining weight and his energy level had
21 improved significantly. Ms. Mosiman transported Justice from the Hospital to the SEO rescue and
22 training facility, where Justice continued to receive topical application of silver sulfadiazine cream
23 according to Dr. Asmar's instructions.

24
25 23.

26 On May 16, 2017, Dr. Asmar examined Justice at the SEO facility. Justice was bright and
27 alert and had already gained about 150 pounds. Justice's penis had improved, but remained semi-
28 prolapsed. The section of necrotic tissue on Justice's penis had healed, leaving a thick layer of scar
29 tissue. The lice and rain rot had also improved. While Justice was stronger physically, he continued
30 to show signs of distress such as stall-circling, a form of compulsive behavior resulting from
31 anxiety.
32

1 24.

2 On June 7, 2017, Justice was castrated in order to reduce the frequency of erections, which
3 would then lead to reduced irritation and a greater chance of recovery.

4
5 25.

6 On August 25, 2017, almost six months since Dr. Asmar first treated him, Justice had
7 regained substantial muscle and scored a BCS of 6 out of 9. Justice had considerably more strength
8 and energy than he did previously, and appeared able to run without issue. However, Justice's penis
9 remained semi-prolapsed.

10
11 26.

12 Given the lack of improvement in Justice's penis after almost six months of care, it is likely
13 Justice suffered permanent penile paralysis and prolapse from the trauma and nerve damage caused
14 by his starvation, chronic exposure to cold temperatures, and lack of timely veterinary care.
15 Justice's injury obstructs his ability to retract his penis.

16
17 27.

18 Justice will likely eventually require surgical intervention in the form of a partial amputation
19 of his penis. Placing a horse under anesthesia for surgery comes with substantial risk, such as
20 serious injury and death. Justice will also likely have a lengthy and potentially painful recovery.

21
22 28.

23 Given the length of time it takes to sustain the degree of damage Justice did, it appears he
24 had been suffering from a prolapsed penis for several months prior to receiving treatment at the
25 Hospital. Further, given the extent of Justice's emaciation—over 300 pounds underweight—Justice
26 had been starving for several months prior to receiving treatment. During these months Justice
27 would have been in significant pain and chronically hungry.

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29 29.

30 As of the commencement of this action, Justice's penis remains prolapsed.
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30.

Justice will require special care in order to reduce the risk of irritation, infection, or injury to his penis. Justice will never have a normal healthy penis and will require special care to prevent the recurrence of a prolapse or aggravation and irritation of the area.

31.

Due to his extensive injuries, Justice will require costly care that he otherwise would not need, including unique sheltering needs, medications, and socialization training.

32.

On July 10, 2017, Defendant pled guilty to neglect of Justice in the first degree.

33.

Pursuant to her criminal plea agreement, Defendant agreed to pay restitution to Sound Equine Options for the costs of Justice's care incurred prior to July 6, 2017. Defendant failed to pay the restitution by the deadline of August 10, 2017. Defendant's plea agreement does not include restitution for the cost of Justice's care after July 6, 2017.

34.

Finding a permanent home for Justice is more difficult, if not impossible, due to the substantial additional costs caused by the Defendant's neglect.

35.

On August 22, 2017, Ms. Mosiman created the Justice Equine Trust, pursuant to ORS 130.185, of which Justice is the sole beneficiary. Ms. Mosiman created the trust in order to provide, in whole or in part, for Justice's care from July 6, 2017 until the end of Justice's life, with any funds obtained in this action against Defendant.

LEGAL BACKGROUND

Oregon's Anti-Cruelty Statute

36.

Oregon's anti-cruelty statute generally protects animals from abuse and neglect.

37.

1
2 A person commits the crime of animal neglect when they intentionally, knowingly,
3 recklessly, or with criminal negligence fail to provide minimum care for an animal in their custody
4 or control. ORS 167.325 and 167.330.

38.

5
6 As the laws regarding the treatment and status of nonhuman animals continue to progress
7 across the country, Oregon in particular has led the way with compassionate legislation and
8 jurisprudence that recognize animals' "unique position in people's hearts and in the law." *State v.*
9 *Newcomb*, 359 Or 756, 767-68, 375 P3d 434 (2016); *see also Fessenden*, 355 Or at 767, 333 P3d
10 278 (recognizing that "Oregon's animal welfare statutes impose one of the nation's most protective
11 statutory schemes").
12

39.

13
14 The Legislature has declared that "[a]nimals are sentient beings capable of experiencing
15 pain, stress and fear" who "should be cared for in ways that minimize pain, stress, fear and
16 suffering." ORS 167.305(1), (2); *see also Newcomb*, 359 Or at 767, 374 P3d 853. As sentient
17 beings, animals are the intended beneficiaries of Oregon's animal cruelty laws and therefore are
18 victims when those laws are violated. *Nix*, 355 Or at 789-90, 334 P3d 437 (finding "the legislature's
19 focus was the treatment of individual animals, not harm to the public generally or harm to the
20 owners of the animals");² *Fessenden*, 355 Or at 773, 333 P3d 278 (citing *Nix* for the proposition
21 that "animals are 'victims' for purposes of animal welfare statutes").
22
23
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26

27 ² The Oregon Supreme Court's opinion in *Nix* was subsequently vacated on purely procedural
28 grounds, 356 Or 768, 345 P3d 416 (2015), and is therefore not itself binding precedent. *Hamilton*
29 *v. Meyers*, 326 Or 44, 55, 943 P2d 214 (1997). However, the *Nix* reasoning was expressly adopted
30 by the Oregon Court of Appeals in *State v. Hess*, and is therefore binding. 273 Or App 26, 359 P3d
31 288 (2015). Moreover, a court may rely on or adopt the reasoning of a vacated opinion. *State v.*
32 *Magana*, 265 Or App 416, 418 n.1, 335 P3d 318 (2014). Further, the Oregon Supreme Court
subsequently relied on its finding in *Nix* that animals are the victim for purposes of animal welfare
statutes. *Fessenden*, 355 Or at 773. While the Court's opinion in *Fessenden* was issued prior to it
vacating *Nix*, the opinion in *Fessenden* has not been disturbed.

1
2
3 40.

4 In *Fessenden*, the Supreme Court of Oregon held that where an officer had “probable cause
5 to believe that defendants were committing animal neglect under ORS 167.325 by failing to provide
6 ‘minimal care’ for the ‘victim’ of that crime—the horse,” protecting the horse from unlawful harm
7 was such “an essential law enforcement responsibility” as to justify a warrantless search under the
8 “exigent circumstances” exception to the Fourth Amendment of the United States Constitution and
9 article I, section 9 of the state constitution. See *Fessenden*, 355 Or at 772-73, 333 P3d 278. The
10 Oregon Supreme Court characterized the Court of Appeals as having gone a step further,
11 “conclud[ing] that animals were included in the class of ‘persons’ that officers may aid without a
12 warrant” on private property under the emergency aid exception, given the “interest in protecting
13 nonhuman animals from unnecessary pain, injury, trauma, and cruel death.” *Id.* at 763 (quoting and
14 affirming on other grounds *State v. Fessenden*, 258 Or App 639, 649, 310 P3d 1163 (2013)).³

16 41.

17 Oregon courts possess expansive powers under the common law and the state constitution
18 to protect injured parties. See, e.g., *Couey v. Atkins*, 357 Or 460, 355 P3d 866 (2015); *State ex rel.*
19 *Ricco v. Biggs*, 198 Or 413, 430, 255 P2d 1055 (1953), *overruled in part*, *State ex rel. Maizels v.*
20 *Juba*, 254 Or 323, 460 P2d 850 (1969) (discussing courts’ “duty” to exercise their inherent power
21 for ensuring fairness and justice “whenever public or private interests require”).

23 42.

24 Against this legal backdrop, and under these unique circumstances, where Oregon
25 recognizes the importance of animals’ interests in avoiding suffering as “sentient beings,” and
26

27
28 ³ The Oregon Supreme Court based its holding in *Fessenden* on the more narrow exigent
29 circumstances exception to the Fourth Amendment without considering whether animals are
30 “persons” under the emergency aid exception. *Id.* at 763, 333 P3d 278. That the Oregon Supreme
31 Court affirmed on other grounds should not disturb the binding effect of the Court of Appeals’
32 holding, since the Court of Appeals frequently cites to holdings from opinions that were
subsequently affirmed on other grounds. See, e.g., *State v. Hendon*, 222 Or App 97, 102, 194 P3d
149 (2008) (citing *State v. Amaya*, 176 Or App 35, 29 P3d 1177 (2001)).

1 where this Court has broad inherent authority to prevent injustice, a finding that Justice may bring
2 this action is permissible and necessary.

3
4 **CLAIM FOR RELIEF**

5 **(Negligence *per se*)**

6 43.

7 Plaintiff re-alleges and incorporates the paragraphs above.

8 44.

9 Oregon recognizes negligence causes of action based on common law. *See, e.g., Deckard*
10 *v. Bunch*, 358 Or 754, 761, 370 P3d 478 (2016); *Chapman v. Mayfield*, 358 Or 196, 198, 361 P3d
11 566 (2015).

12 45.

13 “Negligence *per se*” is a special type of negligence “in which the standard of care is
14 expressed by a statute or rule” rather than by general reference to reasonableness. *Abraham v. T.*
15 *Henry Construction, Inc.*, 350 Or 29, 35 n.5, 249 P3d 534 (2011).

16 46.

17 A plaintiff may state a claim for negligence *per se* by alleging that “(1) defendants violated
18 a statute; (2) plaintiff was injured as a result of that violation; (3) plaintiff was a member of the class
19 of persons meant to be protected by the statute; and (4) that the injury plaintiff suffered is of a type
20 that the statute was enacted to prevent.” *McAlpine v. Multnomah Cty.*, 131 Or App 136, 144, 883
21 P2d 869 (1994).

22 47.

23 At all material times, Defendant was required to comply with Oregon’s anti-cruelty statute
24 enacted for the protection of animals, including Justice. ORS 167.325(1) and 167.330(1).

25 48.

26 Defendant violated the anti-cruelty statute by failing to provide minimum care for Justice as
27 required by law. ORS 167.325(1) and 167.330(1). Upon examination on March 18, 2017,
28 Dr. David Asmar determined that Justice had been seriously injured as a result of Defendant’s
29 criminal neglect. Specifically, Defendant’s failure to provide Justice with “minimum care” caused
30
31
32

1 Justice to suffer from starvation, emaciation, skin disease and unimaginable pain, and rendered him
2 unable to retract his penis to its normal position inside its sheath. Exposed to chronic cold
3 temperatures, Justice’s penis became traumatized, swollen, infected, and frostbitten.
4

5 49.

6 Justice was therefore injured as a result of Defendant’s violation of the anti-cruelty statute.
7 His penile injury, as well as the months of constant hunger and exposure to the cold, caused him
8 substantial pain and suffering.
9

10 50.

11 Justice is a member of the class for whose benefit Oregon’s anti-cruelty laws were passed.
12 As the Oregon Supreme Court concluded after an exhaustive examination of the text, structure, and
13 history of Oregon’s anti-cruelty laws, “the principal purpose of adopting the [anti-cruelty laws] was
14 to prevent the suffering of animals. Although early animal cruelty legislation may have been
15 directed at protecting animals as property of their owners or as a means of promoting public
16 morality, Oregon’s animal cruelty laws have been rooted—for nearly a century—in a different
17 legislative tradition of protecting individual animals themselves from suffering.” *Nix*, 355 Or at
18 796–97, 334 P3d 437; *see also Fessenden*, 355 Or at 772, 333 P3d 278 (citing to *Nix* for the
19 proposition that “animals are ‘victims’ for purposes of animal welfare statutes”).
20

21 51.

22 The injuries that Justice suffered are of the type Oregon’s anti-cruelty statute was enacted
23 to prevent. *See Nix*, 355 Or at 790, 334 P3d 437 (finding, under the animal welfare statutes, the
24 injury is “not . . . to the public generally or . . . the owners of the animals . . . [but] to ‘an animal,’
25 regardless of who owns it”); ORS 167.305(2) (“Animals should be cared for in ways that minimize
26 pain, stress, fear and suffering.”).
27

28 52.

29 As a result of defendant’s negligence, Justice has incurred past and future expenses for
30 reasonable and necessary medical bills and long-term care in an amount to be determined at trial
31 but not less than \$100,000.
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MATTHEW HAMITY (pro hac admission pending)
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537 Kains Avenue
Albany, CA 94706
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Attorneys for Plaintiff



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TTY (503) 846-4863

Oregon Judicial Department
Washington County Circuit Court
Twentieth Judicial District

Opinion Letter

September 17, 2018

Re: Justice vs Gwendolyn Vercher
Case #: 18CV17601

MICHELLE E SMITH; GEORDIE DUCKLER

Dear Counsel:

Defendant filed a Motion to Dismiss the Complaint based on Plaintiff's Lack of Legal Capacity to Sue under ORCP 21 A(4) and for Failure to State Facts Sufficient to Constitute a Claim under ORCP 21A(8). Defendant further requests attorney fees under ORS 20.105.(1). Defendant also raised the issue of legal standing. Plaintiff filed a Response and Defendant then filed a Reply.

A hearing was held on September 14 with all counsel of record present.

This case presents questions of first impression in Oregon and perhaps nationally.

In determining the sufficiency of a Complaint that is the subject of a motion to dismiss pursuant to ORCP 21 A, the court must accept as true all well-pleaded allegations in the Complaint and give the plaintiff, as the nonmoving party, the benefit of all favorable inferences that may be drawn from those allegations. *Espinosa v Evergreen Helicopters, Inc.*, 359 Or 63, 115 (2016)

The court grants with prejudice defendant's motion to dismiss based on a lack of standing for Justice the horse. The court finds that a non-human animal such as Justice lacks the legal status or qualifications necessary for the assertion of legal rights and duties in a court of law. *City of Damascus v. Brown*, 266 Or App 416 (2014). Justice is not the real party in interest. *Smith v Truck Ins. Exch., Inc.*, 242 Or App 202 (2011). There are profound implications of a judicial finding that a horse, or any non-human animal for that matter, is a legal entity that has the legal right to assert a claim in a court of law. Such a finding would likely lead to a flood of lawsuits whereby non-human animals could assert claims we now reserve just for humans and human creations such as business and other entities. Furthermore, non-human animals are incapable of accepting legal responsibilities. Perhaps an appellate court would come to a different conclusion if it wades into this public policy debate involving the evolution of animal rights. Or the Oregon Legislature could balance the public policy implications of the relief sought by Justice and craft legislation that would grant an animal the right to sue in its name for specified damages in specific instances such as a situation like this where the animal has been abused and suffered injury as a result. This court, however, is unable to take that leap.

Defendant's claim for attorney fees is denied as the court finds that there is an objectively reasonable basis for the negligence claim asserted by Justice. *Williams v Salem Women's Clinic*, 245 Or App 476

(2011). The claim is not entirely void of legal or factual support. *Id.* The problem is that there is not an adequate procedural avenue for Justice to utilize that would grant him access to the courthouse door. Counsel for plaintiff has been quite creative in an attempt to surmount this hurdle, and although unsuccessful at the trial court level, this court is not going to punish plaintiff by imposing an award of attorney fees for pushing the envelope. That would not be justice.

The court directs Mr. Duckler to prepare an order reflecting this ruling.

Sincerely,

Signed: 9/17/2018 02:45 PM

A handwritten signature in black ink that reads "John S. Knowles". The signature is written in a cursive, flowing style.

Circuit Court Judge – Pro Tem, John Knowles

Pro Tem Judge John S. Knowles

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF WASHINGTON

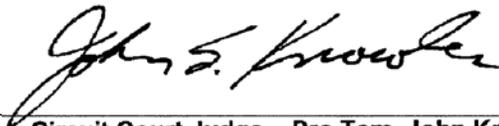
3	JUSTICE, an American Quarter Horse, by)	Case no. 18CV17601
4	and through his Guardian, Kim Mosiman,)	
5)	
6	Plaintiff,)	ORDER
7	vs.)	
8	GWENDOLYN VERCHER,)	
9)	
10	Defendant.)	

11 The matter coming before the Court in an open hearing on September 14, 2018 on
12 defendant’s motion to dismiss under ORCP 21A(4) for plaintiff’s lack of legal capacity to sue,
13 and/or under ORCP 21A(8) for plaintiff’s failure to state ultimate facts sufficient to constitute a
14 claim, and, based upon the record, including the briefing and argument provided by the parties
15 and the papers on file herein, and the Court being fully advised of all matters,
16

17 For the reasons identified in the Court’s September 17, 2018 Opinion Letter, IT IS
18 HEREBY ORDERED that the motion is granted and the Complaint is hereby dismissed with
19 prejudice. Defendant is not awarded attorney fees under ORS 20.105(1).

20 IT IS SO ORDERED.

Signed: 12/24/2018 02:38 PM

21 
22
23 **Circuit Court Judge – Pro Tem, John Knowles**

24 Submitted by:
25 Geordie Duckler, Attorney for Defendant
9397 SW Locust St.
26 Tigard, OR 97223
(503) 546-8052

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF WASHINGTON

JUSTICE, an American Quarter Horse, by
and through his Guardian, Kim Mosiman,

Plaintiff,

vs.

GWENDOLYN VERCHER,

Defendant.

) Case no. 18CV17601

) GENERAL JUDGMENT AND MONEY
) AWARD

Pursuant to the Court’s Order granting defendant Gwendolyn Vercher’s Motion to Dismiss dated September 28, 2018, and the Opinion- Letter issued November 16, 2018, IT IS HEREBY ADJUDGED AND DECREED that a final judgment and money award be entered in favor of defendant GWENDOLYN VERCHER, and against plaintiff JUSTICE, an American Quarter Horse, by and through his Guardian, Kim Mosiman in this action.

MONEY AWARD

- 1. Judgment Creditor [ORS 18.042(2)(a)]: Gwendolyn Vercher
- 2. Judgment Creditor’s Address
[ORS 18.042(2)(a)]: c/o Geordie Duckler
9397 SW Locust St.
Tigard, OR 97223
- 3. Judgment Creditor’s Attorney Address & Phone
[ORS 18.042(2)(a)]: Geordie Duckler, OSB#873780
9397 SW Locust Street
Tigard, OR 97223
(503) 546-8052
- 4. Judgment Debtors [ORS 18.042(2)(b)]: Justice
Kim Mosiman

1	5.	Judgment Debtor's Address & Phone [ORS 18.042(2)(b)(A)]:	31708 NE Wand Rd. Troutdale, OR 97060
2			
3	6.	Judgment Debtor's Date of Birth [ORS 18.042(2)(b)(B)]:	TBD
4			
5	7.	Judgment Debtor's Social Security no. [ORS 18.042(2)(b)(C)]:	TBD
6			
7	8.	Judgment Debtor's Drivers License no. [ORS 18.042(2)(b)(D)]:	TBD
8			
9	9.	Judgment Debtor's Attorney Address & Phone [ORS 18.042(2)(b)(E)]:	
10			Julie M. Engbloom
11			Lane Powell PC
12			601 SW 2 nd Ave, Ste 2100
13			Portland, OR 97204
14			
15			Matthew Liebman
16			Animal Defense Legal Fund
17			525 E Cotati Ave
18			Cotati, CA 94931
19			
20			Sarah K. Hanneken
21			Animal Legal Defense Fund
22			919 SW Taylor St #400
23			Portland, OR 97205
24			
25			Matthew Hamity
26			Law Office of Matthew Hamity
			537 Kains Ave
			Albany, CA 94706
21	10.	Other persons entitled to portion of award [ORS 18.042(2)(c)]:	None
22			
23	11.	Amount of money award [ORS 18.042(2)(d)]:	None
24	12.	Pre-judgment interest [ORS 18.042(2)(e)]:	None
25	13.	Post-judgment interest [ORS 18.042(2)(f)]:	9%
26			

1 14. Accrued arrearages [ORS 18.042(2)(g)]: None

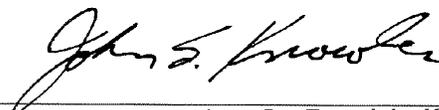
2 15. Costs and fees awarded [ORS 18.042(2)(h)]: Filing fee: \$560

3 Prevailing party fee: \$325

4 Enhanced prevailing party fee: \$675

5 Total: \$1560

Signed: 12/24/2018 02:36 PM



Circuit Court Judge – Pro Tem, John Knowles

9 Submitted by:

10 Geordie Duckler, OSB# 873780

11 9397 SW Locust Street

12 Tigard, OR 97223

13 (503) 546-8052

14 Attorney for Defendant

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service by publication in the Forest Grove News & mailing copy to atty Duckler
 Signed: 07/23/2018
 Created: 07/24/2018 1:41 PM

08/14/2018 Motion - Dismiss with Prejudice
 Created: 08/14/2018 1:56 PM

08/31/2018 Summons
 Created: 08/31/2018 4:19 PM

08/31/2018 Proof - Service
 Created: 08/31/2018 4:19 PM

09/04/2018 Response
 to def mot to dismiss
 Created: 09/05/2018 11:04 AM

09/06/2018 Reply
 to ptf response to mot dismiss
 Created: 09/07/2018 10:18 AM

09/14/2018 Hearing - Motion (9:00 AM) (Judicial Officer Knowles, John S.)
 Def's Motion to Dismiss
 Result: Held
 Created: 08/16/2018 3:12 PM

09/17/2018 Opinion - Letter (Judicial Officer: Knowles, John S.)
 Signed: 09/17/2018
 Created: 09/17/2018 2:47 PM

09/28/2018 Order (Judicial Officer: Knowles, John S.)
 granting def mot dismiss
 Signed: 09/28/2018
 Created: 10/02/2018 2:10 PM

10/03/2018 Statement - Costs & Disbursement
 Created: 10/03/2018 8:33 AM

10/03/2018 Declaration
 sup def costs & fees bill
 Created: 10/03/2018 8:33 AM

10/05/2018 Notice - Substitution of Attorney
 Created: 10/08/2018 10:27 AM

10/22/2018 Objection
 to def req for enhanced prevailing party fee
 Created: 10/23/2018 9:55 AM

10/24/2018 Reply
 to ptf objections to cost bill
 Created: 10/25/2018 11:45 AM

11/16/2018 Opinion - Letter (Judicial Officer: Knowles, John S.)
 final judgment due
 Signed: 11/16/2018
 Created: 11/16/2018 2:47 PM

12/24/2018 Order (Judicial Officer: Knowles, John S.)
 regarding hearing 9-14-18
 Signed: 12/24/2018
 Created: 12/26/2018 3:08 PM

12/26/2018 Digitized Judgment Document (Judicial Officer: Knowles, John S.)
 SATISFIEDgen jgm w/money award
 Signed Date: 12/24/2018
 Created: 12/26/2018 1:29 PM

12/26/2018 Notice - Judgment Entry
 Created: 12/26/2018 1:29 PM

12/26/2018 Closed
 Created: 12/26/2018 1:29 PM

01/08/2019 Satisfaction
 Created: 01/09/2019 8:23 AM

01/24/2019 Notice - Appeal
 A169933 (12/26/18 Judgment)
 Created: 01/24/2019 4:26 PM

01/28/2019 Notice
 Transcript Notification for Appeal A169933
 Created: 01/28/2019 10:16 AM

02/08/2019 Certificate
 of Preparation and Service of Transcript(s) for Electronic Filing at Court of Appeals A169933
 Created: 02/08/2019 3:27 PM

03/15/2019 Certificate
 of Electronic Filing of Transcript(s) at Court of Appeals by: Katie Bradford A169933
 Created: 03/15/2019 8:20 AM

03/18/2019 Notice
 Electronic Copy of Court File Uploaded to COA; No Exhibits for this Case A169933
 Created: 03/18/2019 11:24 AM

FINANCIAL INFORMATION

Attorney SMITH, MICHELLE E	
Total Financial Assessment	3.00
Total Payments and Credits	3.00
Balance Due as of 07/08/2019	0.00

01/31/2019	Transaction Assessment	3.00
------------	------------------------	------

01/31/2019 | Phone Payment Receipt # 2019-96043

Stephen Wiles

ER-23 (3.00)

Defendant Vercher, Gwendolyn
 Total Financial Assessment
 Total Payments and Credits
Balance Due as of 07/08/2019

560.00
 560.00
0.00

08/14/2018 | Transaction Assessment
 08/14/2018 | xWeb Accessed eFile Receipt # 2018-752665

Vercher, Gwendolyn

560.00
 (560.00)

Plaintiff Justice
 Total Financial Assessment
 Total Payments and Credits
Balance Due as of 07/08/2019

578.00
 578.00
0.00

05/03/2018 | Transaction Assessment
 05/03/2018 | xWeb Accessed eFile Receipt # 2018-408031
 01/25/2019 | Transaction Assessment
 01/25/2019 | Phone Payment Receipt # 2019-81190
 01/28/2019 | Transaction Assessment
 01/28/2019 | Phone Payment Receipt # 2019-85952

Justice, Justice

Margaret Leiberan

Margaret Leiberan

560.00
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CERTIFICATE OF COMPLIANCE, SERVICE, AND FILING

I certify that this brief complies with the word-count limitation in ORAP 5.05, which word count is 7,617, and that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes.

I further certify that service of a copy of this brief has been served on the following participant(s) in this case by email, and will be served electronically through the Oregon Judicial eCourt filing portal:

Geordie Duckler
Geordie Duckler PC
9397 SW Locust Street
Tigard, OR 97223

I further certify that I filed this brief with the Appellate Court Administrator on this date.

DATED: July 8, 2019

/s/ Margaret H. Leek Leiberan

Margaret H. Leek Leiberan, OSB #770468
Of Attorneys for Appellant