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Superior Court of California
County of Sonoma
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Arlene D. Junior, Clerk of the Court
By: Janie Dorman, Deputy Clerk

Attorney for MARK KIMBERLY, an individual

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SONOMA
UNLIMITED JURISDICTION

MARK KIMBERLY, an individual

Case No.: SCV SCV-269151

Plaintiffs,

COMPLAINT FOR DAMAGES

vs.

NORTH BAY ANIMAL SERVICES, a
California 501(c)(3) Domestic Nonprofit
corporation; MARK SCOTT, an individual
and DOES 1 through 20, inclusive

1. Failure to Perform Mandatory Duties in Violation of California Gov. Code § 815.6
2. Violation of 42 U.S.C. § 1983 (Municipal Liability)
3. Violation of 42 U.S.C. § 1983 (Individual Liability)
4. Negligence

Defendant(s)

Plaintiff MARK KIMBERLY, is an individual (“Plaintiff” herein) for his complaint against the above-named defendants, and each of them, and allege as follows:

I.

PARTIES

1. Plaintiff MARK KIMBERLY is an individual who at all times herein mentioned was, and is, a resident of Sonoma County, State of California.

2. Plaintiffs is informed and believes, and on that basis allege, that defendant NORTH BAY ANIMAL SERVICES, is a California 501(c)(3) Domestic Nonprofit corporation

1 with an address of 840 Hopper Street, Petaluma, in the County of Sonoma, State of California
2 and subject to California laws and employer of defendant MARK SCOTT.

3 3. Defendant MARK SCOTT is and at all times relevant to this complaint, was
4 employed by NORTH BAY ANIMAL SERVICES as the executive director. MARK SCOTT is
5 named in his individual and official capacities.

6 4. Defendants DOES 1 through 20, inclusive, are sued pursuant to the provisions of
7 California Code of Civil Procedure section 474. Plaintiff is ignorant of the true names and
8 capacities of defendants Does 1 through 20 and will seek to amend this Complaint to set forth
9 their true names and capacities when ascertained. Plaintiff is informed and believes, and on that
10 basis alleges that each of these fictitiously-named defendants is responsible in some manner for
11 the occurrences herein alleged in that Plaintiff's damages as herein alleged were proximately
12 caused by such defendants. Allegations herein applicable to NORTH BAY ANIMAL
13 SERVICES and/or MARK SCOTT as "Defendants" are also applicable to and shall include
14 Does 1 through 20, inclusive, unless specifically averred otherwise.

15 5. In doing the acts herein alleged, unless otherwise stated, each of the fictitiously-
16 named defendants acted as the alter ego, agent, employee, partner, representative or
17 co-conspirator of the Defendants, as well as each other, and in so doing, they were acting within
18 the course and scope of such agency relationship.
19

20 21 INTRODUCTION

22 This case involves an ongoing pattern and practice of abuse and failure to follow state
23 law at the animal shelter located in Sonoma County. Plaintiff is asking that NORTH BAY
24 ANIMAL SERVICES be ordered to follow state laws as specified herein to cease practices
25 which defeat the public policy and requirements under California law in stopping the needless
26 killing and inadequate treatment of animals in its care. NORTH BAY ANIMAL SERVICES has
27 routinely failed to provide prompt veterinary care to its animals and routinely euthanizes animals
28 within 24 hours of impoundment.

1 In addition, Plaintiff seeks redress for the loss of his pet cat, Kaytie, who was improperly
2 and illegally euthanized at the direction of NORTH BAY ANIMAL SERVICES.

3 II.

4 JURISDICTION AND VENUE

5 6. This court has personal jurisdiction over the Defendants and venue is proper in
6 Sonoma County because the defendant is a domestic nonprofit corporation domiciled in the
7 County of Sonoma.

8 7. Venue is also proper in Sonoma County because the injuries sustained by the
9 plaintiff as the owner of a cat named Kaytie which defendants unlawfully euthanized on or about
10 December 12, 2020 occurred in Sonoma County.

11 8. This action arises in part under federal law, to wit, 42 USC section 1983.

12 III.

13 FACTS COMMON TO ALL CLAIMS

14 9. Plaintiff realleges, as though fully set forth, the allegations contained in
15 paragraphs 1 through 8, inclusive.

16 10. The provision of services concerning domestic animals, including dogs,
17 domesticated cats and feral cats in California is governed primarily by California's Food and
18 Agricultural Code. That code, as well as other code provisions, were amended in 1998 after
19 enactment of Senate Bill 1785 ("SB 1785"), authored by then State Senator Tom Hayden, and
20 commonly known and referred to as the "Hayden Act". The underlying purpose of the Hayden
21 Act was to shift California's animal shelter system in the direction of saving, rather than taking,
22 the lives of animals delivered to the care of the animal shelters located at various state locations.

23 11. SB 1785 is currently codified in various places throughout the Civil Code, the
24 Food and Agricultural Code, and the Penal Code. In all three codes, the Legislature specifically
25 codified the state's policy favoring life (by re-homing) over death for shelter animals.
26 (Civ. Code §1834.4; Food & Ag Code §17005; Penal Code §599(d)).
27

1 12. To accomplish the state policy of saving rather killing impounded animals,
2 existing state law now imposes upon all animal shelters throughout California mandatory duties,
3 including, among other things, and without limitation, the following:

4 a) contracting with reputable and competent nonprofit animal rescue
5 organizations to promote adoptions and reduce the rate of shelter killing and to make reasonable
6 efforts before euthanizing an animal. “It is the policy of the state that no treatable animal should
7 be euthanized. A treatable animal shall include any animal that is not adoptable but that could
8 become adoptable with reasonable efforts” (Civ. Code §1834.4(b)).

9 b) to treat impounded animals kindly and humanly, and provide them with
10 adequate nutrition, shelter, exercise, and water with prompt and appropriate veterinary care
11 during the period of their impoundment. (Civ. Code §§ 1815; 1834; 2080; Pen. Code §§ 597(e);
12 597(f); 597.1; 599).

13 c) to hold and make impounded animals available for adoption or owner
14 redemption for a statutory holding period of at least four to six business days, depending on
15 shelter hours of operation, and not including the day of impoundment unless the animals are
16 irremediably suffering from a serious illness or severe injury, or, in the case of owner-
17 relinquished dogs only, if the dog has a history of vicious or dangerous behavior documented by
18 the agency charged with enforcing state and local animal laws, in order to allow owners or other
19 members of the public time to reclaim or adopt animals. (Cal. Food & Ag. Code §31108(a);
20 17006; 31108.5(b)).

21 13. Defendant NORTH BAY ANIMAL SERVICES, a domestic nonprofit
22 corporation (hereafter “NBAS”) is under contract with the City of Petaluma to provide, among
23 other services, animal control, issue dog licenses, pick up stray animals, return missing pets, and
24 facilitate dog and cat adoptions under the laws and regulations of the State of California and
25 comply with the Hayden Act.

26 14. On December 12, 2020 plaintiff is informed and believes, and thereon alleges that
27 a neighbor observed Kaytie and not knowing who she belonged to, believed her to be lost and
28 called NBAS to collect Kaytie believing she would be safer there than on the street. At that time

1 Kaytie had been missing for several days and KIMBERLY had been frantically looking for her
2 in the neighborhood and checking “found” animal sites on social media and in particular the
3 NBAS website.

4 15. Claimant believes that on December 12, 2020 NBAS did in fact pick up Kaytie
5 and under the authority of defendant MARK SCOTT (hereafter “SCOTT”) and she was posted
6 as “found” on the NBAS website.

7 16. KIMBERLY went down to NBAS the following day to pick up his lost cat only to
8 find his worst fears realized. The previous evening, only hours after impound, SCOTT as
9 Executive Director of NBAS, instructed Kaytie be directly transported to VCA Animal Care
10 Center of Sonoma County with a presenting complaint request for “euthanasia”.

11 17. KIMBERLY is informed and believes that NBAS took Kaytie directly to VCA
12 and that there was no other complaint or diagnosis. The VCA exam report indicated a normal
13 elderly cat with slight weight loss and dehydration. The veterinarian notes state “NBAS elected
14 for euthanasia”. Shortly after arrival at VCA Animal Care Center Kaytie was euthanized.

15 18. KIMBERLY contacted SCOTT to inquire as to why his beloved cat was
16 euthanized and SCOTT told KIMBERLY that two cats had been euthanized that night and he
17 (SCOTT) was not sure he had the “right file” in front of him. SCOTT indicated he would call
18 KIMBERLY back after he reviewed the files. When SCOTT called KIMBERLY back he
19 informed plaintiff that “Kaytie is no longer with us”. SCOTT informed KIMBERLY that
20 Kaytie was “underweight, dehydrated and cold” as the reason for euthanizing Kaytie.

21 19. KIMBERLY was initially unable to review the VCA records as the “owner” was
22 listed as NBAS. NBAS and SCOTT failed and refused to change ownership to KIMBERLY for
23 severally weeks after Kaytie was euthanized. Eventually KIMBERLY was listed as Kaytie’s
24 Owner and able to review the medical records completed at the time of admission by VCA. As
25 noted above, those records did not support the claims of defendant SCOTT and plaintiff is
26 informed and believes the records were altered or changed after it became known KIMBERLY
27 was the Owner.
28

1 20. Plaintiff has fulfilled all claim requirements pursuant to Government Code section
2 900 et seq.

3
4 FIRST CAUSE OF ACTION

5 (Failure to Perform Mandatory Duties in Violation of Gov. Code § 815.6)

6
7 21. Plaintiffs incorporate by reference paragraphs 1 through 19 as though fully set
8 forth herein.

9 22. Plaintiff is informed and believes that defendants have routinely violated the
10 Hayden Act and related California statutes pertaining to animals by, among other things,
11 euthanizing dogs and cats prior to the expiration of the statutorily-mandated holding period;
12 failing to cooperate with other non-profit animal rescue organizations, euthanizing animals when
13 animal rescue organizations have demonstrated interest in an animal; euthanizing treatable
14 animals without providing medical care to the animal or allowing the public or rescue
15 organizations to provide medical care; failing to provide necessary and prompt veterinary
16 medical care to impounded animals in its shelter and by routinely designating dogs as
17 “aggressive” in order to justify their euthanization, without performing any behavior evaluation
18 (or any industry-accepted behavioral evaluation), or proper adjudication, and without making the
19 required “reasonable efforts” to rehabilitate or treat dogs in order to make them adoptable.

20 23. Upon information and belief, on the same date, Defendants trapped a stray cat
21 (Case C06073294) and thereafter failed to impound, did not present to VCA for medical
22 evaluation, did not spay or neuter or attempt to find or advertise for cat’s owner in violation of
23 the Hayden Act and indicative of routine violations of the purpose and intent of the Act.

24 24. Defendants violated Food and Agricultural Code section 31752 by failing to hold
25 Kaytie the cat in the shelter for the minimum 72 hours. Kaytie was brought to the shelter on
26 December 12, 2020 at approximately 6:10 p.m. Less than 2 hours later, Kaytie was euthanized
27 on December 12, 2020.
28

1 25. Even if Defendants erroneously determined Kaytie was “irremediably suffering”
2 and euthanized pursuant to Food and Agricultural Code 17006 (which Plaintiff disputes),
3 Plaintiff alleges that Defendants left Kaytie to languish in a cage without veterinary care for
4 several hours before she was euthanized. Accordingly, Defendants failed to provide emergency
5 veterinary care to her upon her arrival at the shelter in violation of Civil Code § 1834.

6 26. Defendant NBAS is directly liable for its failures to discharge their mandatory
7 duties as described above, resulting in the illegal euthanization of Plaintiff’s cat, Kaytie.
8 Plaintiff further alleges that Defendant SCOTT implemented policies and/or ordered hospital
9 staff to euthanize Kaytie and/or failed to provide the requisite emergency veterinary care for
10 Kaytie once impounded to the shelter.

11 27. As a direct and proximate result of Defendant’s illegal conduct, Plaintiff and other
12 members of the public were harmed. Defendant’s aforementioned illegal conduct was a
13 substantial factor in causing Plaintiff’s harm and Plaintiff has suffered damages in an amount to
14 adduced according to proof at trial.

15
16 SECOND CAUSE OF ACTION

17 (42 U.S.C. § 1983 - Municipal Liability)

18
19 28. Plaintiffs incorporate by reference each and every fact, paragraph and allegation
20 set forth herein above, or elsewhere in this complaint.

21 29. This cause of action is against NORTH BAY ANIMAL SERVICES, a California
22 501(c)(3) Domestic Nonprofit corporation with an address of 840 Hopper Street, Petaluma, in
23 the County of Sonoma, State of California and subject to California laws and employer of
24 defendant MARK SCOTT.

25 30. Defendant NBAS, is an agency of the City of Petaluma, a municipality. This
26 agency of the City implemented and executed policies and customs which were the moving force
27 behind the deprivation of Plaintiffs’ due process rights, and the deprivation of Plaintiffs’ property
28 interest in his family cat known as Kaytie, in violation of Plaintiffs’ rights under the U.S.

1 Constitution, including, but not limited to, the Fourth Amendment. Defendants implemented or
2 executed policies or customs which were in violation of the U.S. Constitution with respect to
3 owners' due process rights prior to euthanization of his owned animal, and Fourth Amendment
4 rights to be free from unreasonable seizure of his property. Defendants' actions were
5 fundamentally unfair, arbitrary and/or irrational. Additionally, Defendant SCOTT, as an agent of
6 the City with top policymaking authority, ordered that Plaintiffs' cat should not be treated by a
7 veterinarian and must be euthanized immediately. Defendants' euthanization of Plaintiff's pet
8 cat, Kaytie, without cause or his consent consent, and in violation of the Hayden Act, also
9 constitutes a violation of Plaintiff's Fourteenth Amendment rights to procedural and substantive
10 due process.

11 31. In carrying out this official policy, Defendants euthanized Plaintiffs' pet cat,
12 Katie, who was not irremediably suffering, and prior to the statutorily-mandated hold period.
13 Defendants' conduct in euthanizing Kaytie and failing to make reasonable efforts before her
14 euthanization in violation of California law, as well as implementing policies and procedures of
15 euthanizing animals prior to the statutorily-mandated hold, constitutes an unreasonable seizure of
16 property in violation of the Fourth Amendment.

17 32. Defendants' euthanization of Plaintiff's pet cat, Kaytie, without his consent, and
18 in violation of the Hayden Act, also constitutes a violation of Plaintiff's Fourteenth Amendment
19 rights to procedural and substantive due process. Accordingly, Defendants have committed
20 violations of 42 U.S.C. Section 1983 by depriving Plaintiff of his constitutional rights under both
21 the Fourth and Fourteenth Amendments.

22 33. Plaintiffs allege Defendant NBAS's wrongful euthanization of Plaintiff's pet cat,
23 Kaytie, constituted an unreasonable seizure of property in violation of the Fourth Amendment,
24 and a violation of Plaintiff's Fourteenth Amendment rights to procedural and substantive due
25 process. Defendants' actions were pursuant to official NBAS policy as ordered by an official
26 with top policymaking authority, as well as a pervasive, longstanding practice that has the force
27 of law.

1 41. This cause of action is against all defendants.

2 42. As set forth above, the Hayden Act sets forth mandatory duties to animal shelters
3 located in California.

4 43. Consistent with the mandatory duties set forth in the Hayden Act, Defendant
5 NBAS and its employees, had duties to Plaintiff to prevent harm such as euthanizing his pet cat,
6 Kaytie, without his consent, and before the statutorily-mandated hold period, when she was not
7 irremediably suffering. Defendants had further duties to prevent harm to Plaintiff's companion
8 animal (and/or property) in the course of their public duties at the animal shelter and/or as animal
9 control officers.

10 44. Defendants breached their duties to Plaintiffs, by failing to prevent harm to his pet
11 cat, Kaytie, by euthanizing Kaytie before the statutorily-mandated hold period, when she was not
12 irremediably suffering.

13 45. Plaintiffs allege Defendant SCOTT implemented policies and/or ordered hospital
14 staff to euthanize Kaytie and/or failed to provide the requisite emergency veterinary care for
15 Kaytie once impounded in the shelter, in breach of mandatory duties pursuant to the Hayden Act
16 and duties owed to Plaintiff. Plaintiff alleges Defendant SCOTT implemented policies and/or
17 ordered shelter staff to euthanize Kaytie and/or failed to provide the requisite emergency
18 veterinary care for Kaytie once impounded in the shelter in breach of mandatory duties pursuant
19 to the Hayden Act and duties owed to Plaintiffs.

20 46. Employees of Defendant NBAS, including Defendant SCOTT, were acting within
21 the scope of their employment with Defendant NBAS. Defendants are therefore vicariously
22 liable for their employees' conduct pursuant to California Government Code section 815.2. 52.
23 Plaintiff was harmed by the loss of his pet cat, Kaytie, and Defendants' conduct was a substantial
24 factor in causing Plaintiffs' harm, and as a direct and proximate result of Defendant's conduct,
25 Plaintiffs was harmed and suffered damages in an amount to be adduced according to proof at
26 trial.

27 ///

28 ///

1 RELIEF SOUGHT

2 WHEREFORE, Plaintiffs pray for judgment as follows:

3 1. For all general and special damages, direct damages, incidental damages, and
4 consequential damages, in an amount exceeding the jurisdictional minimum of this Court, which
5 amount is to be adduced according to proof at trial; and

6 2. Exemplary or punitive damages, including, but not limited to damages provided
7 by California Civil Code section 3340 against Defendant NBAS's employees including, but not
8 limited to, Defendant Mark Scott; and punitive damages against all defendants pursuant to and
9 pursuant to Plaintiffs' 42 U.S.C. Section 1983 claims; and

10 3. Injunctive relief; and

11 4. Attorney's fees and costs according to proof and as provided by statute, including
12 but not limited to, 42 USC Section 1988 and California Code of Civil Procedure section 1021.5;
13 and

14 5. Prejudgment interest; and

15 6. For such other further relief as the Court may deem proper.
16
17

18 Dated: August 26, 2021
19

20
21 LAW OFFICES OF JAMES K. COBB
22

23
24 By: /s/ James K. Cobb
25 JAMES K. COBB, Attorney for
26 MARK KIMBERLY
27
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