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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

MARIN COUNTY SUPERIOR COURT

RONDA STAVISKY,

Plaintiff,

v.

MARIN HUMANE SOCIETY and DOES 1 -25,

Defendants.

Case No. CIV 1300526

[Related Case: CIV 1300072]

VERIFIED COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF RE CONVERSION OF VALUABLE BREEDING STOCK, AND DEMAND FOR JURY TRIAL

INTRODUCTION

On December 27, 2012, the Marin Humane Society wrongfully seized a warmblood breeding stallion named Romantic Star from its local keeper, Jill Burnell at Chileno Valley Road in Marin County, California. The Society did so without justification. It thereafter refused to release that stallion to its lawful owner, Ronda Stavisky, Ph.D., who had purchased the stallion for $100,000 on December 18, 2012. Dr. Stavisky has demonstrated to the Society her ownership and ability to provide necessary care for her stallion at her breeding facility in Georgia to the Society prior to filing this Complaint. The Society refused her demand because it contends the stallion is "evidence" in a criminal investigation." Nonetheless, by operation of law, should the Burnells not pay unproven and non-reviewed "lien" amounts demanded by the Society, her horse will be deemed abandoned to the Society. Thereafter, the Society may dispose of this extremely valuable breeding stallion as it will without recompense or further process or acknowledgement of Dr. Stavisky's ownership claims.

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On December 27, 2012, the Society interfered with PLAINTIFF's direction to her veterinarian to manage the care of Romantic Star, or to ascertain his true condition on the date of seizure up to and precluding her effort to have the stallion removed to the Large Animal Clinic for evaluation. Since December 27, 2012, the Society has engaged in and promoted unprivileged slander of title (and reputation) of Dr. Stavisky, interfered with her breeding contracts, prevented her enjoyment of any privilege of ownership including information about, possession and management of Romantic Star. The Society conducted unconsented to and intrusive testing of Romantic Star at least between December 27, 2012 and January 24, 2013. For no more reason that Dr. Stavisky is the horse's owner, most recently, the Society has threatened Dr. Stavisky with criminal prosecution.

The Society's unprivileged conduct has caused Dr. Stavisky harm in her personal and professional reputation, and has subjected her to an onslaught of unwarranted verbal and emotional abuse by strangers, potential and former clients, and acquaintances, as well as causing her significant financial damage and damage to her horse breeding business in an amount not less than $100,000, but which will be demonstrated by proof at trial.

PARTIES

1. PLAINTIFF RONDA STAVISKY ("PLAINTIFF" or Dr. Stavisky) at all times relevant herein is a resident of Polk County, Georgia and conducts business as Rising Star Farm. Dr. Stavisky is the owner of a valuable stallion called Romantic Star.

2. On DEFENDANT MARIN HUMANE SOCIETY ("DEFENDANT" or "the Society") is a private California registered 501(c) (3) non-profit organization, incorporated in the State of California with its principal place of business located in Novato, California. The Society took possession of Romantic Star within Marin County. In addition, at all times relevant herein is independently empowered by the State of California, in the County located to

> ... enter into a contract ... with the county ... to enforce the provisions of laws of this state for the prevention of cruelty to animals, or arresting or prosecuting offenders thereunder, or preventing cruelty to animals [and] ... may perform those actions in the absence of a contract with a city, city and county, or county.

(California Corporations Code § 14501). DEFENDANT has been designated as "the animal services agency for [Marin] county," charged with administering the provisions of the Marin

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Municipal Code Chapter 8.04-Animal Control- and

> the laws of the state of California relating to the care, treatment and impounding of animals, and specifically to issue citations and to make arrests for violations of the provisions of this chapter and related state laws" and "take up, impound and safely keep any animals where authorized under the provisions of [Chapter 8.04] or the laws of this state."

(Marin Muni. Code §§ 8.04.110; 8.04.120 (b) and (c).)

Further to a joint powers agreement, the Marin Humane Society exercises that authority as an independent contractor to and not an agency of the County of Marin.

3. PLAINTIFF does not know the true names of DEFENDANT DOE 1 through 25, inclusive. Therefore, PLAINTIFF sues these DEFENDANTS by those fictitious names. PLAINTIFF is informed and believes and on that basis alleges that one or more of the DOE DEFENDANTS at all times mentioned in this complaint, may be the agents and/or employees of one or more of their co-defendants. To the extent that persons and entities now known to PLAINTIFF were doing the things alleged in this complaint, if they were not acting within the course and scope of their agency and employment with the Marin Humane Society, they may later be individually named.

VENUE

4. Marin County Superior Court is the proper court for this action because DEFENDANT may be found in Marin County, conducts its business in Marin County, and removed PLAINTIFF's stallion, Romantic Star, from Marin County where he was last known to PLAINTIFF to reside with her consent.

FACTUAL ALLEGATIONS

5. Dr. Stavisky is the owner of a horse, Romantic Star, a registered Hanoverian stallion, purchased upon various terms and conditions for $100,000 on or about December 18, 2012. She purchased the stallion for the purpose of earning stud fees in the business of breeding, training and riding sport horses. Romantic Star's stud fee had been $1,300 and higher. Because of Dr. Stavisky's location in an excellent and active breeding market she intended to raise his fee and began a marketing campaign to maximize Romantic Star's earning potential, including arranging

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breeding contracts.

6. Romantic Star is an Imported, Elite Hanoverian Stallion. He was performance tested in Germany and received high scores for his character, temperament, willingness, and rideability. His jumping technique and score earned him a nomination to the Hanoverian Jumper Breeding Program. From the American Hanoverian Society website:

> In 2005, the AHS established the Jumper Breeding Program (JBP), which is based in part on the successful experience of the Programm Hannoveraner Springpferdezucht (PHS) established in 1993 in Germany. A cooperative effort between the AHS and the two regional Hanoverian breeding clubs in Canada, the Jumper Breeding Program is intended to promote the breeding of high quality Hanoverian show jumping horses in North America. To be selected for the program, mares and stallions must have both an appropriate jumping pedigree and demonstrated jumping ability or offspring with demonstrated jumping ability.
>
> Stallion requirements:
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> •A score of at least 125 in the jumping index of the stallion performance test;
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> •A jumping score of 8.5 in the stallion performance test;
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> •A successful competition record, examples of which include placings in show jumping at USEF levels 8/9 (5 times in 1st to 3rd place) or Equine Canada equivalent; participation at international levels of competition or qualification for World Breeding Championships for Young Jumpers or the Bundeschampionate in Germany;
>
> •Offspring with successful competition records; or
>
> •A breeding value for jumping of at least 120. By way of example, the stallion's success in USEF level 8/9 jumping competitions, experience at international levels of competition, or qualification to participate in the World Championships for young show jumpers or the offspring's successes at USEF level 7/8 jumping competitions would be factors considered in favor of including a stallion in the program. Successes in hunter competitions, however, will not be considered.

7. There are only 23 stallions in the United States (out of 101 approved Hanoverian

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stallions) that are either currently activated or eligible for activation in the Jumper Breeding Program. Romantic Star is one of those stallions.

8. A December 19, 2012 veterinary inspection by Dr. Paul McEvoy, DVM, generally indicated the horse's good health. At the time of purchase through the time of transport, the only authorized keeper of the stallion, Romantic Star, was Jill Burnell. Thereafter, and all times relevant to this complaint, the owner of the stallion, Romantic Star, was PLAINTIFF.

9. PLAINTIFF paid for transportation of Romantic Star from Marin County, California to her farm in Polk County, Georgia. On or before December 21, 2012, the transportation date was set as December 28 or 29, 2012. PLAINTIFF is aware of no other person claiming ownership of the stallion, Romantic Star, or right to possession of the horse nor, prior to the actions of the Marin Humane Society complained of in this action, of any possessory or other liens against the horse.

10. On December 26, 2012, in the afternoon the horse Romantic Star got into a stallion fight. Romantic Star lost. He ended up on the ground, in a muddy paddock with the victorious stallion standing over him. When the stallions were eventually separated, and Romantic Star stood up, he was extremely muddy. He had swelling in his face, neck and shoulders, cuts, and one eye was swelling shut. Romantic Star was seen shortly thereafter by a veterinarian who administered antibiotics. Although extremely muddy and bruised, the veterinarian determined that it was unlikely that Romantic Star had suffered any broken bones (the horse was eating and drinking normally and was standing and moving normally). He recommended that the horse be moved for a more thorough examination. He did not require that further examination be made within any particular time frame. No one refused to take the horse to UC Davis or off the property for further examination.

11. On the afternoon and evening of December 26, 2012, the dirt road in and out of the Burnells' property was poor and was unlit. No veterinarian deemed it necessary to traverse the unlit, hillside, dirt road with a large, heavy horse trailer in a non-emergency circumstance.

12. The veterinarian who saw the stallion's injuries on December 26, 2012 (a mandatory reporter of abuse pursuant to Business & Professions Code section 4830.7) did not report that the

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injuries were life threatening or more dangerous to the horse and its human caretakers than would attempts to remove the horse from the Burnells' property in the dark. No veterinarian who examined Romantic Star immediately subsequent to the December 26 stallion fight reported any medical exigency which demanded immediate transport of Romantic Star to any location other than his customary paddock on the Burnell property.

13. Jill Burnell, an experienced horse breeder and manager as well as a licensed critical care nurse remained on the property overnight with the stallion, checking on his condition and ministering to his medical needs every hour or two. She reported on the stallion's condition to PLAINTIFF as requested.

14. On December 27, 2012 in the morning, Dr. McEvoy was again on the Burnells' property to inspect (and did inspect) the horse for PLAINTIFF. Dr. Stavisky instructed Jill Burnell and Dr. McEvoy to have the horse transported to UC Davis Large Animal Clinic or other location as in Dr. McEvoy's opinion was in the best interest of the stallion.

15. In Dr. McEvoy's opinion, Romantic Star was best evaluated at the UC Davis facilities.

16. Unknown to either PLAINTIFF or to Dr. McEvoy at the time that he was engaged to evaluate Romantic Star's injuries from the stallion fight, Sergeant Michelle Rogers of the Society had decided to remove the stallion from the Burnells' property.

17. Denying Dr. Stavisky's ownership and right as an owner to have the horse transported, the Society refused to permit the transportation of Romantic Star from the property by the horse hauler previously hired by the Burnells and PLAINTIFF for that purpose.

18. Only after the Society conducted a warrantless search of the Burnells' property and seized one other horse (a mare, "Pookie"), did it then permit the transportation of Romantic Star by its own officers to UC Davis Large Animal Clinic in Davis, California.

19. The Society then posted on the Internet a request for donations based upon their abuse claims, specifically naming Romantic Star, again without the consent of Dr. Stavisky.[1]

[1] https://www.kintera.org/site/c.aiIOI3NLKgKYF/b.8490959/k.5C3E/West_Marin_Horse_Case/apps/ka/sd/donor.asp?c=aiIOI3NLKgKYF&b=8490959&en=9qJPLVMsEcIKIOPsFaKHJNOtEhJXJ9PKKjIKJXMDL9JNJ2OFJoJ3H "Marin Humane Society's seizure of neglected horses upheld after hearing" Updated: January 31, 2013. "Cost for the care of the seized horses continues to increase and is expected to climb. MHS is a California registered 501(c) (3) non-

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20. Upon information and belief, the Society's appeal for donations has raised over $23,000 for care of the horses seized from Burnells' property, including Romantic Star.

21. On December 27, 2012 at the UC Davis Large Animal Clinic, Romantic Star's physical exam noted that his right eye was swollen, but visual, that he had numerous cuts and bruises toward the front of his body, but especially on his head, neck and chest. He received additional antibiotics and anti-inflammatories (as he had received while at the Burnells' property). At UC Davis, one clinician gave him a body condition score of "3/6" and another "3+/9". He received a thorough bathing and Curasalt gauze was placed on cuts on his face together with a topical antibiotic. His jaw was freely movable and did not give him pain. He could ambulate, eat and drink normally. To equate to human terms, the stallion had the tar beat out of him and ended up with a black eye and some loose teeth. He was fit to be released to any person who could administer anti-inflammatories and antibiotics from the moment of his arrival at UC Davis, and certainly would have been discharged no later than December 30, 2012 but for his celebrity status as an animal seized by the Society and being examined as part of its ongoing investigation.

22. Despite reports to the media that Romantic Star required seizure for broken bones, malnourishment and other scandalous-if-true (but not in fact true) conditions, UC Davis Large Animal Clinic records shows Romantic Star was at ALL TIMES stable. He was injured in the stallion fight but never in any danger. He was also very muddy and required a bath. ALL of the treatments could have been done at home with follow up vet visits to monitor progress of healing. His body condition score did not reflect malnourishment or neglect. His bloodwork and chemistry panels were all within normal limits.

23. On December 26, 2012, Romantic Star sustained abrasions and lacerations, primarily to his head and neck. There is expected swelling associated with these wounds and Romantic Star had head edema and one eye was swollen closed (small corneal ulcer). Some of his teeth were damaged from the fight as well. One leg also had some swelling. All of the wounds improved daily and Romantic Star - from the start - was eating, drinking and moving normally.

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profit organization. The public can assist with MHS's animal rehabilitation and related expenses by making a donation below."

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Cleaning wounds with diluted betadine, applying ointment to wounds, applying triple antibiotic ointment and atropine to eye, cold hosing legs, administering analgesics and anti-inflammatory medication, and administration of injectable antibiotics was the level of care that was required (something easily done at home). Romantic Star was dewormed, had his teeth floated and his feet trimmed (also standard home care). Nothing about his condition required hospitalization beyond his initial evaluation. Every treatment (and followup) could easily have been done at home or in a boarding facility and were "non-emergency" care. Basically, after his intake exam and bath he was cleaned up, had ointment and a Curasalt ™ dressing (an equine "Bandaid") applied.

24. On January 3, 2013, the Society gave notice to the Burnells (but not PLAINTIFF) of a Penal Code 597.1 Post Seizure Hearing concerning horses "believed to be owned by Jill and Alex Burnell" including Romantic Star. It hired Albert Burnham as its hearing officer, as it had numerous times previously, at the rate of $125 per hour to determine that its seizure was justified, the horses seized were not fit to be released from the Society's care, and that the owners of the horses were not capable of providing necessary care for the horses, as he had on every prior occasion when hired by the Society to do so when those matters were contested.

25. On January 8, 2013, the hearing officer, Mr. Albert Burnham, received Dr. Stavisky's declaration of ownership of the stallion, Romantic Star, including all of the following written testimony made under the penalty of perjury:

> I am the owner of the stallion Romantic Star. I understand my horse to have been seized by Marin Humane Society on December 27, 2012 from Jill Burnell's property.
>
> Jill Burnell contacted me immediately following the incident between Romantic Star and Aloha. At that time I asked her to contact Dr. Paul McEvoy to come out and evaluate him, and if Dr. McEvoy deemed necessary, to transport the stallion to UC Davis for treatment. I had previously hired Dr. McEvoy to inspect and test the horse for transportation to me in Georgia. Dr. McEvoy already had my payment information on record, and I have a copy of the invoice from Dr. McEvoy's office for the emergency call, consultation and evaluation of Romantic Star following the incident.

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When I was contacted by Michelle Rogers from MHS [Marin Humane Society], I informed her that arrangements had been made to either take Romantic to a stable where he could recuperate or to UC Davis depending on the severity of injuries and the recommendation of the veterinarian. I was adamant in my assertion that the well being of the stallion was of paramount importance and that I would do whatever was necessary for his safety and well-being based on the advice of the stallion's treating veterinarian, Dr. McEvoy. To date, Marin Humane Society has not apprised me or my representatives of the condition of the stallion."

26. On January 14, 2013, Mr. Burnham found that the Burnells received legal notice but did not address PLAINTIFF's right to legal notice. Although the Society's officers testified that they knew of and had spoken with PLAINTIFF, they did not attempt to have her appear at the post-seizure hearing or to offer the opportunity to present oral testimony.

27. Mr. Burnham made no finding with respect to PLAINTIFF in his discussion of "Issue #1 Were the seizures of Romantic Star and Pookie Justified", and while remarking on Dr. McEvoy's concurrence that Romantic Star be transported to UC Davis failed to note that Dr. McEvoy was present at the scene at PLAINTIFF's request and expense. Mr. Burnham took no testimony from any treating veterinarian from December 26 or 27 (only the hearsay testimony of Sergeant Rogers describing what she recalled they said or did) nor did the Society call any qualified witness from UC Davis regarding the condition of Romantic Star at the time of the hearing. Although available to the Society (the Burnells were prohibited from compelling the attendance of witnesses under the Society's proceedings), the Society did not call any witness who had been present at the Burnell property at the time of or after the stallion fight on December 26, 2012.

28. Mr. Burnham made no finding whether Romantic Star was fit to be returned to PLAINTIFF. Mr. Burnham made no finding whether PLAINTIFF had or could demonstrate her ability to provide the necessary care for Romantic Star.

29. Mr. Burnham characterized the Society's testimony as unopposed, and negatively commented on the fact that the Burnells had not testified on the advice of counsel (but not that

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the context was the Society's ongoing criminal investigation and threats of criminal prosecution). Because PLAINTIFF was not present to be cross-examined he rejected her written sworn testimony, saying only: "Ms. (sic) Stavisky claims that she owns Romantic Star. She provides no proof or documentation of that assertion. She fails to explain why Romantic Star was in the possession of Respondents on December 27, 2012, the date of the seizures. Her declaration, even if true, does not address the material issues in this case."

30. On January 17, 2013, the Society wrote to the Burnells, "Please be advised that the first 21 days of costs for the seizure and care of your two horses (up to an including January 16, 2013) are due to be paid by 5:00 p.m. February 4, 2013 [that date has been continued by agreement to February 18, 2013]. A list of those costs is included with this letter. If these charges are not paid by then your horses may be deemed abandoned pursuant to Penal Code 597.1 and become the property of the Marin Humane Society. [¶] Please note that if the charges are paid, you will also be responsible for all future costs of impoundment and care/treatment of your horses, after today and up until the time their final disposition is determined, and such costs shall constitute a lien on the animals. We will only accept cash, certified check, or a money order." The List of Fees attached to that correspondence claimed $6,302.10 "Total Due 'Romantic Star'". No invoices or description of why or to whom monies were paid was included other than "Impound Fee $200.00; Trailering Fee $156.00, Board ($75/day) $1,575.00, and Veterinary Care $4,371.00." On February 4, 2013, the Society acknowledged that the $75 per day board fee was improper. There was no accounting provided of money raised by the Internet website campaign for the purpose of caring for Romantic Star.

31. On January 29, 2013, PLAINTIFF again requested the return of her stallion. On January 30, 2013, the Society responded, denying PLAINTIFF's request stating, inter alia: "Romantic Star will not be released at this time and we cannot predict when he may possibly be able to be released –or if he will ever be able to be released to his owner. "

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FIRST CAUSE OF ACTION - CONVERSION

32. Plaintiff re-alleges and incorporates by reference the allegations set forth in each preceding Paragraph of this Complaint. PLAINTIFF claims that DEFENDANT wrongfully exercised control and dominion over her stallion, Romantic Star.

33. PLAINTIFF owned the stallion Romantic Star;

34. DEFENDANT intentionally took possession of Romantic Star on December 27, 2012 and continues to keep him from PLAINTIFF at least through February 4, 2013 the date of the filing of this complaint.

35. PLAINTIFF did not consent to the taking;

36. PLAINTIFF was harmed by the taking; and

37. DEFENDANT's conduct was a substantial factor in causing PLAINTIFF'S harm.

38. Further, DEFENDANT acted with malice, fraud and/or oppression in the conduct alleged above. DEFENDANT acted with intent to cause injury to PLAINTIFF and/or DEFENDANT'S conduct was despicable and was one with a willful and knowing disregard of the rights or safety of PLAINTIFF or another. Additionally or alternatively, DEFENDANT acted with knowing disregard of PLAINTIFF's rights, title and interest, and was aware of the probable dangerous consequences and likelihood of harm to PLAINTIFF of his, her, or its conduct and deliberately failed to avoid those consequences. DEFENDANT'S conduct was despicable and subjected PLAINTIFF to cruel and unjust hardship in knowing disregard of her rights. DEFENDANT's conduct in the above alleged acts is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays that judgment be entered against the DEFENDANT as follows:

1. Ordering DEFENDANT to return Romantic Star to Plaintiff immediately;
2. Preliminarily and permanently enjoining DEFENDANT, and any person associated with

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them from use of Plaintiff's name, likeness or that of Romantic Star as an unfair method of competition and/or other wrongful acts;

3. Disgorging any monies from donors collected as a result of DEFENDANT's use of Plaintiff's name, likeness, Romantic Star, or other unprivileged and or unconsented to activities using PLAINTIFF's property and business opportunities to DEFENDANT's purpose;
4. Awarding PLAINTIFF her actual damages sustained as a result of DEFENDANT's unlawful conduct, in an amount to be proven at trial, plus pre-judgment and post-judgment interest thereon at the legal rate until paid in full;
5. Awarding PLAINTIFF punitive, special, and/or exemplary damages
6. Awarding Plaintiff reasonable attorneys' fees and expenses accrued and accruing herein, plus interest thereon at the legal rate from the date judgment is entered until paid in full as may be available by contract, statute or the common law as a cost necessary to incur to achieve the return of her property and her good name;
7. Awarding Plaintiff its costs accrued and accruing herein, plus interest thereon at the legal rate from the date judgment is entered until paid in full;
8. Trial by jury, and
9. Awarding Plaintiff such other and further relief as the Court deems just and proper.

February 4, 2013

WEEMS LAW OFFICES

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