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4 Attorneys for Defendant PETCO ANIMAL SUPPLIES STORES, INC.
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 ANDREW PANKEY AND VANESSA SAUER,)
INDIVIDUALLY AND AS ADMINISTRATORS)
11 OF THE ESTATE OF AIDAN PANKEY,)
DECEASED,)

12 Plaintiffs,)

13 vs.)

14 PETCO ANIMAL SUPPLIES, INC., a)
15 Corporation; BARNEY'S PETS, a Business)
16 Organization; and DOES 1 TO 25,)

17 Defendants.)
18

**CASE NO. 37-2014-00004156-CU-
PO-CTL**

**DEFENDANT PETCO ANIMAL
SUPPLIES STORES, INC.'S TRIAL
BRIEF**

IMAGED FILE

Trial: March 24, 2017
Time: 1:30 p.m.
Judge: Hon. Eddie C. Sturgeon
Dept.: C-67

19 **I.**

20 **INTRODUCTION**

21 This case arises from the untimely death of ten year-old Aidan Pankey. He died after
22 allegedly contracting rate bite fever (hereinafter "RBF") from a rat sold by PETCO ANIMAL
23 SUPPLIES STORES, INC. ("PETCO") and supplied by BARNEY'S PETS ("BARNEY'S").
24 Plaintiffs allege negligence and products liability against PETCO and BARNEY'S as a result.

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1 II.

2 **DEATH BY RBF IS EXTREMELY RARE**

3 Streptobacillus moniliformis is extremely common in both wild and domestic rats. Statistics
4 show anywhere from 50%-100% of rats are *colonized* with streptobacillus moniliformis. Being
5 colonized is distinct from being infected. Streptobacillus moniliformis is not a disease for rats, but
6 is considered a normal condition for rats since it usually does not cause any actual symptoms in a
7 rat. Although rats can be bred in a sterile lab so that they do not have RBF, this is not done for the
8 pet industry and is only done for scientific research.

9 Rats are everywhere. Millions of people regularly come into contact with rats and/or their
10 environments. As stated above, anywhere from 50%-100% of rats (whether domestic or wild) have
11 RBF. Few people ever contract RBF and it is easily treated with antibiotics. If left untreated, RBF
12 can be fatal in 7-13% of cases. It is rare for RBF to go untreated.

13 RBF can be contracted from a bite, a scratch, or from coming into contact with secretions
14 from a rat. A very easy way to contract RBF is to kiss a pet rat near its mouth or nose. Bathing with
15 a pet rat can also allow for easy transmission of RBF. Touching a rat and not washing your hands
16 is another way to transmit the disease.

17 It is believed that Aidan Pankey regularly kissed, bathed, and played with his rat without
18 taking any precautions to prevent the transmission of RBF.

19 III.

20 **SALE OF RAT BY PETCO**

21 PETCO sells rats for domestic purposes, including as pets or feeders for reptiles. In this case,
22 PETCO's sales associate, Katy Richards, sold the rat to Aidan Pankey's grandmother (Sharon
23 Pankey).

24 As is standard practice, Ms. Richards provided Ms. Pankey with a Rat Care Sheet (Exhibit
25 A) and spoke with her about the content thereon. Ms. Richards specifically remembered Aidan
26 and/or Sharon Pankey telling her that they already had a rat. Ms. Richards also specifically
27 remembered Sharon Pankey conveying she (Sharon Pankey) was the adult and would be responsible
28 for the purchase of the rat. Ms. Richards recalled spending about 30 minutes with Aidan and Sharon

1 Pankey talking about the purchase of a rat.

2 During the sales process, Ms. Richards provided Ms. Pankey with a Companion Animal
3 Purchase Card (Exhibit B). After Ms. Pankey filled out the Companion Animal Purchase Card, Ms.
4 Richards flipped over the card over and went over the information on the back of the card, including
5 the information about RBF. Ms. Richards testified she did not read the back of the card verbatim,
6 but rather spoke about the substance of what is on the back of the card, including RBF and other
7 diseases rats may carry. Ms. Richards testified she conveyed to Ms. Pankey that if anyone gets bitten
8 or scratched, they should call a doctor and not wait to see if and when they get sick. Ms. Pankey
9 testified she received both the Companion Animal Purchase Card and the Rat Care Sheet, but that
10 after the purchase, she put them in a drawer and never looked at them.

11 As you can see, the Companion Animal Purchase Card provides: “by signing, I commit to
12 being a responsible pet owner by providing a safe and appropriate environment for my companion
13 animal. I have received a Petco Care Sheet for my companion animal, and am aware of what it is
14 necessary to keep my pet happy and health.” The sheet further notes that Ms. Pankey had read the
15 caution statements on the back of the Companion Animal Purchase Card.

16 On the back of the Companion Animal Purchase Card, there are caution statements. There
17 is a specific section on RBF, which provides:

18 **“Rat Bite Fever (“RBF”), is a bacterial infection transmissible to**
19 **people from rats. Rats are carriers of this bacterium and show**
20 **no signs of illness, however, they can pass the bacteria on to**
21 **people via bites, scratches, or accidental ingestion of**
22 **contaminated rat feces. This ingestion can take place by failing**
23 **to wash your hands after having contact with the pet or its**
24 **bedding. Symptoms of infection will usually occur 2-10 days**
after exposure to an infected rodent and include abrupt onset of
chills and fever, vomiting, pain in the back and joints, headaches,
and muscle pain. A qualified physician can make the diagnosis
of RBF based on symptoms and testing for this specific strain of
bacteria causing RBF. If a rat bite occurs, it would be advisable
to consult a physician.”

25 Furthermore, the Companion Animal Purchase Card also has a “SAFETY PRECAUTIONS”
26 section, which provides in pertinent part:

- 27 • “Never let your mouth come into contact with your rodent. Some people like to give
28 their rodent an affectionate kiss. This is a practice we do not recommend as it can
transmit disease to the person kissing the animal.”

- 1 • “Companion animals should be kept out of the kitchen and other food preparation
2 areas. Kitchen sinks and bathtubs should not be used to bathe rodents, clean habitats,
3 or wash rodents in them. If unavoidable, first remove all materials used to cook,
4 prepare, or serve food, including the toaster. Disinfect the area thoroughly with a
5 mild bleach solution when finished.”
- 6 • “Always wash your hands after coming in contact with any animal.”
- 7 • “Young children should be closely supervised when cleaning habitats or handling pet
8 rodents. They should be supervised or assisted in washing their hands immediately
9 after handling a pet rodent, their habitat, or bedding.”

10 As referenced above, along with the Companion Animal Purchase Card, Ms. Pankey also
11 received a Rat Care Sheet, which included the following:

12 “Because all rats are potential carriers of infectious diseases, such as
13 Rat Bite Fever, always wash your hands before and after handling
14 your rat and/or habitat contents to help prevent the potential spread
15 of diseases.”

16 IV.

17 **IT IS NOT CUSTOMARY TO PREVENT RATS FROM CARRYING RBF IN THE PET** 18 **INDUSTRY**

19 As referenced above, in the pet industry, it is not customary to breed to be free of
20 streptobacillus moniliformis. It is estimated 50% to 100% of rat populations, both domestic and
21 wild, carry streptobacillus moniliformis. Rats show no visible symptoms of carrying streptobacillus
22 moniliformis.

23 V.

24 **MS. PANKEY AND AIDAN’S PARENTS ALLOWED AIDAN TO BREAK ALL SAFETY** 25 **PRECAUTIONS**

26 It is apparent that neither Aidan Pankey’s grandmother or parents taught Aidan Pankey how
27 to handle his pet rat responsibly. Photographs of Aidan Pankey show that he bathed with them and
28 put them close to his face.

Ms. Pankey admitted during deposition that she did not have strict rules about handling the
rats. Ms. Pankey testified there was a general rule about washing hands, but readily admitted the rule
was not followed. Ms. Pankey testified that Aidan would ride his bike, skateboard, and play in the
neighborhood with a pet rat on his shoulder. Ms. Pankey further testified Aidan enjoyed showering
and swimming with his pet rats. Ms. Pankey also testified Aidan would put the rats on his bed and

1 that thereafter, the bed would not be cleaned. Essentially, Aidan was allowed to break every rule in
2 the book when it came to safety precautions and handling rats.

3 **VI.**

4 **PRODUCTS LIABILITY CASE**

5 The Court recently determined that a pet rat sold by PETCO can be considered a product for
6 purposes of products liability law. Plaintiff will pursue a manufacturing defect and failure to warn
7 claim based in products liability. The jury will first need to decide whether a rat carrying
8 streptobacillus moniliformis is a defective product. From there, the jury may need to decide whether
9 adequate warnings were given by PETCO as it relates to warning of RBF. Plaintiff may argue that
10 PETCO should have warned of the potential for death from RBF. Death from RBF is extremely rare,
11 below 7-13%. As mentioned above, the explicit warnings given by PETCO about RBF are very
12 clear, reasonable, and adequate.

13 **VI.**

14 **PLAINTIFF ANDREW PANKEY AND HIS RELATIONSHIP WITH HIS SON**

15 Plaintiff ANDREW PANKEY is seeking damages for funeral and burial expenses and the
16 loss of Aidan Pankey's love, companionship, comfort, care, assistance, protection, affection, society,
17 and moral support.

18 ANDREW PANKEY was in jail when Aidan was born because he had been convicted of
19 possessing methamphetamine along with a firearm. He served approximately 6 months in jail as a
20 result. Thereafter, ANDREW PANKEY and Ms. SAUER lived together for about 2 years, but then
21 separated. ANDREW PANKEY violated his probation and was sent to Norco Prison for about year.
22 This is when Aidan was taken in by his grandmother, Sharon Pankey.

23 In June 2010, ANDREW PANKEY and his then girlfriend, Tiffany Maple, purchased a home
24 in Santee. Despite the purchase of the home, Aidan continued to live with his grandmother for the
25 next two years. Aidan did not move in with ANDREW PANKEY until June of 2012. Aidan had
26 lived with ANDREW PANKEY less than a year prior to passing away.

27 ANDREW PANKEY has an extensive criminal past. Court records show 6 state criminal
28 filings (all felony and in San Diego County) against ANDREW PANKEY. In addition, in January

1 2015, a federal criminal complaint was filed against ANDREW PANKEY for possession of multiple
2 firearms and ammunition by a felon. This filing arose out of a botched robbery attempt at an audio
3 store in Carlsbad. During a subsequent search of ANDREW PANKEY's home, other firearms as
4 well as methamphetamine was found. Trial in this civil suit was previously continued because
5 ANDREW PANKEY had to serve further time.

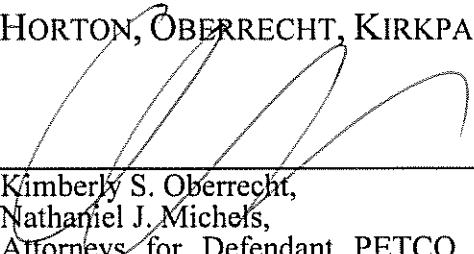
6 **VIII.**

7 **CONCLUSION**

8 This case is very sad, but just because PETCO sold the rat does not make PETCO responsible
9 for this incident.

10 Dated: March 22, 2017

HORTON, OBERRECHT, KIRKPATRICK & MARTHA

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13 _____
14 Kimberly S. Oberrecht,
15 Nathaniel J. Michels,
16 Attorneys for Defendant PETCO ANIMAL SUPPLIES
17 STORES, INC.
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5 Attorneys for Defendant PETCO ANIMAL SUPPLIES STORES, INC.
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

9 ANDREW PANKEY AND VANESSA)
SAUER, INDIVIDUALLY AND AS)
10 ADMINISTRATORS OF THE ESTATE OF)
AIDAN PANKEY, DECEASED,)
11)
Plaintiffs,)
12)
vs.)
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PETCO ANIMAL SUPPLIES, INC.,)
14 a Corporation; BARNEY’S PETS,)
a Business Organization; and DOES 1 TO 25,)
15)
Defendants.)
16

CASE NO. 37-2014-00004156-CU-PO-
CTL
DECLARATION OF PROOF OF
SERVICE
IMAGED FILE
Judge: Hon. Eddie C. Sturgeon
Dept.: C-67

17 I am employed in the County of San Diego, State of California. I am over the age of eighteen (18)
18 years and am not a party to the within entitled action; my business address is 225 Broadway,
Suite 2200, San Diego, California 92101.

19 On **March 22, 2017**, I served the following document:

20 **DEFENDANT PETCO ANIMAL SUPPLIES STORES, INC.’S TRIAL BRIEF**

21 on all interested parties in this action by placing the true copies thereof to be delivered as listed
22 below:.

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<p>1 John H. Gomez, Esq. 2 Bibianne U. Fell, Esq. 3 Max E. Halpern, Esq. 4 GOMEZ TRIAL ATTORNEYS 5 655 W. Broadway, Suite 1700 6 San Diego, CA 92101 7 (619) 237-3490; (619) 237-3496 Fax 8 john@gomeztrialattorneys.com bfell@gomeztrialattorneys.com mhalpern@gomeztrialattorneys.com <i>Attorneys for Plaintiffs ANDREW PANKEY and VANESSA SAUER, Individually and as Administrators of the Estate of Aidan Pankey, Deceased</i></p>	<p>Hamilton E. Arendsen, Esq. ARENDSSEN CANE, MOLNAR, LLP 550 W. C Street, Suite 1150 San Diego, CA 92101 (619) 535-3913; (619) 535-3920 Fax harendsen@arendsencane.com <i>Attorneys for Plaintiffs ANDREW PANKEY and VANESSA SAUER, Individually and as Administrators of the Estate of Aidan Pankey, Deceased</i></p>
<p>9 Christopher E. Faenza, Esq. 10 Andy Mendoza, Esq. 11 YOKA & SMITH 12 445 S. Figueroa Street, 38th Floor 13 Los Angeles, CA 90071 14 (213) 427-2300; (213) 427-2330 Fax cfaenza@yokasmith.com amendoza@yokasmith.com asolis@yokasmith.com <i>Attorneys for Defendant BARNEY'S PETS, INC. (erroneously sued as Barney's Pets)</i></p>	

15 **BY MAIL:** I enclosed the documents in a sealed envelope or package addressed to the
16 persons listed above. I placed the envelopes for collection and mailing, following our ordinary
17 business practices. I am readily familiar with this business's practice for collecting and processing
18 correspondence for mailing. On the same day that correspondence is placed for collection and
19 mailing, it is deposited in the ordinary course of business with the United States Postal Service,
20 in a sealed envelope, with postage fully prepaid. I am employed in the county where the mailing
21 occurred. The envelopes or packages were placed in the mail at San Diego, California.

22 **BY ELECTRONIC MAIL:** I caused the above-listed documents to be transmitted by
23 electronic transmission, addressed to the parties listed above. The service transmissions were
24 reported as complete, and copies of the e-mail receipts will be maintained with the original document
25 in this office.

26 **BY FAX TRANSMISSION:** Based on an agreement of the parties to accept service by fax
27 transmission, I faxed the documents to the persons listed on the attached service list. No error was
28 reported by the fax machine that I used. A copy of the record of the fax transmission will be
maintained with the original document in this office.

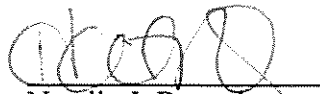
BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package
provided by an overnight delivery carrier and addressed to the persons at the addresses in the
attached service list. I placed the envelope or package for collection and overnight delivery at an
office or a regularly utilized drop box of the overnight delivery carrier.

BY MESSENGER SERVICE: I served the documents by placing them in an envelope or
package addressed to the following persons only and providing them to a professional messenger
service for service at the following address: **John H. Gomez, Esq., Bibianne U. Fell, Esq., and**

DECLARATION OF PROOF OF SERVICE

1 **Max E. Halpern, Esq., GOMEZ TRIAL ATTORNEYS, 655 W. Broadway, Suite 1700,**
2 **San Diego, CA 92101.**

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
4 and correct. Executed on March 22, 2017.

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7 Natalie J. Rosenberg

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