

CIVIL CASE MANAGEMENT SHEET
(see SLR 2.011 for required use)

PARTIES (list overflow on separate sheets):

Case no.:

Pleading has Class Action Allegations: No Yes

Plaintiffs:

Defendants:

*Sandee Strunk
and Wally Strunk*

*Hannah's LLC
d/b/a Hannah The Pet Society*

Related cases in Multnomah County Circuit Court (case number(s)):

n/a

Has this case been filed previously, or is it related to a case file previously in this court or in another court?

No Yes In this Circuit Court Case No. _____
Yes In another Circuit Court Case No. _____ County: _____
Yes In US District Court Case No. _____ Location: _____

PLAINTIFF:

I am an Attorney Representing Plaintiff I am self-represented

Name: *Kevin M. Eckhardt* OSB Number: *136009*
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(Street) (City) (State) (Zip)
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Notice of a change of address pursuant to UTCR 2.010(14).

TYPE OF CASE (select ONE Primary Subject selection does not bind or limit legal theories):

Tort and Employment

- | | |
|---|---|
| <input type="checkbox"/> Motor vehicle (including UM & UIM) | <input type="checkbox"/> Intentional personal injury (including assault, battery, false arrest, intentional infliction of emotional distress) |
| <input type="checkbox"/> Construction Defect | <input type="checkbox"/> Employer liability (ELL) |
| <input type="checkbox"/> Product liability | <input type="checkbox"/> Employment discrimination/wrongful discharge |
| <input type="checkbox"/> Wrongful Death | <input type="checkbox"/> Wage and hour |
| <input type="checkbox"/> Negligence | <input type="checkbox"/> Employment contract |
| <input type="checkbox"/> Professional negligence medical | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Professional negligence (legal, other) | |
| <input type="checkbox"/> Defamation | |
| <input type="checkbox"/> Fraud | |
| <input type="checkbox"/> Intentional injury to property (including nuisance and trespass) | |

Contract (other than employment)

- Money Action (consumer credit)
- Insurance
- Negotiable instrument
- Other (specify): _____

Real Property

- Quiet Title
- Condemnation/Eminent Domain
- Foreclosure
- Specific Performance

Other

- | | |
|--|---|
| <input checked="" type="checkbox"/> Declaratory Judgment/Injunctive Relief | <input type="checkbox"/> Elder Abuse |
| <input type="checkbox"/> Intellectual property | <input type="checkbox"/> Interpleader (ORCP 31) |
| <input type="checkbox"/> Derivative Shareholder suit | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Securities | |

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Case No.

**SANDEE STRUNK and WALLY
STRUNK,**

Plaintiffs,

v.

**HANNAH'S LLC d/b/a HANNAH THE
PET SOCIETY, an Oregon limited liability
company,**

Defendant.

**COMPLAINT
(Breach of Contract, Breach of the Implied
Covenant of Good Faith and Fair Dealing,
Declaratory Judgment)**

**DEMAND FOR JURY TRIAL
NOT SUBJECT TO MANDATORY
ARBITRATION**

Plaintiffs, Sandee Strunk and Wally Strunk, by and through their undersigned counsel, allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs, Sandee and Wally Strunk (together "Plaintiffs") are individual residents of Washington County, Oregon.
2. The Plaintiffs are the pet parents of Kodee, a mixed-breed canine who lives with them at their home in Washington County, Oregon.
3. Hannah's LLC d/b/a Hannah the Pet Society ("Defendant") is an Oregon limited liability company.
4. According to Defendant's registration documents with the Oregon Secretary of State Corporations Division, Defendant's principal place of business is located in Multnomah County, Oregon.

5. Further, according to Defendant's registration documents with the Oregon Secretary of State Corporations Division, Defendant's registered agent and sole member are located in Multnomah County, Oregon.

6. This Court has jurisdiction because Defendant is an Oregon limited liability company with its principal place of business, registered agent, and sole member located in Multnomah County, Oregon.

7. Further, this court has jurisdiction because the instant action concerns acts, services, goods and contracts arising and performed exclusively within Oregon.

8. Venue is proper in this Court because Defendant's principal place of business, registered agent, and sole member are located in Multnomah County, Oregon.

FACTUAL ALLEGATIONS

I. DEFENDANT'S PET LEASING BUSINESS MODEL AND PRACTICES

9. Defendant is engaged in the business of "leasing" pets to retail consumers such as Plaintiffs.¹

10. Defendant leases two retail locations to market its pet leasing business to consumers – one at Washington Square Mall in Tigard, Oregon ("Washington Square") and one at Mall 205 in Happy Valley, Oregon.

11. These retail locations resemble traditional mall pet stores, except that they serve as vehicles for Defendant's pernicious form of pet leasing rather than as retail sales outlets.

¹ By using terms such as "lease" or "leasing" in their allegations, Plaintiffs do not concede that the arrangement between Defendant and its retail customers qualifies as a "true lease" under applicable law. Rather, Plaintiffs use these terms solely for ease of factual description. The agreements themselves do not use the term "lease." Plaintiffs reserve the right to allege that the "leases" between Defendant and its customers, including Plaintiffs, are not "true leases" but disguised secured financing arrangements.

12. Under Defendant's pet leasing business model, Defendant charges consumers a fee – typically about \$200.00 – for the use of its “pet matching” service, which purportedly uses software to determine the proper pet for each consumer.

13. Defendant represents to consumers that its animals come exclusively from rescue organizations and animal shelters, and presents itself as a sort of matching service to bring consumers and rescue organizations and animal shelters together with consumers seeking a pet.

14. Upon information and belief, however, Defendant's “inventory” is primarily sourced from small “backyard breeders” and “puppy mills.”

15. Upon information and belief, Defendant's “inventory” is very rarely sourced from rescue organizations or animal shelters, which generally refuse to do business with Defendant due to its business practices and refusal to establish its adherence to veterinary and boarding laws, regulations and industry standards.

16. Once a matching pet is selected by a consumer, Defendant has the consumer execute a boilerplate form agreement whereby the consumer agrees to pay Defendant a monthly payment – generally more than \$100.00, depending on breed/size of the pet – every month for the remainder of their pet's life, whether the pet lives one year or ten years or twenty years.

17. In exchange for this monthly charge, Defendant agrees to allow the consumer to “use and enjoy” their family pet and to provide emergency and routine veterinary services, boarding and training for leased pets, and to deliver specified food for leased pets on a prearranged schedule.

18. This arrangement is similar to a pet health insurance policy, except under its boilerplate agreements Defendant maintains ownership of the pet.

19. This arrangement allows Defendant to circumvent local and state laws and regulations governing veterinary practices and boarding facilities.

20. Defendant regularly provides veterinary services and keeps its “inventory” at its veterinary clinics, but does not comply with laws and regulations applicable to these businesses because these laws and regulations generally do not apply where a veterinarian provides care to his or her own pet, or where pets are sheltered by their owners.

21. As owners of the pets it leases to consumers, Defendant can avoid scrutiny of its veterinary care and boarding facilities both by avoiding laws and regulations and by denying consumers (or “pet parents”) information and medical records regarding any treatment provided to their pets.

22. As owners of the pets it leases to consumers, Defendant claims sole discretion in making all decisions regarding the pet’s veterinary care, including any decision to euthanize a leased pet.

23. Additionally, unlike a typical pet health insurance contract, Defendant’s “leasing” model allows Defendant to ensnare the unaware consumer into a perpetual obligation whereby they must keep making payments to Defendant or lose their household pet – the pet that Defendant charged a large initial fee to place in a compatible home.

24. Defendant’s form agreements with consumers generally provide for a minimum term – typically one year – during which the consumer must continue to make monthly payments to Defendant and cannot terminate for any reason.

25. According to Defendant, this boilerplate contract of adhesion also provides that if a consumer ever wants to terminate their monthly payment obligations to Defendant, even after the end of the minimum term, they must either surrender their pet back to Defendant

(purportedly for placement with a new lessee owner) or pay a “cancellation fee” in order to purchase their pet.

26. This cancellation fee – typically more than \$600.00 – is unilaterally set by Defendant at the beginning of the pet lease, without any disclosure to the consumer of the costs paid by Defendant to obtain the pet.

27. Upon information and belief, this cancellation fee is not determined based on an analysis of the costs incurred by Defendant to find and acquire the pet or the reasonable damages incurred by Defendant in the event of cancellation by a consumer.

28. As evidence of this, the cancellation fee is not subject to adjustment based on the numbers of months the consumer actually pays under their agreements with Defendant.

29. The price for a consumer to purchase their pet from Defendant – and to end their obligation to continuing making monthly payments to Defendant for the “use and enjoyment” of their household pet – is the same whether the consumer has made monthly payments to Defendant for one year or ten years or twenty years.

30. The cancellation fee has nothing to do with Defendant’s costs or damages in the event of cancellation, or the “residual value” of the pets that its customers have taken into their homes and grown to love.

31. Instead, the cancellation fee is calculated as a multiple of the monthly payments due under the form agreements with the consumer, in order to discourage the consumer from exercising their right to cancel these agreements (even after completion of a minimum term).

32. The cancellation fee is intended as a punitive forfeiture penalty to discourage consumers from ever terminating their monthly payment obligations to Defendant.

33. Defendant is well aware that a consumer will almost never willingly return a family pet that has been in their household for months or years – especially if they cannot be sure that the pet will not be euthanized by Defendant, which exercises sole discretion to make life-ending decisions as the owner of the pet.

34. Accordingly, Defendant knows that consumers will typically continue making monthly payments to Defendant, even if Defendant fails to provide services as promised, rather than paying a cancellation fee several times larger than their monthly payments or surrendering their family pet for potential euthanasia.

35. This is exactly the impossible situation facing Plaintiffs in the instant case.

II. THE AGREEMENTS BETWEEN PLAINTIFFS AND DEFENDANT

36. On May 26, 2013, Plaintiffs' pet husky dog Thundee died.

37. Thundee's death was so traumatic for Plaintiffs that it caused Mr. Strunk to end up in the emergency room with cardiac symptoms.

38. Plaintiffs soon began searching for two new husky puppies to replace Thundee.

39. Plaintiffs believed this would be a boon for Mr. Strunk's poor health, as Mr. Strunk's doctors have previously provided documentation that they believed Mr. Strunk should have a dog due to a heart condition.

40. In October 2013, Plaintiffs heard one of Defendants' radio advertisements and decided to visit Defendant's Washington Square retail location.

41. On October 26, 2013, Plaintiffs met with the manager of Defendant's Washington Square "Placement Center."

42. Plaintiffs asked very specific questions at their initial meeting with Defendant.

43. Plaintiffs specifically asked Defendant's manager if they would be obligated to pay any "cancellation fee" to take ownership of a pet after completion of a minimum one-year term under Defendant's proposed "lease" agreements.

44. The manager told Plaintiffs that they would only be obligated to pay a cancellation fee if they sought to cancel their agreements with Defendant before the completion of a one-year minimum term.

45. The manager also did not disclose to Plaintiffs that if they intended to cancel their agreement with Defendant they would be obligated to return or pay for a \$147.00 "starter kit" they would be forced to buy from Defendant at the time they took possession of a pet.

46. Plaintiffs relied on these representations in entering into an initial "pet finding" agreement with Defendant.

47. On November 23, 2013, Mr. Strunk paid \$340.00 in fees for Defendant to match Plaintiffs with two husky puppies - \$195.00 for the first puppy and \$145.00 for the second puppy.

48. Between November 13, 2013 and November 27, 2013, Defendant's "Pet Placement Counselor" informed Plaintiffs that she had found a 10-week old purebred husky puppy named Denali for Plaintiffs.

49. However, Defendant requested that Plaintiffs pay an additional \$150.00 "Specialty Fee" for Denali.

50. Plaintiffs asked Defendants to adequately explain the justification for this additional fee, but neither the Pet Placement Counselor nor the "Research Team Leader" to whom Plaintiffs were referred would provide an explanation, so Plaintiffs did not accept Denali.

51. On December 5, 2013, another Pet Placement Counselor contacted Plaintiffs and sent them pictures of Kodee.

52. The Pet Placement Counselor indicated that Plaintiffs would not be obligated to pay a “specialty fee” for Kodee.

53. Plaintiffs immediately fell in love with Kodee and informed Defendants that they were willing to accept Kodee.

54. Plaintiffs picked up Kodee on December 21, 2013 at Defendant’s Clackamas County veterinary facility.

55. At the pickup site, Mrs. Strunk electronically signed two form agreements with Defendant – an “Enrollment Agreement” and a “Total LifeTime Care (TLC) Membership Agreement.”

56. Mrs. Strunk initialed and executed these agreements electronically, on a computer screen shown to her by Defendant’s personnel.

57. Mrs. Strunk was not provided with paper copies of the agreements for review prior to initialing and execution.

58. Copies of these agreements are attached hereto as Composite Exhibit “A” and incorporated herein by reference.

59. The one-page Total LifeTime Care (TLC) Membership Agreement (the “Membership Agreement”) provides for a “Total Monthly Fee” of \$125.00 per month, including a \$94.00 monthly charge for “Plan: Easy Essentials” and a \$31.00 charge for “Pup/Specialty Pup/Kit Health Prog.”

60. The Membership Agreement, in a line item electronically initialed by Mrs. Strunk, provides for a “Cancellation fee” of \$600.00 and a “Start Up Kit Cost” of \$140.00.

61. The Membership Agreement, in a line item electronically initialed by Mrs. Strunk, provides that “[y]our membership is for a minimum of 12 months plus 30 days’ notice with signed cancellation.”

62. The Enrollment Agreement (together with the Membership Agreement, the “Agreements”) does not include initialed line items; rather, it is comprised entirely of boilerplate form language on Defendant’s letterhead.

63. Section D of this boilerplate provides that “[u]nless you, as the Pet Parent, notify [Defendant] in writing that you wish to terminate this Agreement and either return or purchase your Hannah Pet and supplies, this Agreement will continue for the rest of the life of the Hannah Pet.”

64. Section E provides that Defendant will deliver “a supply of Pet food that Hannah determines is the correct quantity” every “four to eight weeks.”

65. Section F provides that Defendant “is responsible to provide all of the veterinary needs of the Hannah Pet at a Hannah care provider as determined by the Pet’s Hannah veterinarian.”

66. Section F further provides that Defendant’s “Medical Standards Board, in consultation with the Pet Parent, is the final determiner of any support, care or ‘end of life treatments’ covered under this Agreement.”

67. Section H provides that “[t]he purchase price for your Hannah Pet is the Cancellation Fee listed on the TLC Acceptance Agreement.”

68. In summary, the Agreements purport to require Plaintiffs to make monthly payments to Defendant for Kodee’s entire life, unless Plaintiffs either pay an exorbitant and punitive fee or return Kodee to Defendant.

69. In turn, the Agreements required Defendant to provide Plaintiffs access to Defendant's services 24 hours a day, seven days a week, "just a phone call away."

70. Unfortunately, Defendant did not live up to its promises in the Agreements.

III. COURSE OF PERFORMANCE UNDER THE AGREEMENTS

71. Plaintiffs were initially satisfied with the Defendant's placement process and services under the Agreements.

72. By January 2014, however, Plaintiffs became concerned by Defendant's failure to live up to its promises under the Agreements.

73. Specifically, Plaintiffs had difficulties scheduling veterinary appointments for Kodee and otherwise reaching Defendant's personnel to procure the services promised by Defendant under the Agreements.

74. On January 25, 2014, Plaintiffs sent an email message to Defendant's management detailing some of their issues with Defendant's services, including failure to update them on Kodee's veterinary care and issues, failure to properly address Kodee's inability to gain weight, and failure to notify Plaintiffs regarding upcoming appointments, scheduled vaccinations, food delivery, and other issues.

75. Plaintiffs were very concerned about Defendant's consistent failure to communicate with them or listen to their concerns regarding their new and very dear puppy.

76. Plaintiffs were specifically very concerned about Kodee's failure to gain weight.

77. Plaintiffs were frustrated by Defendant's apparent disorganization and lack of planning for Kodee's training, feeding and medical requirements.

78. However, Defendant failed to respond to Plaintiffs' initial letter requesting better communication and attentiveness from Defendant's veterinarians and staff.

79. Kodee's inability to gain weight continued, and Kodee began to suffer from chronic diarrhea.

80. Between January 2014 and March 2014, Kodee's diarrhea persisted, and in early March 2014 Kodee began to suffer from chronic vomiting.

81. During this period, Plaintiffs repeatedly had difficulty communicating with Defendant's personnel and obtaining any information relating to their new puppy's health and wellbeing.

82. On March 8, 2014, Plaintiffs frantically tried to reach Defendant to schedule an emergency appointment for Kodee, who was now vomiting as well as suffering from diarrhea and could not keep down any food.

83. Plaintiffs attempted to call numerous times but did not reach anyone at Defendant's facility until eight hours after they began calling.

84. Throughout this period, Plaintiffs were routed to voice mail systems and left messages that were never answered.

85. Plaintiffs were later told emergency personnel did not reply because they were too "swamped."

86. Plaintiffs had never experienced such inattentiveness and disorganization from a veterinarian.

87. It became clear to Plaintiffs that Defendant lacks sufficient resources to treat all of the pets they have placed out to loving families.

88. Defendant lacks the manpower, equipment, facilities, and organization to live up to its promises to pet parents, and this presents a real danger to the lives of these pets and the wellbeing of the families into which they have been placed.

89. Defendant's organizational problems are also evidenced by its failure to comply with its obligations to deliver food for Kodee.

90. Defendant dropped off food for Kodee in January 2014 (without providing prior notice as agreed), but did not return until after Kodee's emergency illness on March 8, 2014.

91. By March 8, 2014, Plaintiffs felt they could no longer trust Defendant to do the right thing for Kodee.

92. Plaintiffs had lost faith in Defendant's purported professional abilities and intent to live up to its promises under the Agreements.

93. On March 8, 2014, Plaintiffs sent a second email to Defendant's management detailing Defendant's failure to live up to its promises under the Agreements.

94. At this point Plaintiffs requested a refund of their second \$145.00 placement fee (for a second puppy), which had been placed by Mr. Strunk in November 2013 along with the initial \$195.00 placement fee that eventually led to the adoption of Kodee.

95. After repeated requests, this fee was refunded two months later, in May 2014.

96. Plaintiffs had hoped to obtain a second puppy through Defendant, but chose to terminate that placement request as they had decided they did not trust Defendant sufficiently to address their concerns.

97. On March 8, 2014, Plaintiffs informed Defendant that they believed Defendant had breached its obligations to them under the Agreements.

98. Defendant's personnel did finally reply to Plaintiffs' message accusing it of breach, conceding that "we have dropped the ball on so many items regarding both [Kodee's] health and behavior."

99. Defendant promised to do a better job addressing Plaintiff's concerns in the future.

100. Plaintiffs did not seek to terminate the Agreements at this time because they believed that they could not do so prior to the end of their one-year minimum term without having to pay the exorbitant cancellation fee specified in the Agreements, in addition to the remaining monthly service payments.

101. Based on their discussions with Defendant's personnel, they believed that they could make their monthly payments for the minimum one-year term, and at that time they could cancel the Agreements without any further payments.

102. Had Plaintiffs not been affirmatively told by Defendant's manager that they could cancel the Agreements after the minimum term without having to pay the cancellation fee, they would have terminated the Agreements earlier and refused to pay Defendant based on its breaches.

103. Instead, Plaintiffs elected to live up to their understanding of the Agreements rather than initiate a legal dispute.

104. They would pay for a year, hope Defendant's services improved, and then cancel without penalty if necessary.

105. Unfortunately, Defendant did not address its numerous organizational deficiencies.

106. After an appointment on March 28, 2014, Defendant's veterinarian, at Plaintiffs' request, prescribed some special food to treat Kodee's digestive issues.

107. Plaintiffs had to specifically request the special food, as Defendant did not provide them with any information regarding the availability of special food to treat Kodee's obvious digestive issues.

108. Defendant consistently failed to provide Plaintiffs with any information regarding Kodee's health or treatment, let alone to consult with them regarding treatment as provided in the Agreements, despite their numerous efforts to communicate with Defendant's veterinary staff and management.

109. Of course, this is one of the reasons Defendant developed its unique "pet leasing" business model – to avoid any scrutiny of its veterinary organization, policies, practices, or outcomes.

110. By "owning" the pets it "leases," Defendant can claim to be treating its own pets, despite the fact that these pets are very much members of the families that adopt them from Defendant – and Defendant's failure to provide information causes tremendous anxiety, fear, and uncertainty for the real pet parents, such as Plaintiffs.

111. After two months, Defendant inexplicably ceased delivering the prescribed food.

112. Plaintiffs, lacking any confidence in Defendant's intention to actually treat Kodee properly, elected to start purchasing their own special food, at their own cost, in addition to the monthly service fee they continued to pay to Defendant.

113. Plaintiffs did not bother continuing to make complaints and demands to Defendant based on its failure to deliver food, because Plaintiffs were caught up treating their sick dog and had no confidence that Defendant would address these issues.

114. Kodee also started to display troubling behavioral issues, such as snapping and snarling at other dogs.

115. Plaintiffs became fearful of having Kodee around their grandchildren.

116. Plaintiffs raised these issues with Defendant's trainers, but they failed to provide training advice that might address the issues.

117. In April 2014, Plaintiffs ceased attending Defendant's training courses because they failed to address Kodee's behavioral issues.

118. Plaintiffs eventually retained a new trainer at their own cost that successfully addressed some of Kodee's behavioral issues – but they cannot afford to continue to pay their own trainer in addition to the monthly service fee charged by Defendant.

119. Plaintiffs also eventually gave up on getting a grooming appointment with Defendant and paid out of pocket for Kodee's grooming.

120. Plaintiff further gave up on any resolution of their issues with the food being provided for Kodee and began buying food for Kodee at their own cost, in addition to the monthly fee being charged by Defendant.

121. At this point, Plaintiffs were essentially paying twice for veterinary, grooming, training, and food for Kodee – once in the form of their monthly payment to Defendant, and then out of their own pocket to cover Defendant's failure to provide the promised services.

122. Plaintiffs have paid a total of more than \$400.00 in out-of-pocket costs due to Defendant's breaches of the Agreements, and anticipate further expenditures during the remaining time on the minimum contract term.

123. Again, while Plaintiffs felt that Defendant had failed to live up to its promises to them under the Agreements, they continued to pay the monthly charges due under the Agreements because they believed they could cancel the Agreements at the end of the minimum

term without incurring any further charges, as specifically indicated by Defendant's personnel during their first visit to Defendant's retail store at Washington Square.

124. On October 14, 2014, Plaintiffs sent a letter notifying Defendant of their intention to make the remaining monthly payments due under the Agreements (through December 2014) and then to cancel their Agreements due to Defendant's breaches.

125. Plaintiffs made this offer solely to avoid a legal dispute with Defendant.

126. Had they believed that they would be obligated to pay more than \$740.00 in cancellation fees even after paying for Defendant's non-existent services for a year, they would have cancelled the Agreements much earlier.

127. Of course, Plaintiffs had been told otherwise by Defendant's personnel.

128. Defendant responded to Plaintiffs' October 14, 2014 letter by indicating that Plaintiffs were obligated not only to pay the remaining monthly fees under their Agreements with Defendant, but would also have to pay \$740.00 in cancellation fees if they wanted to keep Kodee.

129. Otherwise, Defendant indicated that Plaintiffs were free to avoid paying the cancellation fee by simply returning their family pet to Defendant.

130. Of course, Plaintiffs never considered for a moment giving up their beloved pet.

131. As Defendant had hoped, Plaintiffs were presented with an impossible choice – pay the cancellation fee, continue to pay monthly fees to Defendant for deficient and often non-existent services which they had been required to pay for elsewhere, or give up their family pet.

132. This is exactly the no-win situation presented by Defendant's punitive "cancellation fee."

133. Instead, Plaintiffs have chosen to file this action seeking damages against Defendant for breach of contract and a declaration that Defendant's punitive "cancellation fee" is an unconscionable and unenforceable liquidated damages provision designed not to compensate Defendant, but to discourage Defendant's customers from opting out of their open-ended obligations to Defendant.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Breach of Contract – Membership Agreement and Enrollment Agreement)

134. Plaintiffs incorporate by reference the preceding paragraphs of the Complaint.

135. The Agreements are valid and enforceable contracts between Defendant and Plaintiffs.²

136. Under the Agreements, Defendant promised to provide certain goods and services to Plaintiffs, as alleged above and indicated in the Agreements.

137. Plaintiffs performed their obligations and conditions precedent under the Agreements.

138. As stated above, Defendant failed to satisfy its obligations under the Agreements.

139. Defendant materially breached the Agreements.

140. Plaintiffs justifiably sought alternative sources for the goods and services that Defendant agreed to provide under the Agreements after Defendant breached the Agreements and failed to provide adequate assurance of future performance under the Agreements.

141. Defendant's material breaches of the Agreements are the legal and proximate cause of damage to Plaintiffs for which Plaintiffs seek monetary damages of at least \$400.00 in

² Plaintiffs do not concede that the cancellation fee provision is valid and enforceable against Plaintiffs.

out-of-pocket expenses and costs to secure alternative sources for the goods and services Defendant agreed to provide under the Agreements.

SECOND CLAIM FOR RELIEF
(Breach of Implied Covenant of Good Faith and Fair Dealing)

142. Plaintiffs incorporate by reference the preceding paragraphs of the Complaint.

143. The Agreements contain an implied covenant of good faith and fair dealing.

144. Defendant breached the implied covenant of good faith and fair dealing by failing to provide goods and services to Plaintiffs in good faith, as alleged above and indicated in the Agreements.

145. Defendant's material breaches of the covenant of good faith and fair dealing are the legal and proximate cause of damage to Plaintiffs for which Plaintiffs seek monetary damages of at least \$400.00 in out-of-pocket expenses and costs to secure alternative sources for the goods and services Defendant agreed to provide under the Agreements.

DEMAND FOR JURY TRIAL

146. Plaintiffs demand a jury trial for all issues so triable.

THIRD CLAIM FOR RELIEF
(Request for Declaratory Relief – ORS Chapter 28)

147. Pursuant to ORS § 28.100, this Court may declare the rights, status and other legal relations of any interested party seeking such declaration whether or not further relief is or could be claimed.

148. Defendant failed to live up to their obligations under the Agreements by failing to provide the services and goods promised in the Agreements, as more fully alleged herein.

149. Such conduct on the part of Defendant constitutes a material breach of the Agreements.

150. Furthermore, Plaintiffs have notified Defendant of their conclusion that Defendant has breached the Agreements, and have denied any future liability under the Agreements – including any liability to pay the remaining monthly service fees under the Agreements and any liability to pay a cancellation fee or fee for return of a starter kit under the Agreements.

151. Even if Defendant is not in breach of the Agreements, Plaintiffs allege that the cancellation fee and starter kit return charges sought by Defendant are unconscionable and constitute unenforceable liquidated damages that seek to penalize Plaintiffs for exercising any right to terminate the Agreements.

152. Defendant has denied that it is in breach of the Agreements and has demanded that Plaintiffs pay no less than \$990.00 in service fees and cancellation charges under the Agreement.

153. By reason of the foregoing, an actual, justiciable controversy has arisen between the parties regarding Defendant's obligations under the Agreements.

154. Plaintiffs therefore seek a binding and judicial declaration from the Court, decreeing that:

- a. Defendant is in breach of the Agreements;
- b. Plaintiffs are not in breach of the Agreements;
- c. Defendant's breaches of the Agreements forgive any obligation of Plaintiffs to pay any further amounts to Defendant under the Agreements;
- d. Plaintiffs are the owners of Kodee;
- e. Alternatively, the Agreements are procedurally and substantively unconscionable and thus unenforceable against Plaintiffs in their entirety;
- f. Alternatively, the Agreements' provisions for payment of a cancellation fee and for failure to return the starter kit constitute unconscionable and unenforceable penalty provisions under applicable law.

155. Plaintiffs and Defendant are in an actual active dispute as to their rights under the Agreements.

156. A declaration of the parties' respective rights is necessary and appropriate at this time in order that Plaintiffs may ascertain their rights to Kodee and their obligation (if any) to pay further amounts to Defendant.

157. Defendant's breach of the Agreements entitles Plaintiffs to the following additional relief in addition to a declaratory judgment: damages, fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Enter judgment in favor of Plaintiffs on their claim for breach of the Agreements and award damages in an amount in excess of \$400.00, plus interest at the highest rate allowed by law;
 2. Enter judgment in favor of Plaintiffs on their claim for breach of the implied covenant of good faith and fair dealing;
 3. Declare Plaintiffs the owners of Kodee;
 4. Declare that the cancellation fee under the Agreements is unconscionable and/or unenforceable as a punitive forfeiture penalty;
 5. Award Plaintiffs attorneys' fees as applicable and costs of suit incurred herein;
- and

6. Grant such other and further relief as the Court deems just and proper.

**Dated: December 4, 2014
Portland, Oregon**

Respectfully submitted,

/s/ Kevin M. Eckhardt
Kevin M. Eckhardt (OSB #136009)
HUNTON & WILLIAMS LLP
550 South Hope Street
Suite 2000
Los Angeles, CA 90071
(704) 378-4729

COMPOSITE EXHIBIT A

Total LifeTime Care (TLC) Membership Agreement

Member Name: Wally Strunk Pet Name: Kodee
Pet ID: 108484 Species: Canine Est. Adult Wht (47 lbs)

- \$94.00/mo. Plan: Easy Essentials Plan pricing can be adjusted to adult weight on first exam after 12/21/2014
- \$31.00/mo. Pup/Kit/Specialty Pup/Kit Health Prog (Mo. Chg for 12 mo. from start of agreement) Ends On:12/21/2014
- \$0.00/mo. Specialty Breed Health Program
- \$0.00/mo. Corrective Health Program (Monthly Charge for 12 mo.) Ends On:12/21/2014
- \$0.00/mo. Longevity Health Program (Monthly Charge for life of the Pet, includes Rx diets*)
- \$0.00/mo. Corrective Behavior Program (Monthly Charge for 12 mo.) Ends On:12/21/2014
- \$0.00/mo. Longevity Behavior Program (Monthly Charge for life of the Pet)

*Rx diets may increase the monthly fees after today's date if food allergy is diagnosed within the next 90 days.

Additional Services:(May be added to monthly services, each service requires 30 day cancellation notice)

- \$0.00/mo. Cat Litter (Feline Plans)
- \$2.00/mo. Starts on 6/21/2014 if 6 training classes have not been completed (Puppy Plans)
- \$0.00/mo. Food Delivery - Scheduled Trip (In Zone2 - \$15 premium added)
- \$0.00/mo. Pet Pickup and Delivery - Scheduled Trip (in Zone2 - \$10 premium added)
- \$0.00/mo. Multiple Pet Discount (discount -\$5.00/mo.)
- \$0.00/mo. Adjustment to monthly Fee - Reason:
- \$0.00/mo. Shelter Donation Amount
- \$0.00/mo. Hannah's Helping Hands Charity Donation Amount
- \$125.00/mo. Total Monthly Fee

TLC Approval (Pending any outstanding diagnostic tests)

- I understand that my account will be charged additional fees for food bins (currently \$25) or supplies not returned in original condition.
- Your membership is for a minimum of 12 months plus 30 days notice with signed cancellation, or 5 months if pet is returned.
- Cancellation fee is: \$600.00 Start Up Kit Cost is \$140.00
- I understand that my account will be charged for the amount and on the schedule (monthly) listed in this agreement. Late payment fees will be incurred.
- I understand that Hannah will make its best effort to ensure but can make no guarantee on puppy/kitten/rabbit/guinea pig adult weight, breed, health and behavior. All Pets placed have Hannah's behavior screening test but some behaviors will only become apparent in the home. Behavior is also influenced by the home environment, pet parents' ability to provide exercise and participation in training classes. I further understand that Hannah's goal is to send home Pets that are healthy but illness can occur at any time and in spite of all screening and medical care provided prior to placement. Pets may be sent home on medication and you have the option to delay placement until the pet isn't showing any symptoms of illness. Resolution for weight, breed, behavior or health issues are limited to exchanging the pet or use of the medical and behavior care provided by the Hannah Health and Education Center.
- I understand that using veterinary or emergency services at a facility not approved by Hannah's or without prior written authorization will not be paid by Hannah and will be at the member's own expense.
- I understand that Hannah is committed to excellent member service and that all concerns that our Health and Education Center has not addressed to your satisfaction will be addressed directly with Hannah through its member concerns support hotline at 360-816-8747 or email member.concerns@hannahsociety.com.

Sande Strunk

Date: 12/21/2013

Hannah Team Member:
Jessica Curtin

Enrollment Agreement

Congratulations on joining Hannah the Pet Society and being selected to have a "Hannah Pet" as part of your family! We are excited and honored that you are becoming a Hannah Pet Family - Thank you!

Our goal is to help you by providing all the products and services your Pet's Hannah veterinarian determines are necessary for your Hannah Pet - like quality food, Pet supplies, training and veterinary care at Hannah's service providers - and even a 24-hour Help Line! We ask that you provide all the love you can as we partner together to provide your new "Hannah Pet" with the best quality of life possible.

This Enrollment Agreement is made as of today between Hannah the Pet Society and you, the new "Pet Parent" and has the following terms and conditions:

A. Hannah the Pet Society promises you, the new "Pet Parent," and your family, the "Pet Family":

- To do our best to harmoniously match you and your family with as nearly an ideal a Pet as we can within a reasonable time frame – Hannah's goal is an ideal Hannah Pet Family for the Hannah Pet and an ideal Pet for the Pet Family.
- To provide you and your family with an appropriate Pet, based on the best information Hannah has available with respect to your Hannah Pet.
- To do our best to keep you and your family safe by testing the Hannah Pet for potentially dangerous behavior problems, doing our best with prevention of any recognized zoonotic disease, and treating problems with haste and zeal if any are ever found.
- To do our best to keep you and your family and your Hannah Pet together through the use of education, support, and loving attention to the needs of your Pet Family and the Hannah Pet. We will be available for advice 24/7/365 and help you find an emergency Pet hospital or any other resource if one is ever needed.
- To support you and your family through times if/when your Hannah Pet is injured, ill or dying by providing veterinary care and consultation as Hannah veterinarians and staff determine what is appropriate, necessary, and timely.
- To retrieve the Hannah Pet for any reason if you determine you no longer can or no longer want to care for your Hannah Pet.
- To listen to the Pet Family's requests and concerns regarding your Hannah Pet and to respond to you as soon as possible.
- To give every Hannah Pet the same care and quality products that any of us at Hannah would want for ourselves if the Pet and our positions were magically reversed
- To not be the reason you and your family don't have a Pet or don't want another one!

B. The Match. The matching process starts upon your payment of the Pet Matching Fee set below.

- We will try to find up to three Pets that are closest to an ideal match as possible for your family based on a combination of what you tell us about you and your family, the Pets available for adoption, and our expertise. You'll be able to choose the Pet of your choice - and you'll be able to repeat this process up to three times without any further costs. It will usually take between 1 to 30 days for us to find up to three Pets for you to choose from, but can take longer under some special circumstances. You will need to decide quickly once we've identified your choices because often Pets are in shelters and could be adopted by a customer of the shelter while you are thinking about it.
- You probably realize that the information Hannah has is limited to what we've been told or found through exams and that this information may not be perfect, so you agree to not hold Hannah responsible for errors as a result of that information - Hannah promises to do every reasonable thing to correct a problem once it is discovered.
- If you change your mind about getting a Hannah Pet, you can call the search off at anytime. If you call the search off before Hannah has found any match for your family (we usually find a Pet in one business day), we will refund your Matching Fee in full. If we have already found a match and you decide you don't want a Hannah Pet after that work is done, your Matching Fee will be donated to the Hannah charity to help other homeless Pets find loving homes. If yours is a special case and Hannah simply cannot find a match after trying for five months, we will return your Matching Fee in full unless you want us to continue looking. If Hannah finds a match and places the Hannah Pet in your family and you later decide the Pet is not a good fit, we will take the Hannah Pet back and go through the matching process again at no additional cost to you. We will provide up to three matching processes to you with no additional fee.

C. Placement Period During the first five months after the Hannah Pet joins your new Hannah Pet Family's home (the "Placement Period"), you will get to know your Hannah Pet's behavior and personality. You, as the Hannah Pet Parent, may return the Hannah Pet at any time during the Placement Period and cancel this Agreement (minimum membership periods may apply), but we believe that a "good faith effort" to try the Pet is at least a 30 day trial. You can imagine that going to live in a strange new home is confusing and traumatic for the Pet, too, and it can often take three to four weeks for the Pet to adjust. After the conclusion of the Placement Period, you may continue under this Agreement for as long as you want or you may purchase your Hannah Pet at any time.

D. Acceptance of Hannah Pet. You, the Pet Family, will be responsible to pay to Hannah the Monthly Support Fee in the TLC Acceptance Agreement, which covers the supplies and care as described in sections "E" and "F" to follow, and the first Monthly Support Fee is due when you sign the TLC Acceptance Agreement. Unless you, as the Pet Parent, notify Hannah in writing that you wish to terminate this Agreement and either return or purchase your Hannah Pet and supplies, this Agreement will continue for the rest of the life of the Hannah Pet. Minimum time frames for support fees and a Pet return fee may apply depending on Pet selection and will be included in your TLC Acceptance Agreement. The Monthly Support Fee may adjust annually in an amount equal to the change in the Consumer Price Index and/or the increase, at cost, over the present amount Hannah pays for Pet food. The Monthly Support Fee will be billed directly to a credit or debit card. It is the responsibility of you, the Pet Parent, to notify Hannah at the below phone number if your card number, expiration date, address or other contact information changes. In the event that you, the Pet Parent, fail to pay any Monthly Support Fee within 30 days of its due date, Hannah may terminate this Agreement and declare all unpaid outstanding fees due immediately, including the Cancellation Fee listed on your TLC Acceptance Agreement, plus any outstanding charges for supplies or services. In the event Hannah determines that you are persistently making unreasonable demands that exceed the scope of Hannah's obligations under this Agreement, Hannah will request that you cease such demands. In the event you refuse to cease such demands, (1) Hannah will have the right to immediately discontinue providing supplies, care and any other services under this Agreement and all related agreements, and (2) this Agreement will terminate (i) upon your return of the Pet to Hannah or (ii) your payment of all outstanding fees (including the Cancellation Fee listed on your TLC Acceptance Agreement, plus any outstanding charges for supplies or services and accrued interest) and you provide written notice to Hannah that you elect to keep the Hannah Pet. The Monthly Support Fee will continue to accrue until this Agreement is terminated. Unpaid fees, which will accrue interest at one-percent per month, may be referred to a collection agency which may add collection fees to the total owed.

E. Supplies. Hannah will provide you, the Pet Parent, with a Just Add Love Welcome Home Kit that includes all the initial supplies that you will likely need to welcome the Hannah Pet into your home. Then, every four to eight weeks, Hannah will deliver to you, the Pet Family, at the address set forth below or at another agreed upon address within Hannah's delivery area, a supply of Pet food that Hannah determines is the correct quantity based on the breed of the Hannah Pet, its weight, activity level and environment.

F. Care. Hannah has various locations that provide veterinary care. Hannah is responsible to provide all of the veterinary needs of the Hannah Pet at a Hannah care provider as determined by the Pet's Hannah veterinarian, and you agree to call Hannah if you have ANY concerns about your Hannah Pet and to follow the Hannah veterinarian's directions for care to the best of your ability. The following is a list of veterinary care and products provided to the Hannah Pet by Hannah as needed:

- Routine and emergency medical and dental veterinary care;
- Medicines needed for veterinary treatment;
- Telephone medical and behavioral advice via Hannah's Pet Advice Hotline;
- Depending on the service plan selected by you, the Pet Family:
 - Behavior support and obedience training provided by Hannah;
 - Boarding at a Hannah designated facility based on availability (on a first come/first served basis);
 - Grooming at a Hannah designated groomer (bath and brush) based on availability;
 - Pet pick-up and delivery services.

Veterinary care, behavior support, obedience training, (boarding and grooming care based on plan type) will be provided only by providers and at locations designated by Hannah. Non-emergency procedures and treatments will be scheduled by the Pet Parent and Hannah, based on the availability of appointments. Hannah's Medical Standards Board, in consultation with the Pet Parent, is the final determiner of any support, care or "end of life treatments" covered under this Agreement. Hannah believes that it is important to have the Hannah Pet be as comfortable as possible when health declines and to provide treatments that focus on quality of life, but may not necessarily extend the life of a terminal patient. You, the Pet Parent will be consulted with and will be as actively involved in all medical, nutritional, and care decisions regarding the Hannah Pet as you choose to be.

If your Hannah Pet is lost you must contact our Health and Education Center as soon as possible. Should this happen after normal business hours you must contact our emergency hotline that is listed on the Hannah website: www.hannahsociety.com. The Hannah team will provide you with guidance on searching for your Hannah Pet. The Hannah team will also contact the area animal control and animal welfare societies. Your Hannah Pet has a microchip that can be read by any animal welfare agency that has a microchip reader. The microchip can be looked up by the animal welfare agency on the Hannah website to find information to facilitate retrieval of the Pet. In the event that the Pet is not found you have the option of (1) selecting a new Hannah Pet and paying 50% of the cancellation fees and all other fees that may be due (with a minimum of a 1 year membership term for the new Hannah Pet) or (2) ending the Enrollment Agreement and paying the full cancellation fee and all other fees that may be due.

The following items are not covered nor provided by Hannah under this Agreement:

- Any veterinary care, behavior support, obedience training, boarding, grooming, equipment, supplies or food that you, the Pet Family, obtain from someone other than a Hannah service provider without Hannah's express consent or prior to completion of the TLC Acceptance Agreement;
- Boarding or grooming care in addition to that provided under this Agreement (though this is available with addendum or by appointment);
- Pick-up or delivery services (though this is available with addendum or by appointment).

G. Taking Hannah Pet Back. Hannah hopes that the Pet Family will remain a Hannah Pet Family for the Hannah Pet's entire life and we will do everything we can reasonably do to make that happen. Hannah will only take the Hannah Pet back under the following conditions:

- The Pet Family asks Hannah to take the Hannah Pet back;
- The Hannah Pet is treated cruelly due to negligence or abuse in the unanimous opinion of three Hannah veterinarians;
- The Pet Family fails to pay the Monthly Support Fee for the Hannah Pet and then chooses to return the Pet rather than purchase it; or
- The Pet Family refuses to follow the recommendations of Hannah with respect to the care of the Hannah Pet or the procedures set by Hannah for obtaining services for the Hannah Pet.

H. Retained Ownership Program. Until you opt to purchase the Pet, your Hannah Pet is actually the legal property of Hannah the Pet Society. However, you, as the Pet Parent, may purchase your Hannah Pet from Hannah at any time after the end of the Placement Period. Upon purchase of your Hannah Pet, Hannah will immediately transfer ownership of the Hannah Pet to you by providing a Certificate of Ownership, and this Agreement will terminate. If you move (or live) outside of Hannah's service area (more than 15 miles from any Hannah Placement Center or Health and Education Center), you will have the choice of purchasing the Hannah Pet, returning it to Hannah, paying the extra delivery charges (for Pet food and supplies), or picking up your food and supplies at a Hannah Health and Education Center and will be required to bring the Pet to the closest Hannah care facility for care. The purchase price for your Hannah Pet is the Cancellation Fee listed on the TLC Acceptance Agreement; any outstanding balance the Pet Parent owes to Hannah will be in addition to the Cancellation Fee. The Cancellation Fee covers a number of costs and expenses of Hannah, including, among other things, Hannah's costs associated with sourcing, medical testing, behavior testing, transportation, training and placement, and will remain the same for the life of the Pet without request for any added costs paid by Hannah and/or inflation. The Cancellation Fee cannot be waived or discounted when Hannah transfers ownership to you. In the event you purchase the Hannah Pet but in the future no longer want it or are unable to keep it, Hannah agrees to unconditionally take the Pet back despite any medical conditions, and we will care for it as we believe best and most appropriate. Please, never surrender the Pet to a shelter.

I. Death of a Hannah Pet. Like people, most Pets die in a hospital. If the Hannah Pet dies at a Hannah Pet hospital or while under the care of a Hannah service provider, this Agreement will terminate immediately. Otherwise, this Agreement will terminate upon you, the Pet Family, immediately contacting us so that we can arrange for the proper cremation of the Pet's remains at no cost to you, in compliance with local laws and ordinances. If you wish to receive the ashes or remains for private burial, we will of course help you do so, at your expense.

J. Terms and Limitations. You, the Pet Family, are responsible for managing all aspects of the Hannah Pet's interaction with other people and other Pets while the Hannah Pet is under your care. You realize that Hannah cannot predict the acts of Hannah Pets in every situation or place. Hannah agrees not to hold you, the Pet Family, liable and to indemnify you for all liabilities, damages, claims (including third party claims), costs and expenses (including reasonable attorneys' fees) arising out of the actions of the Hannah Pet when in Hannah's care. You agree to not hold Hannah liable for and to fully release and indemnify Hannah from all liabilities, damages, claims (including third party claims), costs and expenses (including reasonable attorneys' fees) arising out of the actions of the Hannah Pet when in your care. **Hannah DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE** (for example and as an illustration only, Hannah cannot assure that every Hannah Pet will be just what the Pet Family is looking for). You, the Pet Family agree that if you are not satisfied with the Hannah Pet, your sole remedy is to return the Hannah Pet to Hannah.

K. Miscellaneous. Neither party may transfer or assign this Agreement. This Agreement is binding on the Pet Parent's heirs and personal representative. This Agreement is governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of laws principles. The Application, this Agreement, and the TLC Acceptance Agreement constitute the entire agreement between you, the Pet Parent, and Hannah and supersede all prior understandings and agreements, whether written or oral, between you and Hannah.

L. Start of Services. Membership services start after signing of the TLC Acceptance Agreement. No emergency or non-emergency services are authorized until the signing of the TLC Acceptance Agreement.

Hannah the Pet Society: 360-816-8000

Pet Parent Information

Name: Wally Strunk & Sandee Strunk

Address: 2681 SE River Rd #34 **City:** Hillsboro **State:** OR **Zip:** 97123

Home Phone: **Work Phone:** 503-640-8049 **Cell Phone:** 971-800-1463

Email: sandee.strunk@gmail.com

Hannah Pet Name: Kodee **Chip ID#:** 981020011049830

- \$195.00 Pet Matching Fee (to be paid to start the Hannah Pet Matching process).
- The agreed Monthly Pet Support Fee set forth in the TLC acceptance agreement.

Sandee Strunk

Date: 12/21/2013