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Susan Marie Gertz (0065319)
Attorney for the Plaintiff

**HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO**

09CV27353

BETH SHEEHAN
5218 Salem Hills Lane
Cincinnati, OH 45230

: CASE NO. _____

: JUDGE: _____

PLAINTIFF

VS.

COMPLAINT

MARY L. SALEE
2028 Eight Mile Road
Cincinnati, OH 45244

3

(With Jury Demand Endorsed
Hereon)

**NEGLIGENCE
BREACH OF CONTRACT
NEGLIGENT**

and

**MISREPRESENTATION
VICARIOUS LIABILITY
RESPONDEAT SUPERIOR**

COLLEEN BLACK
2028 Eight Mile Road
Cincinnati, OH 45244

**IN ACCORDANCE WITH CIVIL RULE 4.6 (C) OR (D)
AND 4.6 (E) AN ORDINARY MAIL WAIVER IS REQUESTED**

and

TAMMIE SMITH
2028 Eight Mile Road
Cincinnati, OH 45244

DEFENDANTS

For her Complaint, Plaintiff Beth Sheehan, by and through counsel, alleges as follows:

PARTIES AND JURISDICTION

- At all times herein, Plaintiff was a resident of Hamilton County, Ohio.
- At all times herein and on information and belief, Defendants were residents of

Hamilton County, Ohio and also jointly operated a veterinary clinic as an unincorporated

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HAMILTON COUNTY, OH

business known as Anderson Hills Animal Care Hospital in Hamilton County, Ohio. On information and belief, the business is owned by Defendant Tammie Smith, who employs Defendants Black and Sallee.

3. Jurisdiction is proper pursuant to Ohio Revised Code §2307.382(A)(3).

4. Venue is proper pursuant to Ohio Civil Rule 3(B)(3) because the activities that gave rise to the claim for relief occurred in Hamilton County, Ohio.

FACTUAL BACKGROUND

5. On August 5, 2007, at approximately 2:00 a.m., Plaintiff's dog Bailey began vomiting repeatedly. By Tuesday, August 7, the vomiting continued, and Plaintiff took him to Anderson Hills Animal Hospital ("Anderson Hills").

6. Bailey was examined by Defendant Black, who indicated that she wanted to keep Bailey overnight for testing and to administer fluids.

7. During questioning, Plaintiff indicated to Defendant Black that Bailey had a tendency to chew socks, underwear, tshirts, etc when he could get to them. Plaintiff paid the requested estimate and left.

8. Later that day, Plaintiff received a voice mail from Defendant Black letting her know that Bailey could not remain overnight due to the fact that the other veterinarian was not due into the office until 2:00 p.m. the next day. Defendant Black said Bailey could either go home or to the Care Center, as it was up to Plaintiff. Defendant Black instructed that Plaintiff should return to Anderson Hills with Bailey the next day. Plaintiff took Bailey home.

9. No x-rays were taken at Anderson Hills on August 7, 2007.

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HAMILTON COUNTY, OH

10. Plaintiff brought Bailey back to Anderson Hills on August 8, 2007, and he was examined by Defendant Sallee, due to persistent vomiting. Defendant Sallee diagnosed a gastrointestinal virus and opined that he'd be better by the following week. No x-rays were taken.

11. Given the fact that Bailey continued to vomit repeatedly, Plaintiff called Anderson Hills on August 9, 2007 to get advice and assistance. Defendant Sallee again instructed that nothing could be done for the virus and to wait it out.

12. On Friday, August 10, 2007, Plaintiff again telephoned Anderson Hills due to his repeated vomiting and failure to eat since Sunday, August 5. Defendant Black instructed that the dog should be sent to the Care Center immediately, and she arranged for an appointment with a specialist there, Dr. Wang.

13. Bailey was examined by Dr. Wang on August 10, 2007, who performed x-rays and an ultrasound. Dr. Wang diagnosed Bailey with gastrointestinal obstruction. Emergency surgery was performed by Dr. Muldoon at the Care Center that evening.

14. On Saturday, August 11, 2007, Bailey seemed to be doing better post-surgery at the Care Center. However, on Sunday, August 12, his condition worsened. The veterinarians at the Care Center suspected that Bailey might be suffering from internal bleeding or peritonitis. Another surgery was conducted, and it was determined that too much damage had been sustained by the gastrointestinal tract to heal properly. Upon permission from Plaintiff, Bailey was euthanized that evening.

15. Defendants negligently failed to properly diagnose Bailey's condition, negligently treated Bailey, and were otherwise negligent in the care provided to Bailey.

16. Defendants' negligence was the proximate cause of Bailey's death.

17. After Bailey's death, Plaintiff attempted to obtain the chart, records, and other medical information from Anderson Hills and Defendant Smith. She was told that Bailey's computer records at Animal Hills had been deleted, and Plaintiff did not receive all of the requested records from Anderson Hills and Defendant Smith, in violation of Ohio law.

COUNT I

Negligence

18. Plaintiff incorporates herein the allegations contained in paragraphs 1 – 19.

19. Bailey's death was caused by the failure of Defendants Black and Sallee to properly diagnose Bailey with gastrointestinal obstruction. Veterinarians of ordinary skill, care, and diligence under similar circumstances, would have performed a radiographic investigation of Bailey.

20. Bailey's symptoms and history of ingestion of foreign material indicated the need to conduct a radiographic investigation, and the failure of Defendants Black and Sallee to conduct a radiographic investigation in this situation was negligent.

21. Defendants negligently and carelessly treated Bailey, proximately causing his death.

22. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered the loss of Bailey; expenses for two emergency surgeries, and the cost of euthanizing Bailey.

COUNT II

Breach of Contract

23. Plaintiff incorporates herein the allegations contained in paragraphs 1 – 24.

24. Plaintiff contracted with Defendants for veterinary care of her pet Bailey.

25. The services provided by Defendants were inadequate, substandard, and otherwise did not conform to the contract for service with the Plaintiff.

26. As a direct and proximate result of Defendants' breach of the contract, Plaintiff has suffered the loss of Bailey; expenses for two emergency surgeries, and the cost of euthanizing Bailey.

COUNT III

Negligent Misrepresentation

27. Plaintiff incorporates herein the allegations contained in paragraphs 1 – 28.

28. On August 7, 2007, Defendant Black, acting in her professional capacity, told Plaintiff that Bailey could either go home or to the Care Center.

29. Defendant Black, acting in her professional capacity, misrepresented the severity of Bailey's illness to Plaintiff by telling her that Bailey could go home.

30. Defendant Black breached her duty to Plaintiff when she misrepresented the severity of Bailey's illness.

31. Plaintiff relied upon the representation of Defendant Black in taking Bailey home.

32. Defendant Sallee, acting in her professional capacity, misrepresented the nature of Bailey's illness to Plaintiff.

33. Defendant Sallee, acting in her professional capacity, misrepresented to Plaintiff that Bailey had a gastro-intestinal virus and that he'd be better by the following week.

34. When Plaintiff called Anderson Hills on August 9, 2007 to get further advice and assistance, Defendant Sallee again instructed that nothing could be done for the virus and to wait it out.

35. Defendant Sallee breached her duty to Plaintiff when she misrepresented the nature of Bailey's illness.

36. Plaintiff relied upon the representation of Defendant Sallee in waiting for Bailey to get better and not taking Bailey to the Care Center before August 10, 2007.

37. As a result of Defendants' negligent misrepresentations, Plaintiff has suffered the loss of Bailey; expenses for two emergency surgeries, and the cost of euthanizing Bailey.

COUNT IV

Vicarious Liability / Respondeat Superior

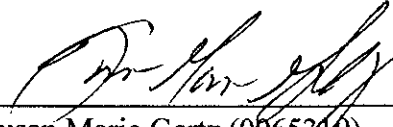
38. Plaintiff incorporates herein the allegations contained in paragraphs 1 – 47.

39. At all times herein, Defendants Black and Sallee were employees of Defendant Smith and Anderson Hills and were acting within the scope of their employment at the time of said negligent acts and was under the authorization, direction and/or control of Defendant Smith, and therefore the negligence of Defendants Black and Sallee is imputed to his principal and/or master Defendant Smith through the legal principles of vicarious liability/respondeat superior.

WHEREFORE, Plaintiff demands judgment on her causes of action against the Defendants, and the following:

- 1) compensatory damages;
- 2) Plaintiff's costs expended herein;
- 3) attorney's fees;
- 4) and such other and further relief as this Court may deem just and proper.

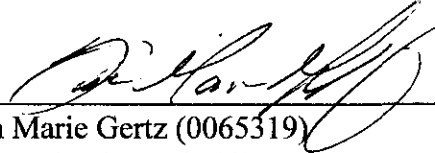
Respectfully submitted,



Susan Marie Gertz (0065319)
Trial Attorney for the Plaintiff
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JURY DEMAND

Plaintiff demands a trial by jury in this action.



Susan Marie Gertz (0065319)
Attorney for the Plaintiff

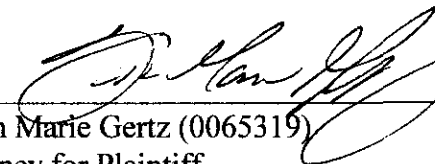
TO THE CLERK:

Please issue service of summons, along with a copy of the Complaint, by certified mail, return receipt requested with ordinary mail waiver, to the following:

MARY L. SALEE
2028 Eight Mile Road
Cincinnati, OH 45244

COLLEEN BLACK
2028 Eight Mile Road
Cincinnati, OH 45244

TAMMIE SMITH
2028 Eight Mile Road
Cincinnati, OH 45244



Susan Marie Gertz (0065319)
Attorney for Plaintiff