

# ALDF UPDATE

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# 2007

VOLUME XI  
**XI.2**  
NUMBER 2




## ALDF SUPPORTED CASES

### ALDF Files Suit to Stop Abuse of Newborn Dairy Calves at California Ranch *Tulare County's Mendes Calf Ranch, linked to Land O' Lakes and numerous other commercial brands, keeps thousands of cows in illegal intensive confinement conditions*

 **Tulare County, CA** – The Animal Legal Defense Fund (ALDF) filed a complaint in Tulare County Superior Court on June 19, 2006, against Mendes Calf Ranch for isolating and confining newborn calves in crates so tiny that they can barely move or turn themselves around. This confinement violates state anti-cruelty laws, which require that animals be provided with an adequate exercise area. ALDF is also suing the California Department of Agriculture for failure to inspect and discover the cruelty and is alleging that the State Board of Equalization is illegally using public funds by giving tax breaks to these farmers for

the crates. Co-plaintiffs in the case are two Stanford Law School students who have purchased and consumed dairy products over the past couple of years, including Challenge and Land O' Lakes brands of butter, both of which can be traced to Mendes Calf Ranch. Both individual plaintiffs believed that they were paying market value for products made in accordance with California law; they are suing because of the harm they have suffered by paying for illegally-produced goods that they now know to have come from cows who have been cruelly raised in the process. (*ALDF v. Victor L. Mendes, et al., Tulare County, Calif., Super. Ct., No. 06-219533.*) **PF 401.10**

### Northwest Animal Rights Network Files Suit against City of Seattle *NARN seeks transfer of an Asian elephant named "Bamboo" to Tennessee Animal Sanctuary*

 **King County, WA** – The Northwest Animal Rights Network (NARN) and others recently filed suit against the City of Seattle, the Seattle Department of Parks and Recreation, The Woodland Park Zoological Society, and several public officials, among others, alleging that the public officials have failed to comply with Washington's public trust policy and that it has resulted in "substantial harm" to 39-year-old Bamboo, who is currently living at the Woodland Park Zoo. Plaintiffs further assert that defendants have failed to comply with the provisions of the State Environmental Policy Act and to heed the proscriptions of the Endangered Species Act. Plaintiffs claim that defendants have steadfastly refused to send Bamboo to a restorative sanctuary where she can heal from her life-threatening physical decline and

psychological trauma. It has been stated that The Woodland Park Zoo has no role for Bamboo in its intensive propagation program, and the Zoo has publicly admitted failure to provide social integration, an essential species-specific need, for her. The initial evidence assembled for NARN by attorney Valerie Bittner is substantial. A former Woodland Park director, a veterinarian, and the pioneer of captive breeding programs at Portland's zoo all have given affidavits suggesting that poor treatment has made Bamboo unhappy, harmed her psychologically, and put her at risk of early death. Plaintiffs seek declaratory, equitable, and injunctive relief. (*The Northwest Animal Rights Network, et al. v. City of Seattle, et al., Super. Ct., Wa., King County, Case # 06-2-18335-5 SEA; Seattle Post-Intelligencer Editorial Board, Editorial, June 18, 2006.*) **PF 710.00**

How good are your state's laws for prosecuting animal cruelty? The Animal Legal Defense Fund invites you to examine your state's laws with our new feature, the "Prosecutor Puzzler."



### ALDF Action against CA Pork Producer Seeks to Protect Pigs from Inhumane Treatment *Pigs confined for a lifetime of misery, in violation of anti-cruelty law*

**Tulare County, CA** – In September 2006, in a California Superior Court, ALDF filed a complaint against CorcPork, Inc., California's largest industrial pig farming operation, alleging that CorcPork keeps its thousands of pregnant and nursing pigs in violation of California's anti-cruelty laws – crammed into stalls that are often so small that the sows' bodies are permanently forced into the bars at either end. These mothers spend virtually their entire lives pushed into hard, cold metal, with hard concrete floors beneath them, without relief. These highly intelligent and sensitive animals cannot turn around, they cannot scratch, and they cannot walk even one foot forward or backward. They are locked in these crates without the ability to engage in any of a pig's natural activities. All the while, they are forced to endure a constant cycle of pregnancy followed almost immediately after

giving birth by impregnation, until their tired bodies finally give out. California's penal code makes it clear that all animals must be given adequate room to exercise; given the size of their crates, and the fact that the sows can barely even move in them, ALDF claims that CorcPork is clearly committing thousands of violations of this law every single day. ALDF's suit seeks to put an immediate end to these abusive practices. Meanwhile, consumers who buy pork products from popular brands such as Farmer John, which have been linked to pigs raised at CorcPork's facility, have been, unknowingly, purchasing cruelly and unlawfully-produced food products. Three co-plaintiffs in ALDF's case claim an injury as a result of unknowingly purchasing products that were produced in conditions so inhumane that the law declares them illegal. (*ALDF v. CorcPork, Inc., et al., Los Angeles Co. Super. Ct., Calif., No. BC358107.*) **PF 401.20**

### CA Trial Court Sides with CA Veterinary Medical Assn. in Cat Declawing Dispute *ALDF to file an amicus curiae brief on appeal for the City of West Hollywood*

**California Court of Appeals** – The City of West Hollywood enacted an ordinance prohibiting the declawing of domestic cats. The California Veterinary Medical Association (CVMA) then sued the City, claiming it was getting involved with the practice of veterinary medicine by regulating the declawing of cats. The CVMA argued that the City was

barred from passing such an ordinance. The CVMA won at the trial court level, but ALDF is writing an amicus curiae brief in support of the City's position in the California Court of Appeals. (*California Veterinary Medical Assn. v. City of West Hollywood, Calif. Ct. of Appeals, Second Appellate Dist., Div. 7, No. B188723.*) **PF 730.00**



## DEVELOPMENTS IN ANIMAL CASE LAW

### Texas Attorney General's Office Orders Seizure of Primarily Primates, Inc. *Chimpanzees and other animals put under control of receiver on heels of PETA lawsuit*

**San Antonio, Texas** – In October 2006, law enforcement officials converged on the 75-acre property owned by Primarily Primates, Inc. (PPI), to secure the decrepit facility and turn over animal care and financial operations to a court-appointed receiver. The seizure comes on the heels of a lawsuit that People for the Ethical Treatment of Animals (PETA) filed against PPI on behalf of seven surviving Ohio State University (OSU) chimpanzees who had been placed at PPI in February 2006, after funding for the studies that they were involved in ran out. PETA had already been monitoring PPI since August 2005, when whistle blowers within the facility contacted PETA with documentation of abjectly filthy and inhumane conditions, including open sewage and confinement of chimpanzees and other primates to tiny dark enclosures and barren cells, which drove them insane. PPI staff alleged that the facility's director failed to provide adequate care for many of the 800-plus animals on its property, resulting in injuries and illness that often went without treatment and the slow deaths of many animals. PETA filed a complaint with the Attorney General's Office in May 2006 concerning PPI's failure to meet its charitable mission on behalf of the animals confined there. Texas resident Lee Theisen-Watt has been appointed temporary receiver with the duty of making a thorough assessment of the facility and the animals' health. In the

PETA lawsuit, the Honorable Andy Mireles initially made a critical ruling, declaring the chimpanzees to be the legal beneficiaries of a trust instead of the objects of a contract between OSU and PPI. PPI's donors would have gasped to hear PPI's attorney argue that because animals are mere "property," they could not be beneficiaries of a trust. The Bexar County District Court appointed San Antonio attorney Charles Jackson, Master in Chancery, to make recommendations on behalf of the chimpanzees. On August 15, 2006, the Master made his recommendation to Judge Mireles, stating that the chimpanzees should be moved without any further delay to Chimp Haven in Louisiana. However, on September 8, 2006, Judge Mireles dismissed the suit against PPI, rejecting the recommendation of the Master who had initially been recommended by PPI's attorney. PETA will appeal the judge's decision and go forward with other efforts to make PPI accountable for the suffering and death that it has caused. (*Attorney General of Texas, Greg Abbott, on Behalf of the Public Interest in Charity v. Primarily Primates, Inc., et al., Travis County Probate Court, No. One, Texas, Cause No. 85636, and People for the Ethical Treatment of Animals v. Primarily Primates, Inc., Bexar County District Court, 73rd Judicial District, Texas, Cause No. 2006-CI-06691.*) **PF 270.00**

### Court of Appeals of Ohio Declares Unconstitutional the Breed-Specific Provisions of the Ohio Dangerous Dog Statute *A defendant's convictions are vacated*

**Lucas County, OH** – Defendant Paul Tellings appealed from a judgment by the Toledo Municipal Court, which found that Toledo, Ohio Code § 505.14(a) and Ohio Rev. Code Ann. § 955.22 were constitutional and that Mr. Tellings was guilty of violating them by owning three pit bull type dogs. The dogs were family pets and they had no history of aggressive or unlawful behavior. When the Lucas County Dog Warden was notified of their presence, one was allowed to remain in the home, one was given away, and one was destroyed by the Dog Warden. Mr. Tellings was then charged with the crimes alleged under the Ohio dangerous dog statutes. On appeal, the court found that the statutes were unconstitutionally violative of procedural due process, as Mr. Tellings could not rebut the presumption that his dogs were "vicious" before being charged. Further, the statutes were void for vagueness under that constitutional principle due to the subjective identification procedures. The statutes also violated equal protection and substantive due process where there was no rational basis to single out the pit bull as inherently dangerous, based on the current evidence regarding the breed. (*City of Toledo v. Paul Tellings, Ct. of Appeals of Ohio, Sixth Appellate District, Lucas County, 2006 Ohio App. LEXIS 884; Discretionary appeal allowed by Toledo v. Tellings, 2006 Ohio LEXIS 2222 (Ohio, Aug. 2, 2006).*) **PF 230.00**

## PROSECUTOR PUZZLER

*How good are your state's laws for prosecuting animal cruelty? The Animal Legal Defense Fund invites you to examine your state's laws via the following "puzzler" scenario to consider new ways your laws could be improved. The following is an actual case of animal cruelty reported to ALDF.*

In March 2005, Jeffrey Allen McPherson, 35, allegedly was intoxicated and shooting up the family home. Police surrounding the house did not see him shoot his stepdaughter's cat in the house. The cat crawled out of the house and was found dead in the backyard. Police took photos of the cat and McPherson reportedly later admitted to a family member that he killed the cat. McPherson had never been charged with killing other animals,

although a family member claimed witnesses had seen him shoot stray dogs in his yard. He had previous alcohol and drug convictions. Your challenge: How could you prosecute this case with your state's laws? What charges could you bring against the suspect? Does your law provide for enhancements if family violence is involved? What kind of sentence would be possible upon conviction? **For the actual disposition of this case, see page 6.**

## Eighth Circuit Holds that District Court Erred in Granting Summary Judgment to Police Chief on Claim He Violated Plaintiffs' Civil Rights When He Shot Their Dog

*Reasonable jury could find that the chief acted unreasonably when he seized and killed the dog*

**United States Court of Appeals for the Eighth Circuit** – Mike and Jana Andrews filed an action against the City of West Branch, Iowa, and former Police Chief Dan Knight in the District Court for the Northern District of Iowa seeking damages and other relief under 42 U.S.C.S. § 1983, alleging that Knight wrongfully seized and deprived them of their property, specifically, their dog, Riker. They also filed a state court action seeking relief based on Fourth and Fourteenth Amendment violations and theories of recovery under state tort law. The state court action was removed to federal court and consolidated with the § 1983 action. Defendants moved for summary judgment, and the magistrate judge granted it to them, concluding that Knight's actions were lawful under Iowa Code § 351.26, precluding any claim of a constitutional violation. The district court entered judgment in favor of defendants on all of the claims. Plaintiffs appealed, claiming the district court erred in its construction and application of § 351.26 of the Iowa Code, and arguing that the record reflected that a reasonable jury could conclude from the facts presented that plaintiffs were entitled to judgment on their substantive due process, Fourth Amendment, and qualified immunity claims. The Eighth Circuit affirmed in part and reversed in part, finding plaintiffs' substantive due process claim and their attachment of liability to the City of West Branch to be without merit, and their Fourth Amendment claim worthy of consideration by a jury. (*Mike Andrews and Jana Andrews, Individually and as Next Friends of Ian Andrews, Appellants, v. The City of West Branch, Iowa; Dan Knight, Appellees. Mike Andrews and Jana Andrews, Individually and as Next Friends of Ian Andrews; Ian Andrews, Appellants, v. The City of West Branch, Iowa; Dan Knight, Appellees, No. 05-1188, United States Court of Appeals for the Eighth Circuit, 2006 U.S. App. LEXIS 18748; Rehearing, en banc, denied by Andrews v. City of W. Branch, 2006 U.S. App. LEXIS 22508 (8th Cir., Sept. 1, 2006).*) **PF 284.90**

## DAMAGE AWARDS REPORT

### Oregon Family Awarded \$56,400 by a Jury for Dog's Death

**Clackamas County, Oregon** – On May 31, 2006, Raymond Weaver was ordered to pay Mark Greenup and his family \$50,000 in punitive damages, \$6,000 for emotional distress, and \$400 for the value of their 14-year-old dog, Grizz, who was run over by Weaver. The family had initially sought more than \$1 million from Weaver, their neighbor. Weaver was also previously convicted of first-degree animal abuse and was sentenced to serve 90 days in county jail. Weaver's attorney, Larry Dawson, said the incident was an accident. But Greenup and his family

said Weaver drove over the dog several times outside their Estacada home and that he did not stop when they called out to him or when they tried to save their dog. Clackamas County Judge Eve Miller dismissed a loss of companionship claim but allowed the jury to decide if the family should be paid for punitive damages and intentional infliction of emotional stress. Miller ruled that loss of animal companionship was not "a viable theory under Oregon law." (*The Seattle Times, May 31, 2006.*)

### Costa Mesa Pays Family For the Killing of their Pit Bull by 2 Police Officers

**Costa Mesa, California** – In September 2006, the City of Costa Mesa, California, agreed to pay a family \$225,000 to settle a lawsuit in which the family asserted that two police officers acted wrongfully when they shot their brindle pit bull, Paul, 15 times and killed him. Paul was killed on May 13, 2004, as the officers were chasing two boys through the family's backyard. Police said the boys, who were friends of the family, had run away from officers who were issuing them citations for riding their bikes without helmets. During the litigation, it was unclear whether Paul

had threatened the officers because the assistant city attorney acknowledged that tapes of the radio transmissions made during the incident were improperly destroyed. He said in an interview that the erasure was unintentional and occurred when the tapes were reused to record radio transmissions months later. Another problem was that one officer's uniform was no longer available as evidence. The case was settled with the help of a mediator. (*Los Angeles Times, Sept. 28, 2006, p. B4.*)

## ANNOUNCEMENTS

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WINTER 2007

## Owners Get \$1,300 in Dog's Death by Neighbor's Python

**West Palm Beach, FL** – On May 8, 2006, the guardians of a small dog killed by an 11-foot Burmese python were awarded \$1,300 for the dog's death by a small claims court judge. The amount awarded Boynton Beach residents Wayne Vassello and Shana Lane was for damages and court costs. In February, while Vassello was walking 8-pound rat terrier, Max, he was let off his leash near their home. A neighbor's pet python had gotten loose and attacked Max by the head, wrapping itself

around Max several times. Vassello hit the snake with a golf club, and eventually the snake released Max. Unfortunately, Max ran away and was later found dead from injuries consistent with constriction, according to a veterinarian. The snake's owner argued in court that Vassello was partly responsible for Max's death because Max was off his leash and because he might have accidentally hit Max with the golf club while fending off the snake. (*Associated Press, May 9, 2006.*)

## Washington Arbitrator Awards \$6,700 for the Intrinsic Value of an 11-year old Cat

**Whatcom County, Washington** – In a mandatory arbitration award made in the Superior Court of the State of Washington for Whatcom County on July 21, 2006, an arbitrator awarded Jack and Carrie Van De Ven \$6,700 for the death of their cat who was killed by a neighbor's dog. The arbitrator did not consider the loss of use/companionship or

any emotional damages, as the award was purely economic in scope. The arbitrator found that it was clear that the defendants, Hale and Shelly Hardt, were negligent in allowing their dogs to escape and that one or both of the dogs killed the Van De Ven's cat. (*Van De Ven v. Hardt, Wash. Super. Ct., Whatcom County, No. 05-2-02686-0.*) **PF 285.00**

## \$10,000 Settlement in California Dog Shooting Case

**Placer County, California** – Colleen Harrington filed a suit against David Hovanec, alleging that Hovanec shot her dog, Penny, and that he fired at least 13 times into Penny, using two different guns. As a result of the shots, Penny died. Based on the May 12, 2004, shooting, Hovanec was convicted of a crime in Placer County, California. In her suit,

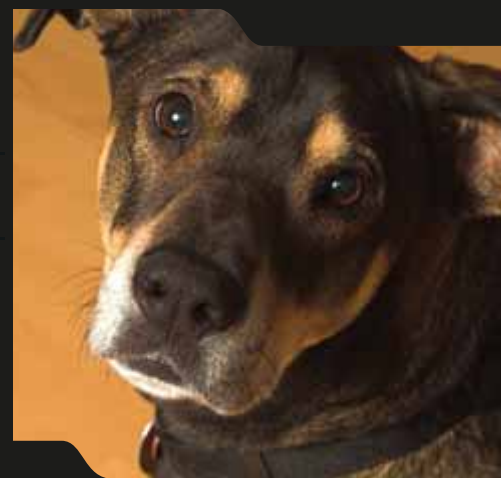
Harrington sought compensatory damages pursuant to California Civil Code § 3355, damages for mental, physical, and emotional pain and suffering, and exemplary damages. The suit was settled on the first day of trial for \$10,000. (*Colleen Harrington v. David Hovanec, et al., Placer County Super. Ct., California, No. SCV 14342.*) **PF 285.40**

## Arbitration Award Made in Dog's Wrongful Death Action

**King County, Washington** – Ronald Hane and Laurie Simerson filed an action against Maurice and Mary James, after the James' two pit bulls, felicitously named "Mafia" and "Menace," trespassed on Hane and Simerson's property, broke into a secure kennel, and killed their 4-year-old Border collie mix. The matter involved admitted negligence by the pit bulls' owners. Based on pretrial orders eliminating general damages (emotional distress), Hane and Simerson's attorney, Adam Karp, asked

for the dog's intrinsic value, loss of his use/companionship, and special damages (kennel and fence repair). On August 21, 2006, an arbitrator awarded \$10,000 for "general/utility damages" (ostensibly the value of the dog) and \$2750 for "special damages" (ostensibly the fence/kennel repair costs). Mr. Karp noted that what this shows is that the intrinsic value of a "mutt" is worth at least \$10,000. (*Hane v. James, King Cy. Sup. Ct., Washington, No. 05-2-31242-2KNT/Darvas.*) **PF 285.50**

Raymond Weaver was ordered to pay Mark Greenup and his family \$50,000 in punitive damages, \$6,000 for emotional distress, and \$400 for the value of their 14-year-old dog, Grizz, who was run over by Weaver.



CONTINUED FROM PAGE 3  
 PROSECUTOR PUZZLER

## DISPOSITION

The McPherson case occurred in Missouri. Missouri statutes allow prosecution of animal abuse, including intentionally or purposefully killing an animal, but grants exemptions in Mo. Rev. Stat. § 578.007, including “(6) The killing of an animal by the owner thereof, the agent of such owner, or by a veterinarian at the request of the owner thereof.” In Mo. Rev. Stat. § 578.005, definitions include “(8) ‘Owner,’ in addition to its ordinary meaning, any person who keeps or harbors an animal or professes to be owning, keeping, or harboring an animal.” According to Missouri law, McPherson was the owner of the cat, and it was lawful for him to kill the cat in the manner that he did. The prosecutor charged McPherson with a felony offense under Mo. Rev. Stat. § 571.030.1(5), discharging a firearm while intoxicated. On September 8, 2006, the case was re-filed with only a charge of misdemeanor property damage to which the defendant pleaded guilty. He was sentenced to 6 months in jail, suspended, and 2 years of unsupervised probation.

**The next step: How could laws in your state be changed to facilitate prosecution of similar cases?**

**Resources:** The Animal Legal Defense Fund has resources to help you make changes to your state’s animal protection laws. Go to [www.aldf.org](http://www.aldf.org) and click “Resources” to find the following:

- Animal Protection Laws of the United States of America (CD-Rom available)
- Model Animal Protection Laws (downloadable .pdf)
- Contact information for State Bar Association Animal Law Sections or Committees (or contact Pamela Alexander, Director of ALDF’s Animal Law Program, at [palexander@aldf.org](mailto:palexander@aldf.org) on how to start your own section)

## LATEST INFORMATION ON PREVIOUS ITEMS

### Decision Issued in Appeal Concerning Wild Horse Round-Up Challenge *D.C. Circuit rejects argument that district court erred in concluding that it lacked jurisdiction over specific wild horse round-ups by the United States Bureau of Land Management*

**United States Court of Appeals for the District of Columbia Circuit** – Oral argument took place in September 2005 in the appeal of *The Fund for Animals, et. al. v. U.S. Bureau of Land Management (BLM), et al.* The district court had previously ruled that it did not have jurisdiction over the case because the action of BLM was not a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C.S. § 706, since further decision-making by BLM’s district offices was required. In its appeal, plaintiffs singled out for example BLM’s discrete decision to round-up more than 1,800 wild horses from the Herd Management Areas that comprise the Buffalo Hill Complex. Plaintiffs claimed that this specific round-up decision violated the National Environmental Policy Act, 42 U.S.C.S. § 431, et seq., because the Environmental Assessment failed to adequately consider the environmental impacts of, or alternatives to, the elements of the Restoration Strategy—such as removing wild horses in all age classes, or reducing populations to 40% below each Herd Management Area’s Appropriate Management Level. Plaintiffs also alleged

that this and other round-ups to 40% below the Appropriate Management Level violated the Wild Free-Roaming Horses and Burros Act, 16 U.S.C.S. § 1331, et seq., which only permits round-ups “so as to achieve” an Appropriate Management Level. Plaintiffs argued that each time BLM decided to conduct a specific wild horse round-up, that decision was indisputably a “final agency action” reviewable under the Administrative Procedure Act. The Court of Appeals affirmed the district court’s judgment, finding that the complaint failed to state a claim in that plaintiffs did not challenge any justiciable agency action reviewable under 5 U.S.C.S. §§ 702, 704 of the Administrative Procedure Act. It found that an instruction memorandum was a short term, temporary document that had expired, and thus any claim was moot. The court also ruled that the specific challenges made were moot. (*The Fund for Animals, et. al. v. U.S. Bureau of Land Management (BLM), et al.*, 2006 U.S. App. LEXIS 21206, Aug. 18, 2006; *ALDF Update, Fall 2005/Winter 2006*, p. 8.) **PF 714.00**

### Court Keeps Poultry Slaughter Case Alive

*U.S. district court rules that members of the Humane Society of the United States can sue the federal government over the way chickens and turkeys are slaughtered*

**United States District Court for the Northern District of California** – On September 5, 2006, Federal judge Marilyn Hall Patel opposed a motion by the U.S. Agriculture Department (USDA) to dismiss a lawsuit that seeks to broaden a 1958 law requiring the humane slaughter of cattle and pigs to include poultry. Several organizations including the Humane Society and the East Bay Animal Advocates were dismissed from the lawsuit but individual members still have standing within the court, the judge decided. The

fundamental issue in the case is the fact that such a large number of the animals consumed for food are not provided federal protection during the slaughter process. (*Ellen Levine, et al., v. Mike Johanns, U.S. Dist. Ct., N.D. Calif., No. C 05-04764 MHP; Companion case dealing with the slaughter of exotic animals: American Bison, et al., v. George W. Bush, et al., U.S. Dist. Ct., N.D. Calif., No. C 05-05346 MHP; Christopher Doering, Reuters, Sept. 6, 2006; ALDF Update, Summer 2006*, p. 3.) **PF 401.00**

WINTER 2007

## Favorable Decision in Primate Psychological Well-Being Case

*Court of Appeals reverses lower court ruling, finding that a USDA decision is reviewable*

**Ninth Circuit Court of Appeals**—Plaintiffs, who included ALDF, the Animal Welfare Institute, and three individuals, challenged a decision of the United States Department of Agriculture (USDA) not to adopt a Draft Policy that would have provided guidance to zoos, research facilities, and other regulated entities on how to ensure the psychological well-being of nonhuman primates in order to comply with the federal Animal Welfare Act. Plaintiffs challenged the decision not to adopt the Draft Policy under the Administrative Procedure Act as arbitrary and capricious. A California district court did not reach the merits of the suit because it determined that the USDA's decision did not constitute reviewable agency action. On November 22, 2006, the Ninth Circuit issued an opinion

that reversed the lower court's dismissal of the action. It held that at least one of the plaintiffs had standing under Article III of the U.S. Constitution based on the aesthetic injury she had described. It also concluded that the district court had authority under § 706(2) of the Administrative Procedure Act to review the USDA's decision not to adopt the Draft Policy because the USDA's withdrawal of the Draft Policy constituted final agency action. The case was remanded to the district court to determine whether the USDA's withdrawal of the Draft Policy was in fact arbitrary and capricious. (*ALDF, et al. v. Ann M. Veneman, et al.*, Ninth Cir. Ct. of App., No. 04-15788. *ALDF Update, Spring/Summer 2004*, p. 7.) **PF 611.00**

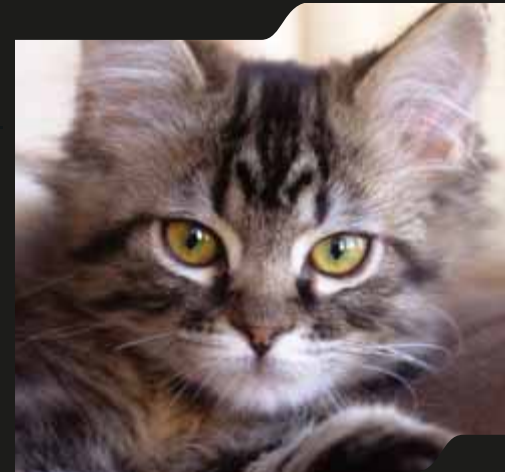
## New Cause of Action for “Malicious Injury to a Pet” Recognized by WA Court of Appeals

*ALDF filed an amicus curiae brief*

**Spokane, WA** – On May 25, 2006, Division Three of the Washington Court of Appeals recognized a new cause of action for those whose companion animals have been maliciously injured or killed. On July 20, 2003, Jason Brumback, Rusty Von Rardon, and Jayson Anderson took Max, a feline cared for by Spokane resident Bernadette Womack, doused him in gasoline, and then set him on fire. Max was rescued but not before he suffered extensive burns, and his dire injuries resulted in euthanasia. A lawsuit by Womack named the men that committed the act, and the suit also named Bonnie Mastain Rardon, mother to Rusty Von Rardon, and Donald G. Brumback and Susan L. Brumback, parents to Jason Brumback for negligent supervision of their sons. The Brumbacks and Ms. Womack settled out of court, but Ms. Womack obtained a default judgment against the remaining defendants. Jason Brumback and Rusty Von Rardon were also found guilty of first-degree animal cruelty and ordered to perform community service at an animal control facility. Spokane Superior Court Judge Jerome Leveque awarded Ms. Womack \$ 5000 for the value

of Max and her emotional distress. He dismissed various claims, including one for outrage. On May 16, 2005, Ms. Womack appealed the ruling to the Court of Appeals. The Court of Appeals then stated that, “For the first time in Washington, we hold malicious injury to a pet can support a claim for, and be considered a factor in measuring a person's emotional distress damages. The damages are consistent with actual and intrinsic value concepts... because, depending upon the particular case facts, harm may be caused to a person's emotional well-being by malicious injury to that person's pet as personal property. We do not interpret the trial court's final reference to value as limiting the measure of damages to pet fair market value.” The court used favorable language in recognizing that the value of a companion animal is actual and intrinsic, not fair market. It is clear that Max the cat did not die in vain, and as a result of his death, state law has been changed both criminally and civilly. (*Womack v. Von Rardon, WA Ct. of Appeals, Div. III, Docket # 24221-8-III*). *ALDF Update, Spring/Summer 2004*, p. 2) **PF 200.30**

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Defense Fund

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## Update on ALDF v. Woodley, Lee County, North Carolina Puppy Mill Case

*The latest on civil cruelty case and ALDF's custody of over 300 abused dogs*

**Sanford, NC** – As mentioned in the Fall 2005/Winter 2006 issue of Update, ALDF, led by attorney Bruce Wagman, took action against the owners of a backyard breeding/hoarding operation where hundreds of dogs were confined in cramped, filthy quarters. On October 31, 2005, an order was issued modifying a temporary order granting custody and care, allowing ALDF to provide the

medical care that the dogs required, including necessary sterilizations. Defendants were also ordered not to interfere with the care of the dogs during visitation periods and not to own any other dogs. An appeal in the case was heard by the North Carolina Court of Appeals on October 19, 2006, and a decision is pending. (*ALDF Update, Fall 2005/Winter 2006, p. 2.*) **PF 212.20**

## Another City Agrees to Pay Hells Angels for Shooting Dogs During Raids

*Parties agree to an \$800,000 settlement*

**San Jose, CA** – The City of San Jose agreed in August 2006, to pay nearly \$800,000 to the Hells Angels motorcycle club to settle a lawsuit that claimed police unlawfully and unnecessarily killed three dogs during raids on club members' homes that took place on January 21, 1998. San Jose City Attorney Rick Doyle said the city was forced to settle because an appellate court ruled that shooting the dogs violated

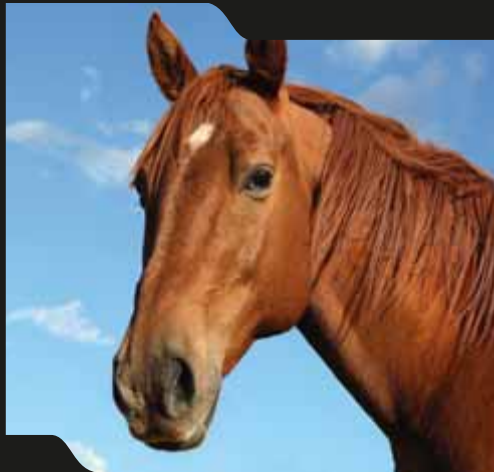
Fourth Amendment protections against unreasonable search and seizure. The club had claimed that the dogs were killed after police refused to give owners and caretakers a chance to secure the animals. Santa Clara County has already paid about \$990,000 to settle claims brought against the sheriff for the raids. (*San Jose Mercury News, August 23, 2006; ALDF Update, Summer 2006, p. 2.*) **PF 284.80**

## Horses Win in the House! Now Senate Must Take Action...

*House passes bill meant to prevent the slaughter of horses*

**Washington D.C.** – The recent passage of H.R. 503, the Horse Slaughter Prevention Act, by the House, is a significant move towards permanently banning the slaughter of horses in the United States for human consumption abroad. The House of Representatives overwhelmingly passed the bill by a vote

of 263 to 146 on September 7, 2006. Originally introduced in 2001, the Horse Slaughter Prevention Act calls for a full and permanent ban on horse slaughter for human consumption. The bill now has to pass the Senate, where a vote is currently pending. (*ALDF Update, Summer 2006, p. 4.*) **PF 400.00**



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