At an I.A.S. Trial Term, Part 2, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 320 Jay Street, Borough of Brooklyn, City and State of New York, on June 17, 2025.

P R E S E N T:
Hon. AARON D. MASLOW
Justice

- X

TREVOR DeBLASE and NAN DeBLASE,

Plaintiffs,

-against-

MITCHELL HILL,

Defendant.

- X

DECISION AND ORDER

Index No. 522689/2023
Motion Sequence Nos. 1, 2
Calendar Date: 9/30/2024
Calendar Nos. 1, 2

Appearances:[1]

Subin Associates, LLP, New York City (*Andrew Bokar* of counsel), for Plaintiffs.

Zachary & Zachary, P.C., Staten Island (*Deborah Zachary* of counsel), for Defendant.

Nora Constance Marino, Great Neck, for Legal Action Network for Animals, amicus curiae.

Spencer Lo and *Elizabeth Stein*, Washington, for Nonhuman Rights Project, Inc., amicus curiae.

Shook, Hardy & Bacon, LLP, New York City (*Joseph A. Iemma* of counsel) and Washington (*Philip S. Goldberg* of counsel), for New York State Veterinary Medical Society, American Kennel Club, Cat Fanciers' Association, Animal Health Institute, American Veterinary Medical Association, American Animal Hospital Association, National Animal Interest Alliance, American Pet Products Association, and Pet Industry Joint Advisory Council, amici curiae.

The following numbered papers were used on these motions: 7-13, 17-66, 72-82.

I. Introduction

Plaintiffs Trevor DeBlase and Nan DeBlase (hereinafter "Plaintiffs," "Nan," and/or "Trevor"), son and mother respectively, commenced the within action to recover damages resulting from Defendant driver Mitchell Hill negligently striking and killing Plaintiffs' dog, Duke (hereinafter "Duke") and nearly killing Nan while Nan was walking Duke. In Motion Sequence No. 1, Plaintiffs seek (1) summary judgment on liability against Defendant on the grounds that there is no triable issue of fact; (2) to strike affirmative defenses as to liability; and (3) to set the matter down for a trial on damages. Defendant cross-move under Motion Sequence No. 2, seeking to dismiss a portion of Plaintiffs' complaint pursuant to CPLR 3211 (a) (7) for failure to state a cause of action upon which recovery may be granted. On this issue, the Court accepted and reviewed amicus briefs regarding whether Plaintiffs' claim of negligent infliction of emotional distress ("NIED") is viable.

[1] The Court appreciates the extensive efforts engaged in by all amici in elucidating the issues present in this motion, including by performing what is obviously extensive legal research. The Court's explanation for inviting amici to make submissions is set forth in *DeBlase v Hill* (83 Misc 3d 1242[A], 2024 NY Slip Op 50901[U] [Sup Ct, Kings County 2024]).

As discussed below, Plaintiffs' motion seeking summary judgment on liability, to strike affirmative defenses as to liability, and to set the matter down for a trial on damages is *granted*.

Additionally, as discussed below, Defendant's cross-motion seeking to dismiss a portion of Plaintiffs' complaint – that portion which seeks to recover for NIED – pursuant to CPLR 3211 (a) (7) for failure to state a cause of action upon which recovery may be granted is *granted in part* as against Trevor DeBlase and *denied in part* as against Nan DeBlase.

II. Statement of Facts

On July 4, 2023, Nan was walking her son Trevor's dog. Nan and Duke, a four year and seven-month-old Dachshund, were connected via a leash when they approached the stop sign-controlled intersection of East 64th Street and Strickland Avenue in Brooklyn (Kings County), New York. After looking both ways and being assured that no cars were entering or near the intersection, Nan and her companion Duke exited the sidewalk intending to cross East 64th Street. Before reaching the other side, Nan observed a car proceed through the stop sign without stopping and without use of a directional signal, and turn left onto East 64th Street. In doing so, Defendant driver struck and killed Duke in front of Nan and while still connected to her via his leash. (*See generally* NYSCEF Doc Nos. 11, 19, 20, 29.)

The bill of particulars noted that as a result of Defendant's negligence, Plaintiffs each suffered:

> Mental distress suffered as a result of the wrongful death of a companion animal and loss of a companion animal.
> Mental harm inflicted as a result of the wrongful death of a companion animal and loss of a companion animal. (*See* NYSCEF Doc No. 20 ¶ 5.)

The bill of particulars further noted Nan as having

> . . . suffered mental suffering, as well as emotional and psychological injury resulting from the wrongful act of Defendant as she observed the striking of the dog, was physically present in close proximity of the dog, and was additionally in reasonable fear and danger of being struck herself (*id.*).

Plaintiffs subsequently brought this action to recover damages for personal injuries due to Defendant's negligence under the theory of NIED. In addition to emotional damages, Plaintiffs seek compensatory damages in the sum of $1,979.84, which includes $1,500 for Duke and $479.84 for veterinary bills. Plaintiffs further move for summary judgment on liability, and to strike all affirmative defenses as to liability[2], sever the liability portion from the main action, and set the matter down for a trial on damages. Defendant, however, cross-moves to dismiss the action based on a failure to state a viable cause of action, arguing that NIED premised upon witnessing a death is only applicable to "immediate family" members, not a pet dog.

III. Plaintiffs' Motion for Summary Judgment, Striking an Affirmative Defense, and Setting the Matter Down for Trial

A. Plaintiffs' Contentions

[2] Defendant's first affirmative defense alleged comparative negligence, fault, culpable conduct, and assumption of the risk on the part of Plaintiffs (*see* NYSCEF Doc No. 6 at 2).

Plaintiffs assert that Defendant is the sole cause of the subject accident based on information provided in Nan's affidavit and a video of the incident. The video, recorded by a nearby doorbell camera, depicts Nan and Duke approaching the street, pausing to allow a car to pass, and then proceeding across the crosswalk with no vehicles present at the intersection. Nan, with Duke strolling to her left, were more than halfway across when Defendant approached the intersection and made a left turn toward them. Nan reacted by running toward the sidewalk, to remove herself from the path of the car, but Duke was not quick enough and was struck by Defendant. (*See* NYSCEF Doc No. 29.)

Nan's affidavit further claims that while "within the cross-walk," she "continued to check for any vehicles and there were none in the vicinity" (NYSCEF Doc No. 11). The subject vehicle, however, "did not have any directional signal on," with Nan further claiming that she "observed that vehicle proceed through the stop sign without stopping, making a left turn from Strickland Avenue onto East 64th Street, and suddenly, and without any warning, strike [her] son's dog" (*id*.). In light of this, Plaintiffs contend that Defendant's failure to abide by traffic signals, resulting in Plaintiffs' harm, constitutes negligence per se as Defendant violated Vehicle and Traffic Law ("VTL") § 1146 (a) ("every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist [or] pedestrian upon any roadway").

Plaintiffs' argument is based inter alia on *Rodriguez v City of New York* (31 NY3d 312 [2018] [worker not required to demonstrate absence of own comparative fault to obtain partial summary judgment on issue of liability]). The Court held that "[p]lacing the burden on the plaintiff to show an absence of comparative fault is inconsistent with the plain language of CPLR 1412," which states that "[c]ulpable conduct claimed in diminution of damages, in accordance with [CPLR 1411], shall be an affirmative defense to be pleaded and proved by the party asserting the defense" (*Rodriguez v City of New York*, 31 NY3d at 318). Plaintiffs therefore contend that their *prima facie* case has been met as Defendant failed to present contradictory evidence as to how the accident occurred let alone implicate Nan's comparative fault.

B. Defendant's Contentions

Defendant claims that Plaintiffs' motion is premature as Nan has not yet been deposed and discovery has not been completed. Defendant contends that summary judgment should be denied as premature where the movant has yet to be deposed (*see* NYSCEF Doc No. 26 citing *Figueroa v City of New York*, 126 AD3d 438 [1st Dept 2015]), and that Nan must be deposed to determine whether to assert a counterclaim against her (*see* NYSCEF Doc No. 26, citing *Sean v Negron*, 38 AD3d 516 [2d Dept 2007]). Defendant further argues that discovery is still necessary to ascertain the lighting and weather conditions at the time of the subject accident; the size and color of the dog; where the dog was in relation to Nan; whether the dog was visible given lighting conditions; the dog walker's conduct; and traffic conditions.

C. Discussion

To be entitled to summary judgment on the issue of a defendant's liability, a plaintiff does not bear the burden of establishing the absence of his or her own comparative negligence (*see Rodriguez v City of New York,* 31 NY3d 312; *Maliakel v Morio,* 185 AD3d 1018, 1019 [2d Dept 2020]). However, the issue of a plaintiff's comparative negligence may be decided in the context of a summary judgment motion where, as here, the plaintiff moves for summary judgment dismissing an affirmative defense alleging comparative negligence (*see Kwok King Ng v West,* 195 AD3d 1006, 1007 [2d Dept 2021]; *Hai Ying Xiao v Martinez,* 185 AD3d 1014, 1014 [2d Dept 2020]).

Here, Plaintiffs established their prima facie entitlement to judgment as a matter of law on the issue of liability. Plaintiffs contend Defendant breached his duty established under VTL § 1146 (a), which

provides, "Notwithstanding the provisions of any other law to the contrary, every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist, pedestrian, or domestic animal upon any roadway and shall give warning by sounding the horn when necessary." However, the applicability of this statute is questionable given Defendant did not collide with Plaintiff Nan, a pedestrian in the crosswalk. Plaintiff did collide with Duke. Under VTL § 1146 (a), a "domestic animal" is defined as "domesticated sheep, cattle, and goats which are under the supervision and control of a pedestrian." Thus, even if Defendant's failure to exercise due care led to Duke's death, Duke was not in a class protected by the statute.[3]

This Court does find that Defendant breached the following Vehicle and Traffic Law provisions:

- VTL § 1172 (a):

(a) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two.

- VTL § 1163 (a) and (b):

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section eleven hundred sixty, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

Nan submitted an affidavit and video evidence demonstrating that she was approximately more than halfway across the crosswalk when the subject accident occurred (*see* NYSCEF Doc No. 29). Defendant, who "proceed[ed] through the stop sign without stopping" after making a left turn "without any directional signal," failed to yield the right-of-way resulting in the subsequent harm (NYSCEF Doc No. 11; *see Maliake v Moriol,* 185 AD3d at 1019; *Hai Ying Xiao v Martinez,* 185 AD3d at 1015; *Higashi v M&R Scarsdale Rest., LLC,* 176 AD3d 788, 790 [2d Dept 2019]; *Huang v Franco,* 149 AD3d 703, 703 [2d Dept 2017]). Nan also established, prima facie, that she was not at fault in the occurrence of the accident by demonstrating her exercise of due care in confirming that she had the right-of-way, "look[ing] both ways before stepping off of the sidewalk" and "continu[ing] to check for any vehicles" as she crossed (NYSCEF Doc No. 11; *see Dunajski v Kirillov,* 148 AD3d 991, 992 [2d Dept 2017]; *Gomez v Novak,* 140 AD3d 831, 831-832 [2d Dept 2016]; *Martinez v Kreychmar,* 84 AD3d 1037, 1038 [2d Dept 2011]). In opposition, Defendant failed to provide an affidavit or any other evidence to raise a triable issue of fact as to his negligence or whether Nan was comparatively negligent in the happening of the accident (*see generally Zuckerman v City of New York,* 49 NY2d 557, 562 [1980]).

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[3]. As noted in Plaintiffs' Supplemental Brief in Response to Amici, the proposed bill entitled "Protecting Animals Walking on the Street" or "PAWS Act" (S9915/A10660) provides that should a driver fail to yield and cause "physical injury to a companion animal, they would be subjected to the same penalty already imposed for pedestrians and cyclists" (NYSCEF Doc No. 76). Such would create a protected class for beloved pets struck and killed by cars while on walks.

Furthermore, Plaintiffs' motion was not premature. Defendant failed to offer an evidentiary basis to suggest that additional discovery may lead to relevant evidence, especially given that some of the information Defendant seeks to request is already before the Court. The video shows clear and dry weather daytime conditions, Duke's visibility given his size, clear traffic conditions, and that Nan legally crossed the street in the crosswalk after checking for oncoming vehicles (*see* NYSCEF Doc No. 29). Defendant further failed to suggest that any of the requested facts essential to opposing the motion were *exclusively* within the knowledge and control of Plaintiff Nan (*see Maliakel v Morio,* 185 AD3d at 1019; *Rodriguez-Garcia v Bobby's Bus Co., Inc.,* 175 AD3d 631, 632 [2d Dept 2019]; *Lazarre v Gragston,* 164 AD3d 574, 575 [2d Dept 2018]). The "mere hope or speculation" that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the plaintiff's motion (*Lazarre v Gragston,* 164 AD3d at 575; *see Niyazov v Hunter EMS, Inc.,* 154 AD3d 954, 955 [2d Dept 2017]).

In fact, Defendant knows what transpired. He was present at the accident site, killing Duke and nearly killing Nan. Defendant possesses the information he would need to defend against Plaintiffs' motion for summary judgment. Discovery is not needed to ascertain what he already knows. There is no affidavit from him. "An explanation for not submitting an affidavit or affirmation is due. That is what is lacking from Defendant[ ] here." (*Ji Hae Byun v Perez*, 83 Misc 3d 1278[A], 2024 NY Slip Op 51124[U], *4 [Sup Ct, Kings County 2024].) Plaintiff Nan DeBlase provided testimony on her motion through her affidavit. Defendant Mitchell Hill did not. There is no explanation as to why not.

Having established that Defendant violated Vehicle and Traffic Law provisions whose intent is to prevent accidents of the type which occurred here, Plaintiffs established prima facie that Defendant committed negligence which was a substantial factor in producing the injuries and damages complained of. Since Defendant failed to rebut Plaintiffs' prima facie case, Plaintiffs are entitled to summary judgment on the issue of liability. Likewise, since Plaintiffs established a prima facie case of no contributory negligence, and this has not been rebutted, Plaintiffs are entitled to dismissal of the first affirmative defense asserting comparative negligence.

IV. Defendant's Cross-Motion to Dismiss NIED Cause of Action

A. Defendant's Contentions

Defendant argues that since Plaintiffs seek mental, emotional, and psychological damages due to Duke's death, the complaint, as amplified by the bill of particulars, must be dismissed. In New York, pets are legally recognized as property (*see* NYSCEF Doc No. 18, citing *Mullaly v People*, 86 NY 365 [1881]) and, while the state does not recognize a claim for NIED for the loss of animals (*see id.*, citing *Kyprianides v Warwick Val. Humane Soc*., 59 AD3d 600 [2d Dept 2009]), the state limits damages to the value of the pet at the time it died (*see id.*, citing *Jason v Parks*, 224 AD2d 494 [2d Dept 1996]). Defendant thereby takes no issue with the cause of action relating to property damage and instead focuses on Nan seeking emotional damages for being in the zone of danger of the accident.

Defendant grounds his argument in *Greene v Esplanade Venture Partnership* (36 NY3d 513 [2021]), a landmark decision analyzing the definition of "immediate family" in light of a grandmother seeking bystander recovery under the "zone of danger" theory after witnessing her granddaughter's death. While the Court of Appeals' decision brought the grandmother within the ambit of a permissible plaintiff suing for NIED, Defendant's analysis of *Greene* focuses on limited factors. The grandparent-grandchild relationship alone was not enough to bring the grandmother into the "immediate family," argued Defendant, but rather the Court examined the following factors to determine entitlement to zone of danger

damages: the plaintiff had cared for and participated in raising her granddaughter, and the plaintiff had developed a powerful emotional bond with her (*see* NYSCEF Doc No. 80, citing *Greene v Esplanade Venture Partnership,* 36 NY3d 513). "Had the grandmother in *Greene* been an occasional visitor in the granddaughter's life, the decision may have been different" (*id.* at 2).

Defendant argues that NIED is inapplicable because dogs are not considered "immediate family" and Nan was not Duke's owner. However, it is clear that Duke was the family dog, although technically "owned" by Trevor. Although other states have permitted emotional damages for loss of pets, Defendant contends that the cases provided by the Amicus Curiae Brief of Nonhuman Rights Project, Inc. deal with intentional, malicious, oppressive, or fraudulent conduct, none of which is present here. Furthermore, despite *Greene* expanding the definition of "immediate family," Defendant emphasizes that the Court is "historically circumspect" regarding the expansion of "liability for emotional damages within the zone of danger jurisprudence" (*see* NYSCEF Doc No. 18 at ¶ 8, citing *Greene v Esplanade Venture Partnership*, 36 NY3d at 516).

Defendant additionally claims that public policy compels against expanding NIED. The Court in *Trombetta v Conkling* (82 NY2d 549 [1993]) stated that "[e]very injury has ramifying consequences, like the rippling of waters, without end" but courts must "limit the legal consequences of wrongs to a controllable degree" (NYSCEF Doc No. 80, quoting *Trombetta v Conkling*, 82 NY2d 549 [1993]). The Court, based on public policy, refused to "expand the cause of action for emotional injuries to all bystanders who may be able to demonstrate a blood relationship coupled with significant emotional attachment or the equivalent of an intimate, immediate familial bond" to avoid this "narrow avenue" from becoming "a broad concourse" (*see id.*). Therefore, permitting Duke to be considered "immediate family" would be contrary to public policy.

B. Amicus Brief in Support of Defendant's Cross-Motion

A brief of amici curiae in support of Defendant was submitted on behalf of the New York State Veterinary Medical Society, American Kennel Club, Cat Fanciers' Association, Animal Health Institute, American Veterinary Medical Association, American Animal Hospital Association, National Animal Interest Alliance, American Pet Products Association, and Pet Industry Joint Advisory Council (*see* NYSCEF Doc No. 55). These amici are "non-profit associations dedicated to animal welfare and responsible animal ownership" (*id.* at 1), who advocate for "sound pet welfare and ownership policies" in the law (*id.* at 3). They aver that "[e]stablishing new causes of action or measures of damages based on relational or emotional attachments to a pet runs contrary to this goal" (*id.*).[4]

[4.] These amici are described individually as follows:
- New York State Veterinary Medical Society: Having a membership of more than 2,000 licensed veterinarians in this state, it makes sure the profession develops the best guidelines and laws and advocates for responsible pet ownership.
- American Kennel Club: The largest registry of purebred dogs, it advocates for the purebred dog as a family companion, advances canine health and well-being, works to protect the rights of dog owners, and promotes responsible dog ownership.
- Cat Fanciers' Association: Possessing the largest registry of pedigreed cats in the world, this organization is dedicated to the promotion of cat health, cat welfare, and public education of responsible cat ownership.
- Animal Health Institute: A trade association of companies which manufacture animal health products, pharmaceuticals, vaccines, and feed additives used in food production and medicines in order to keep pets healthy, it works to ensure a safe and effective supply of medicines that help pets and other animals live longer and healthier.
- American Veterinary Medical Association: Comprised of more than 105,000 members, representing approximately 80% of U.S. veterinarians, it is the national voice for the veterinary profession.
- American Animal Hospital Association: Comprised of around 5,000 companion animal hospital member organizations, it represents approximately 50,000 people holding jobs in the animal care industry and develops

Amici suggest that this Court has no basis for denying Defendant's cross-motion. Similar to Defendant, amici emphasize that under well-established tort law pets are not deemed immediate family members (*see* NYSCEF Doc No. 55 at 8, citing *Schrage v Hatzlacha Cab Corp.*, 13 AD3d 150, 150 [1st Dept 2004] ["pets are treated under New York law as personal property, and the loss of a dog by reason of negligence will not support claims by the animal's owners to recover for their resulting emotional injury"]; *id.*, citing *Johnson v Douglas*, 187 Misc 2d 509, 510-511 [Sup Ct, Nassau County], *affd* 289 AD2d 202 [2d Dept 2001] ["The zone of danger rule has only been applicable to the observance of the death or serious injury of an immediate family member who is a person. . . . The court is unaware of any recent case law extending the rule to the loss of a family pet."]; *id.*, citing *Nonhuman Rights Project, Inc. v Breheny*, 38 NY3d 555, 576 [2022] [while "the law clearly imposes a duty on humans to treat nonhuman animals with dignity and respect," "also implicit in these statutes is a plain endorsement of the legal distinction between human beings and nonhuman animals"]). Amici further allege and list various cases to prove that no other state in the country allows for this type of liability except for Tennessee, which implemented a statute permitting recovery of emotional damages when a pet is on its owner's property or under the owner's control (*see id.* at 14, citing Tenn Code Ann § 44-17-403).

Moreover, allowing Plaintiffs to proceed will result in unintended adverse impacts on pets and pet welfare. First, permitting companion animals to be seen as "immediate family" will create mass confusion within the judicial system as it is impossible to cogently identify this class "because the human capacity to form an emotional bond extends to an enormous array of living creatures" (*see id.* at 16, quoting *Rabideau v City of Racine*, 2001 WI 57 ¶ 31, 243 Wis 2d 486, 501, 627 NW2d 795, 802 [2001]). Second, allowing emotion-based liability would fundamentally alter the pet owner-provider relationship as prices of pet services and procedures will rise to afford court awards. Amici worry that big awards and resulting higher priced services and goods will lead to fewer pet owners being able to afford necessary medication and preventative care, in turn leading further to pets suffering and/or an increase in euthanasia.

Finally, amici contend that the Court should not legislate and should be wary of granting an award based on no legal structure (*see id.* at 22, quoting *Koester v VCA Animal Hosp.,* 244 Mich App 173, 176-177, 624 NW2d 209, 211 [2000] ["plaintiff and others are free to urge the Legislature to visit this issue in light of public policy considerations"]). The animal protection laws already in place protect animals from cruelty, allow trusts to be used for pet care, and permit a "best interest" standard when determining where a pet should remain during divorces. Amici claim these laws are specifically related to the protection of pet welfare; however, allowing recovery of damages for a deceased pet would prioritize human interests over the pet's well-being. Therefore, legislation is the optimal form for evaluating and safeguarding against adverse consequences of this liability expansion as it can hold hearings for public comment and balance stakeholder interests regarding pet welfare (*see id.* at 22, quoting *Kondaurov v Kerdasha*, 271 Va 646, 657, 629 SE2d 181, 187 [Va. 2006] ["permitting such an award would amount to a sweeping change in the law of damages, a subject properly left to legislative consideration"]).

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clinical practice standards, publications, and educational programs to enhance the delivery of small animal veterinary medicine.

- National Animal Interest Alliance: Opposing animal rights extremism, this group consists of breeders, trainers, veterinarians, research scientists, farmers, fishermen, hunters and wildlife biologists dedicated to promoting animal welfare and strengthening the human-animal bond.
- American Pet Products Association: This is a trade association for the pet products industry, representing nearly 1,000 pet product manufacturers, importers, manufacturers' representatives, and livestock suppliers who share a mission to develop and promote responsible pet ownership.
- Pet Industry Joint Advisory Council: Doing business as the Pet Advocacy Network, this trade association represents thousands of manufacturers, distributors, breeders, and retailers, and advocates for healthy and safe pets, responsible trade in pets and pet products, and pro-pet policies in courts and legislatures. (*see* NYSCEF Doc No. 55 at 1-3.)

C. Plaintiffs' Contentions

Plaintiffs argue for a legal change allowing recovery of damages for emotional distress resulting from the negligent destruction of a dog, asserting that the current law is outdated and inconsistent with legal trends. Dogs are cherished members of the family and, according to Plaintiffs, can no longer be classified as mere personal property as such is not in line with how society views family dogs (*see* NYSCEF Doc No. 31, citing *Feger v Warwick Animal Shelter*, 59 AD3d 68 [2d Dept 2008] ["Companion animals are a special category of property and are afforded many protections under the law," including recognition in trusts, orders of protection, and divorce cases]; *id*., citing *Morgan v Kroupa*, 167 Vt 99, 702 A2d 630 [1997] [recognizing unique status of domestic pets in declining to apply available lost property statutes]).

New York's legal landscape regarding pets has already begun evolving, argue Plaintiffs, as can be seen in Domestic Relations Law [DRL] § 236 (B) (5) (d) (15), which requires courts to consider the best interest of a companion animal when awarding possession in divorce or separation proceedings. Specifically, the legislature recognizes pets as being more than property, stating, "For many families, pets are the equivalent of children and must be granted more consideration by courts to ensure that they will be properly cared for after a divorce" (NYSCEF Doc No. 31, quoting NY Committee Report, 2021 NY Senate Bill No 4248 [Feb. 6, 2021]; *see id.*, citing *L.B. v C.C.B*., 77 Misc 3d 429, 436 [Sup Ct, Kings County 2022]). While this evidences the legislature's increasing willingness to consider expanding rights for pets, Plaintiffs argue that the courts are best suited to define "immediate family" under the "zone of danger rule," as this would be a limited carve-out consistent with common law (*see* NYSCEF Doc No. 72 at 7).

Plaintiffs concede that while the Court in *Greene* noted its reluctance to redefine the law, the Court also found that "roles and perspectives change, and that what once was accepted as a basic social premise has to be carefully examined in a way that reflects the realities of our lives" (*see* NYSCEF Doc No. 72 at 6, citing *Greene v Esplanade Venture Partnership*, 36 NY3d at 523-524). Nevertheless, Plaintiffs acknowledge that New York does not recognize a claim for NIED for loss of pets (*see* NYSCEF Doc No. 51 at 6, citing *Kyprianides v Warwick Val. Humane Socy.*, 59 AD3d 600 [2d Dept 2009]). However, they contend that such a conclusion conflicts with that of *Taggart v Costabile* (131 AD3d 243 [2d Dept 2015]), where the Court discussed the plaintiff's emotional damages resulting from accidentally shooting his dog while defending his home from a third party (*see* NYSCEF Doc No. 51 at 6). Plaintiffs postulate that the Court in *Taggart* took issue not with the claimed emotional damages but with the failure to state a cause of action, as several factors intervened with the chain of causation which "were not the normal and foreseeable consequences of the situation created by the defendants' alleged failure to comply with the statutory duty" (*id.* at 5). Plaintiffs contend that the cause of action for NIED thereby applies, as Defendant's breach of duty directly caused the death of Duke, leading to Nan experiencing severe emotional harm due to unreasonable endangerment and fear for her own safety (*see id*. at 5-6).

Awarding emotional damages relating to pets is not unprecedented, according to Plaintiffs. In *Corso v Crawford Dog and Cat Hosp., Inc.* (97 Misc 2d 530 [Civ Ct, Queens County 1979]) for example, the plaintiff was entitled to recover for damages for shock, mental anguish, and despondency suffered due to wrongful destruction and loss of her dog's body (*see* NYSCEF Doc No. 31 at 4). In *Corso*, after euthanizing her dog and agreeing to turn the body over to an organization for a pet funeral, the plaintiff owner found a deceased cat in the casket instead. The Court reasoned that the plaintiff was entitled to damages beyond market value because "a pet such as a dog is not just a thing" or "an inanimate thing that just receives affection"; a pet also returns affection (*id*., quoting *Corso v Crawford Dog and Cat Hosp., Inc.*, 97 Misc 2d at 531). Therefore, Plaintiffs claim that it would be fair and appropriate for a jury to consider the emotional damages resulting from Duke's death.

It is also Plaintiffs' contention that allowing emotion-based liability in cases involving the zone of danger and companion animals will not jeopardize pet care as amici in support of Defendant assert. Defendant's liability for harm or death of a companion animal already covers medical costs, so extending liability in zone of danger cases would not significantly affect pet welfare or the expenses of uninvolved parties. This proposed carve-out would neither impose new liability nor significantly change existing liability. Finally, Plaintiffs assert that the failure to create a carve-out unjustly fails to compensate people in light of the increasing number of accidents resulting in pet deaths.[5]

D. Amicus Curiae in Support of Plaintiffs' Opposition

i. Brief of Amicus Curiae Legal Action Network for Animals (LANA)

LANA is a not-for-profit organization whose mission is to provide legal services defending and protecting animals in connection with animal-related issues. In support of Plaintiffs' cause of action for NIED, LANA maintains that the "zone of danger" should be expanded to apply to companion animals. (*See* NYSCEF Doc No. 62 at 1.)

Similar to Plaintiffs, LANA alleges that *Greene* opened the door to expanding the definition of "immediate family." Although the Court found that grandparents are considered "immediate family," it did not "fix permanent boundaries of 'immediate family' " as the "outer limits of the phrase" are "unsettled at this juncture" (NYSCEF Doc No. 62, quoting *Greene v Esplanade Venture Partnership*, 36 NY3d at 516). The concurrence in *Greene* further suggests that "[e]ven without a blood relation, people form bonds" such as "unrelated children who grow up together [who] consider themselves siblings in every sense, or [ ] individuals who have grown close through shared experience [who] may be family in every sense of the word save for biology" (*id.*, quoting *Greene v Esplanade Venture Partnership*, 36 NY3d at 546-547). If no blood or biological relation is needed to be considered family, then humans who become emotionally intertwined with their companion animal can be considered "immediate family," too, LANA argues.

Greene also represents the evolutionary ability of the "zone of danger" doctrine to adapt and expand in response to changing societal views. The Court purposefully did not define the outer limits of or enumerate "immediate family" members (*see* NYSCEF Doc No. 82 at 13, quoting *Greene v Esplanade Venture Partnership*, 36 NY3d at 523). In its analysis, it emphasized "that roles and perspectives change, and that what once was accepted as a basic social premise has to be carefully examined in a way that reflects the realities of our lives" (NYSCEF Doc No. 82 at 14, quoting *Greene v Esplanade Venture Partnership*, 36 NY3d at 524). Simply put, the Court has authority to expand the definition of "immediate family" to include a companion animal, maintains LANA.

The evolution of pet rights has significantly shifted away from their treatment as mere property. Punitive damages are now permitted with respect to loss of a pet (*see* NYSCEF Doc No. 62 at 9, citing *Lewis v DiDonna*, 294 AD2d 799 [3d Dept 2002] [prayer for punitive damages permitted to remain in complaint which alleged that defendants caused plaintiff's pet to overdose on prescribed medication]). Furthermore, pets involved in custody disputes are now treated like children, with their ownership determined by a "best interest" standard (*see id.* at 12, quoting *Travis v Murray*, 42 Misc 3d 447, 451 [Sup Ct, NY County 2013] ["Where once a dog was considered a nice accompaniment to a family unit, it

[5] Plaintiffs referenced an ABC news article entitled "Dogs Bring Loads of Joy but also Perils on a Leash." Although the link is no longer active, the article, also posted at https://www.lakelandtoday.ca/lifestyle/dogs-bring-loads-of-joy-but-also-perils-on-a-leash-9520710, found that "[f]rom 2001 to 2020, the estimated number of adults seen at emergency departments for dog-walking injuries increased significantly, from 7,300 to 32,300 a year."

is now seen as an actual member of that family, vying for importance alongside children."]; *see id.* at 13, quoting *Morgan v Kroupa*, 167 Vt at 103, 702 A2d at 633 ["modern courts have recognized that pets generally do not fit neatly within traditional property law principles"]; *see id.*, citing *Rabideau*, 2001 WI 57 ¶ 3, 243 Wis 2d at 491, 627 NW2d at 798 [discomfort voiced "with the law's cold characterization of a dog . . . as mere 'property' " as it "fails to describe the value human beings place upon the companionship that they enjoy with a dog," which "is not a fungible item, equivalent to other items of personal property"]). In particular, New York banned the sale of dogs from puppy mills in pet stores (General Business Law § 753-f), declawing of cats (Agriculture & Markets Law § 381), and the inclusion of elephants in entertainment enterprises (Agriculture & Markets Law § 380) (*see* NYSCEF Doc No. 62 at 18-19).

However, LANA acknowledges the difficulty courts face in deciding how to handle cases involving pets. In *Matter of Nonhuman Rights Project, Inc. v Lavery* (31 NY3d 1054 [2018]), for instance, the Court's denial of leave to appeal with respect to a habeas corpus petition for confined chimpanzees was accompanied by a thoughtful concurring opinion of Judge Fahey. He delved into the issue and noted, "Even if it is correct . . . that nonhuman animals cannot bear any legal duties, the same is true of human infants or comatose human adults, yet no one would suppose that it is improper to seek a writ of habeas corpus on behalf of one's infant child . . . or a parent suffering from dementia" (NYSCEF Doc No. 62 at 14-15, quoting *Matter of Nonhuman Rights Project, Inc. v Lavery*, 31 NY3d at 1057 [2018]). Still, LANA argues that the challenges courts face in making these decisions indicate a shift in how animals are viewed in our lives, suggesting a move away from treating animals as property and toward a more thoughtful evaluation of their role.

If this Court permits Plaintiffs to continue with their cause of action for NIED, LANA maintains that the general pet-owning populace would not be affected by a shift in the law. Even if the businesses, industries, organizations, and members comprising adversary amici in support of the Defendant's position would be affected, LANA argues that the impact would be positive, as the added liability would promote accountability and result in more adequate levels of care. Without this necessary change, LANA contends that the current laws will continue to completely shield and protect offenders from liability, as pet owners are unfairly not compensated for losses. In the end, emotional anguish is the same regardless of what causes it. (*See* NYSCEF Doc No. 82 at 5-8.)

ii. Brief of Amicus Curiae Nonhuman Rights Project, Inc. (NhRP)

NhRP is a civil rights organization which challenges what it describes as the "archaic, unjust status quo that views and treats nonhuman animals as 'things,' " and "has filed habeas corpus petitions seeking to secure the right to liberty of chimpanzees and elephants" in various states (NYSCEF Doc No. 45 at 1).

Common law is flexible and can transform over time as courts "re-examine a question where justice demands it," NhRP points out (NYSCEF Doc No. 81 at 3, citing *Woods v Lancet*, 303 NY 349, 354 [1951]). Courts are further duty-bound to "bring the law into accordance with present day standards of wisdom and justice rather than with some outworn and antiquated rule of the past" (*id*., citing *Woods v Lancet*, 303 NY at 355). Thus, it follows that, rather than solely adhering to mere tradition, "a rule of law should depend heavily upon its continuing practicality and the demands of justice" (*id.*, citing *Buckley v City of New York*, 56 NY2d 300, 305 [1982]).

NhRP thereby asserts that New York common law can and should evolve so that the family dog is included within one's "immediate family" for purposes of the zone of danger doctrine. Despite adversary amici's contentions, the Court would not have to determine all the nonhuman animals who would qualify to resolve all liability issues that may arise. Any unworkability of a decision which favored

the DeBlases herein could be resolved in future court decisions or through legislation. Furthermore, permitting Nan to claim emotional damages under this theory will not affect veterinary offices and, even if it did increase litigation, such cannot justify freezing the common law in the archaic past as it is "the duty of the courts to willingly accept the opportunity to settle these disputes" (NYSCEF Doc No. 81 at 28-29, quoting *Battalla v State of New York,* 10 NY2d 237, 241-242 [1961] [abolishing impact requirement in NIED because the outdated rule was "unjust" and "opposed to experience and logic"]).

The Court in *Battalla* further highlighted that denying a plaintiff the opportunity to be made whole and receive fair compensation after experiencing a significant wrong goes against established tort principles (*see* NYSCEF Doc No. 45, citing *Battalla v State of New York,* 10 NY2d at 239-240). Compensatory awards serve another important deterrent purpose: disincentivizing negligent behavior (*see* NYSCEF Doc No. 81 at 7, citing *McDougald v Garber,* 73 NY2d 246, 254 [1989] ["placing the burden of compensation on the negligent party also serves as a deterrent"]; *id.*, citing *Greene v Esplanade Venture Partnership*, 36 NY3d at 527 [Rivera, J, concurring] [noting the "dual purposes of tort law, which [are] to make wrongfully injured parties whole and provide a sufficient economic disincentive for injurious negligent conduct"]). Therefore, denying Nan's ability to recover damages for her emotional injuries not only fails to accord with traditional tort principles but also fails to disincentivize drivers from repeating this tortious act of negligent driving behavior.

Of all the cases presented by adversary amici, NhRP contends that only one pertains to a zone of danger scenario: *Johnson v Douglas* (289 AD2d 202 [2d Dept], *affg* 187 Misc 2d 509 [Sup Ct, Nassau County 2001]). The Court found that the owner could not recover damages for emotional distress caused by the negligent killing of his dog, who was crushed when he was being walked (*see* NYSCEF Doc No. 81 at 11-12). Conforming to the *Douglas* court's view would inevitably conflict with the analysis in *Greene,* stating that when considering roles and perspectives pertaining to family structures, "[w]hat once was accepted as a basic social premise must be carefully examined in a way that reflects the realities of both our changing legal landscape and our lives" (*id.* at 14, quoting *Greene v Esplanade Venture Partnership*, 36 NY3d at 524-25). As *Douglas* was decided before societal norms regarding pets drastically changed, NhRP urges this Court not to restrict itself to outdated interpretations of the zone of danger doctrine (*see id.* at 14-15, quoting *People v Hobson*, 39 NY2d 479, 487 [1976] [stare decisis is "not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder and verified by experience"]).

Finally, NhRP found several states cited by adversary amici that actually have permitted compensation for emotional distress resulting from the death of a companion animal, including Louisiana (*see* NYSCEF Doc No. 81 at 15-16, citing *Barrios v Safeway Ins. Co.,* 97 So 3d 1019 [La Ct App 2012] [upholding $10,000 award for mental anguish brought by two dog owners whose dog was killed in a pedestrian-motorist accident]); Connecticut (*id.* at 17-20, citing *Vaneck v Cosenza-Drew,* 2009 WL 1333918 [Conn Super Ct 2009] [permitting bystander emotional distress claim involving dog killed in car accident]; *id.*, citing *Field v Astro Logistics, LLC,* 2022 WL 2380560 [Conn Super Ct 2022]); Hawaii (*id.* at 20-21, citing *Campbell v Animal Quarantine Sta.*, 63 Haw 632, P2d 1066 [1981] [allowing recovery for serious mental distress resulting from death of dog during transport to veterinary hospital]); Florida (*id.* at 21, citing *Knowles Animal Hosp. Inc., v Wills*, 360 So 2d 37 [Fla Dist Ct App 1978] [affirming $13,000 jury award for plaintiffs' physical and mental suffering after dog required euthanasia due to suffering severe burns]); California (*id*. at 22, citing *Plotnik v Meihaus*, 208 Cal App 4th 1590, 146 Cal Rptr 3d 585 [Cal Ct App 2012] [upholding award of emotional distress damages recovered for trespass to personal property arising from act of intentionally striking dog with bat]); and Washington (*id.* at 23, citing *Sherman v Kissinger,* 165 Wash App 855, 195 P3d 539 [Wash Ct App 2008] [damages can be awarded against veterinarian due to death of dog]).

E. Discussion

i. Stare Decisis

Courts often find themselves at a crossroads, faced with the decision to uphold traditional law or facilitate its evolution. Stare decisis is a bedrock "doctrine which holds that common-law decisions should stand as precedents for guidance in cases arising in the future" and a rule of law "once decided by a court[ ] will generally be followed in subsequent cases presenting the same legal problem" (*People v Peque*, 22 NY3d 168, 194 [2013] [internal quotation marks omitted]). Stare decisis "is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process" (*People v Taylor*, 9 NY3d 129, 148 [2007]). Adherence to stare decisis "promote[s] efficiency and provide[s] guidance and consistency in future cases by recognizing that legal questions, once settled, should not be reexamined every time they are presented" (*People v Bing*, 76 NY2d 331, 339 [1990]). Courts have consistently expressed reluctance to alter even definitions within law, as seen in *Greene*, where the Court described its "historically circumspect" approach in reviewing the case (*see Greene v Esplanade Venture Partnership*, 36 NY3d at 516). "[U]nless a compelling justification exists for such a drastic step," prior decisions should not be departed from merely because '[i]t's time' " (*Grady v Chenango Val. Cent. Sch. Dist*., 40 NY3d 89, 96 [2023] [internal quotation marks partially omitted]).

Nevertheless, when legal recognition of a special status, societal views, common sense, and public policy suggest a different approach, courts may adjust the interpretation of law to align with shifting societal norms (*see Greene v Esplanade Venture Partnership*, 36 NY3d at 526). "Tort cases, but especially personal injury cases, offer another example where courts will, if necessary, more readily re-examine established precedent to achieve the ends of justice in a more modern context (see, e.g., *Victorson v Bock Laundry Mach. Co*., 37 NY2d 395; *Goldberg v Kollsman Instrument Corp.,* 12 NY2d 432; *Bing v Thunig,* 2 NY2d 656; *Woods v Lancet,* 303 NY 349). Significantly, in these cases the line of precedent, although well established, was found to be analytically unacceptable, and, more important, out of step with the times and the reasonable expectations of members of society." (*People v Hobson*, 39 NY2d at 489 [1976].)

Earlier this year, the Court of Appeals had occasion to revisit a tort doctrine, ironically in the context of a dog. *Flanders v Goodfellow* (— NY3d —, 2025 NY Slip Op 02261 [Apr. 17, 2025]) presented a fact situation where a postal carrier was bitten by a dog while delivering a package to the dog owners' residence. The postal carrier commenced an action against the owners to recover damages for injuries, asserting causes of action for strict liability and negligence.

"Following discovery, Supreme Court awarded summary judgment to the Goodfellows and dismissed the claim. With respect to strict liability, the court concluded that the evidence created no triable issue of fact as to whether the Goodfellows had actual or constructive knowledge of the dog's alleged vicious propensity, which is an essential element of a strict liability cause of action. The court considered the affidavits from the postal workers, but found them insufficient because they did not show that the Goodfellows were home while the dog acted aggressively towards postal workers or that the Goodfellows otherwise knew about the dog's behavior. The court also dismissed Flanders's negligence cause of action under Fourth Department precedent foreclosing such liability for harms caused by domestic animals." (*Id.*, *1.)

"The Appellate Division affirmed (215 AD3d 1248 [4th Dept 2023]). It determined that the Goodfellows had demonstrated that they neither knew nor had reason to know of the dog's allegedly vicious propensity, and that Flanders had failed to raise a dispute of fact that required a trial on the strict

liability cause of action. The Court further held that Flanders's negligence cause of action was properly dismissed." (*Id.*)

The Court of Appeals made the determination to overrule *Bard v Jahnke* (6 NY3d 592 [2006]), "which held that there can be no common-law negligence liability when a domestic animal causes harm" (*Flanders v Goodfellow*, 2025 NY Slip Op 02261, *1). "Experience has shown that this rule is in tension with ordinary tort principles, unworkable, and, in some circumstances, unfair. Continued adherence to *Bard* therefore would not achieve the stability, predictability, and uniformity in the application of the law that the doctrine of stare decisis seeks to promote. Accordingly, we overrule *Bard* to the extent that it bars negligence liability for harm caused by domestic animals, and reinstate Flanders's negligence cause of action." (*Id.*)

In no longer adhering to the principle that a plaintiff in a domestic animal bite case had to show that the owner knew or had reason to know of the animal's vicious propensity – a concept of strict liability – the Court of Appeals in *Flanders* made the following observation:

> "Stare decisis is not an inexorable command" (*Payne*, 501 US at 828). Rather, it " 'is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable' " (*People v Bing*, 76 NY2d at 338, quoting *Helvering v Hallock*, 309 US 106, 119 [1940]). . . . "[T]ort cases," including "personal injury cases," . . . "offer an[ ] example where courts will, if necessary, more readily re-examine established precedent to achieve the ends of justice" (*People v Hobson*, 39 NY2d 479, 489 [1976]) . . . where we have concluded that a "rule of nonliability is out of tune with the life about us, [and] at variance with modern-day needs and with concepts of justice and fair dealing". . . . (*Bing v Thunig*, 2 NY2d 656, 667 [1957], *overruling Schloendorff v Society of N.Y. Hosp.*, 211 NY 125 [1914]; *see also Woods v Lancet*, 303 NY 349 [1951], *overruling Drobner v Peters*, 232 NY 220 [1921]).
>
> . . . Also relevant is whether legal developments in the doctrine undermine an earlier decision (*see People v Bing*, 76 NY2d at 342). Finally, we may consider how courts grapple with a decision over time—for example, whether it is "unworkable," "creates more questions than it resolves," or "no longer serves the ends of justice" (*Peque*, 22 NY3d at 194 [internal quotation marks omitted]).
>
> Taking full account of these factors, along with the abiding values that stare decisis seeks to promote, we conclude that the time has come to set aside *Bard*'s rule that an owner of a domestic animal may not be held liable in negligence for harms caused by their animal. (*Flanders v Goodfellow*, 2025 NY Slip Op 02261, *3.)

It is not uncommon for a court that breaks from tradition to face criticism for legislating from the bench. However, for such situations there exists a safety net whereby incorrect interpretations of the law may be overturned on appeal if erroneous. In general, it is difficult to imagine any court intentionally overstepping its bounds with the expectation of being overruled. Ultimately, if a trial court perceives a change in law, it is morally obligated to recognize it. Hence, courts face the challenging balancing act of interpreting and applying law to align with evolving societal norms while remaining faithful to the original intent of the law. This is precisely what this Court sets out to achieve.

ii. Pet Dog in Context of Negligent Infliction of Emotional Distress and Zone of Danger

"[T]here is no duty to protect from emotional injury a bystander to whom there is otherwise owed no duty, and, even as to a participant to whom a duty is owed, such injury is compensable only

when [there is] a direct, rather than consequential, result of the breach" (*Kennedy v McKesson Co.*, 58 NY2d 500, 506 [1983]). The zone of danger doctrine, an exception to this general rule prohibiting "bystander claims" for emotional distress, occurs where a plaintiff establishes that she "suffered serious emotional distress that was proximately caused by the observation of a family member's death or serious injury while in the zone of danger" (*Stamm v PHH Veh. Mgt. Servs., LLC,* 32 AD3d 784, 786 [1st Dept 2006]). Additionally, "there may be recovery for the emotional harm, even in the absence of fear of potential physical injury, to one subjected directly to the negligence of another as long as the psychic injury was genuine, substantial, and proximately caused by the defendant's conduct" (*Howard v Lecher*, 42 NY2d 109, 111 [1977]).

The primary dispute between the parties is whether a dog can be classified as "immediate family" in light of Plaintiff Nan's claim that she was in Duke's zone of danger at the time of the subject accident. The zone of danger rule was initially introduced by the New York Court of Appeals in *Bovsun v Sanperi* (61 NY2d 219 [1984]), where Ms. Bovsun and her daughter were deemed "immediate family" after witnessing the defendant driver strike and pin Mr. Bovsun between two vehicles.[6] Although initially thought to refer only to parent-child and spousal relationships, the Court in *Greene v Esplanade Venture* Partnership (36 NY3d 513) expanded the definition of immediate family to include grandparents. If the current rule is enforced, then Duke would not qualify as immediate family as he is neither Nan's grandparent, parent, child, or spouse, and Nan would not be entitled to emotional damages resulting from being in the zone of danger. Plaintiffs therefore seek to expand the definition to include companion animals or, more specifically, pet dogs.

After viewing Plaintiffs' video (NYSCEF Doc No. 29) and examining all submitted documents, this Court is inclined to agree that the specific fact pattern presented here calls for an exception to the routine dismissal of NIED causes of action which involve the death of a companion dog. Adhering to unyielding general precedent no longer aligns the law with current societal norms concerning family pets. The *Greene* decision posited a few factors used to determine whether the grandmother would be considered "immediate family," including legal recognition of the special status of grandparents, shifting societal norms, and common sense. Applying these same factors here, this Court fails to see why a beloved companion pet could not be considered "immediate family" in the context of the zone of danger doctrine *under the fact pattern presented by Plaintiffs*.

As Plaintiffs and supporting amici LANA and NhRP highlight, New York's legal framework concerning household pets has significantly evolved from treating them as mere property. Companion animals are currently recognized more "as a special category of property [which] is consistent with the

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6. "On May 24, 1975, due to mechanical difficulties the station wagon in which the members of the Bovsun family were riding had stopped at the side of the Southern State Parkway in Nassau County. Jack Bovsun, father and driver, alighted from the vehicle, went around to the rear, and leaned inside the open tailgate window. Selma Bovsun, his wife, remained seated in the front passenger seat, and Mara Beth Bovsun, their daughter, was in the rear seat. At this point the Bovsun station wagon was struck in the rear by an automobile owned by defendant Rosario Sanperi and driven by defendant Gary T. Sanperi. Jack Bovsun was seriously injured when he was pinned between the two vehicles. The mother and daughter were thrown about the station wagon by the force of the impact but suffered less serious physical injuries than Jack Bovsun. Although neither mother nor daughter actually saw the Sanperi car strike their station wagon (they were facing forward or to the side), both were instantly aware of the impact and the fact that Jack Bovsun must have been injured and each thereafter immediately observed their seriously injured husband and father." (*Bovsun v Sanperi*, 61 NY2d at 224-225.) Bovsun also involved a companion case involving the Kugel family. The Court held: "Although plaintiffs in Bovsun did not actually see their husband and father being injured, they do assert their instantaneous awareness that he had been injured as well as their observation of him immediately after he was struck by defendants' automobile. Plaintiffs in Kugel claim similar observations. Thus, the claims in both cases are sufficient, if substantiated by the evidence, to entitle plaintiffs to recover for their asserted emotional distress damages." (*Id.* at 233-234.)

laws of the State and the underlying policy inherent in these laws to protect the welfare of animals" (*Feger v Warwick Animal Shelter*, 59 AD3d at 72). In line with this, DRL § 236 (B) (5) (d) (15) was passed in 2021, requiring a "best interest"[7] framework similar to that seen in custody battles for children because the legislature recognized that "for many families, pets are the equivalent of children and must be granted more consideration by courts to ensure that they will be properly cared for after a divorce" (NY Committee Report, 2021 NY Senate Bill No 4248 [Feb 6, 2021]). Even amici supporting Defendant recognize that in 1996, New York passed Estates, Powers, and Trusts Law (EPTL) § 7-8.1, permitting people to create trusts for the care of their pets. In further consideration of animal welfare, New York also enacted a variety of laws aimed at reducing abuse and suffering, including the Puppy Mill Pipeline Act effective 2024 (General Business Law § 753-f) and a ban on the declawing of cats (Agriculture & Markets Law § 381). Even judges have found it challenging to limit their view of pets as more than mere property to only divorce and abuse cases (*see Nonhuman Rights Project, Inc.*, 38 NY3d at 606 [Wilson, J., dissenting] ["domesticated pets have become important members of families, and the law has accounted for the role they play in people's lives"]).

Not surprisingly, this shift in legal recognition reflects a shift in societal norms. Although difficult to believe, there was a time in the not too distant past when pets were generally not allowed to stay in hotels with their owners in the United States. However, according to a 2016 survey by the American Hotel & Lodging Association, about 75% of luxury, mid-scale, and economy hotels now consider themselves pet friendly (*see* American Hotel & Lodging Association, *What's 'Inn' at Hotels?*, available at https://www.ahla.com/sites/default/files/1128_AHLA_RandomFacts.pdf [last accessed June 8, 2025]). Many hotel booking websites identify which establishments are pet friendly. Moreover, in the 1980s airlines started allowing small dogs to travel in the main cabin of passenger planes (*see* Arturo Weiss, *How Has Flying With Pets Changed Over the Years?*, available at https://simpleflying.com/flying-with-pets-history/ [last accessed June 8, 2025]). "Pets are family members, and the thought of leaving them housesitting by themselves is a thought many diehard owners would never think of" (*id.*). The rise in pet-friendly resources comes as no surprise, considering that approximately 49.7% of New York's population own pets, according to an American Veterinary Medical Association survey (*see* World Population Review, *Pet Ownership Statistics by State 2025*, available at https://worldpopulationreview.com/state-rankings/pet-ownership-statistics-by-state [last accessed June 8, 2025]).

Finally, the "common sense" factor in *Greene* seems to have been shaped by society's general perception of a grandparent's role. Had that not been the case, courts would need to assess the factors each time a grandparent sought emotional damages after being in the zone of danger of a deceased child or grandchild. Thus, considering the various accommodations made for companion animals in general, along with the deep and affectionate bond Plaintiffs shared with their dog, it stands to reason that companion animals, like Duke, could also be recognized, as a matter of common sense, as immediate family. Taking into account the *Greene* factors, therefore, warrants deeming the family dog an immediate family member for purposes of the zone of danger doctrine.

However, it follows that expanding the definition of immediate family to include companion animals could diverge from the original intent of the Court in *Bovsun v Sanperi.* Although *Greene* acknowledged that "roles and perspectives change, and that what once was accepted as a basic social premise has to be carefully examined in a way that reflects the realities of our lives" (36 NY3d at 523-524), it is reasonable to conclude that the Court did not foresee this definition to extend to nonhuman family members given their status as property but instead to distant relatives such as aunts, uncles, and

[7] Recently, this Court encountered a dispute over two dogs requiring a determination as to who was the rightful owner, in *Connolly v Nina* (84 Misc 3d 1212[A], 2024 NY Slip Op 51422 [Sup Ct, Kings County 2024]). Instead of seeing the dogs as mere property and determining the case based on rules of replevin, the Court elected to implement the "best interest" standard now used in divorce cases.

cousins. Nonetheless, *Greene* recognized that *Bovsun* did not define the boundaries of the immediate family; "that issue remains open" (*Greene v Esplanade Venture Partnership*, 36 NY3d at 526).

Additionally, it is to be noted that the negligent act committed by Defendant took place while operating an instrument of harm, i.e., a motor vehicle. An instrument of harm carries special weight in the law, as exemplified in the holding of *Espinal v Melville Snow Contractor, Inc.* (98 NY2d 136 [2002]) and its progeny, where it has been recognized that launching such an instrument carries the potential for tort liability to a third person, outside the construct of a contract between it and a tort victim (*see also Moch Co. v Rensselaer Water Co.*, 247 NY 160 [1928]). Recognition of the motor vehicle as an instrument of harm took place in *Cavosie v Hussain* (215 AD3d 1080 [3d Dept 2023]) due to its improper alteration. A motion to dismiss in an action involving a front-end loader was denied in *Demarest v Village of Greenwic*h (224 AD3d 1196 [3d Dept 2024]), holding that it might have been an instrument of harm. Assigning incompetent drivers to valet park a vehicle which struck a pedestrian constituted the launching of an instrument of harm (*see Berger v Rokeach*, 58 Misc 3d 827 [Sup Ct, Kings County 2017]). A taxi might have been an instrument of harm where its tire came off, causing a motorcyclist to hit it (*see Rathje v Tomitz*, 128 AD3d 1041 [2d Dept 2015]). These cases demonstrate that the law holds those launching an instrument of harm in the form of a motor vehicle to a higher degree of scrutiny for their actions.

Granting the cross-motion herein would leave Plaintiff Nan without fair and just compensation given the emotional injuries she allegedly suffered while in the zone of danger created by Defendant's negligence. This Court believes that "a pet such as a dog is not just a thing" and that Plaintiff Nan "is entitled to damages beyond the market value" of Duke to her son (*Corso v Crawford Dog and Cat Hosp. Inc*., 97 Misc 2d at 531). Therefore, the Court recognizes the following carve-out to the zone of danger rule: A plaintiff who experiences emotional distress due to witnessing the death of a family pet in the zone of danger proximately caused by a defendant negligently operating a motor vehicle may file a claim for NIED if the pet was *leashed* to the plaintiff at the time the negligent act occurred and the plaintiff herself was exposed to danger. In other words, the pet must have been tethered to the plaintiff – the pet was an extension of the human's presence at the site of the defendant's negligence.

In so holding, the Court recognizes various decisions adhering to a broad holding that there is no recovery for NIED resulting from the death of a pet.[8] However, as noted in a case four decades back in which the Court participated as counsel, it was stated, "As this court announced many years ago, 'No opinion is an authority beyond the point actually decided, and no judge can write freely if every sentence is to be taken as a rule of law separate from its association' (*Dougherty v Equitable Life Assur. Socy.*, 266 NY 71, 88, rearg denied 266 NY 615)" (*Matter of Staber v Fidler*, 65 NY2d 529, 535 [1985]).

In researching the issue presented herein, the Court believes that of all the appellate decisions involving denial of recovery for NIED due to the death of a pet, only two involved the death of a dog caused by a motorist. In *Johnson v Douglas* (289 AD2d 202), the plaintiffs were walking their dogs when one of them, Coco, was crushed by the defendant motorist. There is nothing to indicate that Coco was leashed to the plaintiffs (*see* brief for plaintiffs-appellants in *id.* at 1-3, available at 2001 WL 34689980). In *Schrage v Hatzlacha* Cab Corp. (13 AD3d 150), the plaintiff Schrage's dog was being walked on a leash, but not by the plaintiff. The dog was leashed to a dog walker, Steven Atwood, when the dog was killed by the defendant motorist. Thus, neither of these two cases clearly presented a fact pattern where the plaintiff witnessed the killing of the family dog by the defendant motorist while the dog was tethered to the plaintiff. These two cases are distinguishable from the facts presented herein by Plaintiffs. These decisions are authorities with respect to their specific facts (*see Matter of Staber v Fidler*, 65 NY2d at 535).

[8] They need not all be listed here as amici supporting Defendant performed a capable undertaking in discussing them (*see* NYSCEF Doc No. 55).

Based on the *Greene* factors, companion animals would be considered immediate family. As amici supporting Defendant point out, however, "companion animal" is a broad term that includes a variety of creatures beyond cats and dogs (*see* NYSCEF Doc No. 55 at 16). This Court, however, takes judicial notice that very few people walk tethered to their cats, rabbits, or other non-dog pets on a leash; walking with a leashed pet is really limited to dogs.

The Court acknowledges the concerns conveyed in the amicus brief of nine organizations supporting Defendant's position herein. They fear an opening of the floodgates to further litigation were the Court to recognize a broad cause of action for NIED resulting from a pet's death, as that could engender litigation against veterinarians, veterinary technicians, animal hospitals, humane shelters, dog walkers, and pet food and other pet product manufacturers. Yet, in light of the limited holding of the Court, in which liability is limited to a circumscribed set of facts where a negligent driver, as the operator of an instrument of harm, is to be found responsible for infliction of emotional distress upon a person walking a leashed family dog in the zone of danger and viewing the horror of it being killed by the driver while the person herself is exposed to danger, these amici's parade of horrors' arguments are overstated. The Court does not contemplate the recognition of a cause of action for NIED where the death of a companion animal takes place outside the human family's presence. For example, veterinary surgery usually takes place outside the presence of the human family. Even if the human family is present during surgery, the veterinarian does not perform the surgery with an instrument of harm such as a motor vehicle and the human family is not also exposed to danger; further, the Court ventures to say that the pet is not tethered to the human family member during the surgery. Hired dog walkers would not be liable where a vehicle runs over a client's dog as the client would not be present in the zone of danger. Pet product manufacturers perform their work outside the presence of pets and their human family members walking them on a leash.

Allowing a cause of action where the killed companion animal was leashed and thus tethered to the family member at the time of a motor vehicle operator's negligent driving insures that a plaintiff who is also "subjected directly to the negligence of another" where the "psychic injury was genuine, substantial, and proximately caused by the defendant's conduct" (*Howard v Lecher*, 42 NY2d at 111) may obtain recovery of tort damages while still preserving the principle of non-liability where either the companion animal was not tethered to the plaintiff, the death occurred outside the presence of the plaintiff, or the plaintiff and the companion animal were not together in a zone of danger.

The type of compensatory award permitted herein also serves as a strong deterrent, discouraging negligent driving behavior around pets physically tethered to their owners, thus encouraging more responsible conduct to prevent future harm of this type. After all, "[t]he state is interested in the conservation of the lives and of the healthful vigor of its citizens . . . and the maintenance of proper and reasonable safeguards to human life and limb" (*Johnston v Fargo*, 184 NY 379, 385 [1906]).

"It is fundamental to our common-law system that one may seek redress for every substantial wrong. 'The best statement of the rule is that a wrong-doer is responsible for the natural and proximate consequences of his misconduct; and what are such consequences must generally be left for the determination of the jury.' (*Ehrgott v. Mayor of City of N. Y.*, 96 N. Y. 264, 281.)" (*Battalla v State of New York*, 10 NY2d at 240).

In applying this carve-out here, Plaintiff Nan would be permitted to bring a cause of action for NIED. As shown in the video, Nan was connected to Duke by a leash, keeping him close by as they crossed the street. Nan turned to face Defendant, driving recklessly, while rushing out of the subject

vehicle's path, witnessing him running over and killing Duke. (*See* NYSCEF Doc No. 29.)[9] It is reasonable for a jury to conclude that witnessing Duke being crushed, as a direct result of Defendant's violation of VTL §§ 1172 (a) and 1163 (a) and (b), led to emotional distress that goes beyond that which is generally felt by the loss of mere property. Likewise, it is also reasonable to infer that Nan feared for her own safety, either due to Defendant's recklessness or the risk of being pulled toward the car by the leash that tethered her to Duke (*see* NYSCEF Doc No. 20 ¶ 5).

Unfortunately, as much as this Court sympathizes with the pain experienced from losing the family dog, killed by Defendant's recklessness, Trevor would not be permitted to proceed with a cause of action for negligent infliction of emotional damages. Trevor was not present at the time of the accident nor was he attached to Duke by a leash within the Dachshund's zone of danger at the time.

V. Conclusion

Regarding Plaintiffs' motion for summary judgment, and considering that Defendant provided no opposing evidence, Plaintiffs have presented enough proof to demonstrate that Defendant was the sole proximate cause of the accident in question. Therefore, Plaintiffs established a prima facie case of Defendant's liability in their motion for summary judgment, to strike all affirmative defenses as to liability, and to sever the liability portion from the main action.

With respect to Defendant's cross-motion to dismiss pursuant to CPLR 3211 (a) (7), in accordance with the carve-out recognized by the Court with respect to the law concerning negligent infliction of emotional distress, since Nan DeBlase was tethered to Duke at the time of the accident, it is proper for her to recover damages for emotional distress resulting from witnessing Duke's death and fear for her own safety, all due to Defendant's negligent, indeed reckless, operation of his vehicle.

Trevor DeBlase, however, failed to demonstrate entitlement to recovery for negligent infliction of emotional distress as he was neither tethered to Duke nor present at the scene of the accident within the zone of danger; he is, however, entitled to recover for the intrinsic value of Duke and the post-accident veterinary costs, including any burial, cremation, and memorialization costs.

Accordingly, IT IS HEREBY ORDERED that Plaintiffs' motion for summary judgment (Motion Sequence No. 1) is GRANTED. It is hereby declared that Defendant Mitchell Hill acted negligently in killing Duke and nearly killing Nan DeBlase. The matter is to be set down for a trial on damages, to wit, Nan DeBlase's damages for emotional distress resulting from witnessing Duke's death and fear for her own safety, and Trevor DeBlase's damages in the form of the intrinsic value of Duke and the post-accident veterinary costs, including any burial, cremation, and memorialization costs. Defendant Mitchell Hill's first affirmative defense, alleging Plaintiffs' own fault, culpable conduct, negligence, and assumption of the risk, is stricken.

Additionally, IT IS HEREBY FURTHER ORDERED that Defendant's cross-motion (Motion Sequence No. 2) is DENIED IN PART insofar as Nan's DeBlase's cause of action for damages for negligent infliction of emotional distress and Trevor DeBlase's cause of action for damages in the form of

[9] Concerns of fraud in NIED cases (*see Tobin v Grossman*, 24 NY2d 609 [1969]; *Battalla v State of New York*, 10 NY2d 237; *Mitchell v Rochester Ry. Co*., 151 NY 107 [1896]) are lessened as a result of modern technology where the prevalence of video cameras enhances the ability of judges and juries to observe what actually transpired. Certainly, modern psychiatry and psychology have advanced since 1896, when *Mitchell v Rochester Ry. Co.* (151 NY 107), the seminal case in New York on the subject of NIED, was decided (*see generally* Thomas T. Uhl, *Bystander Emotional Distress: Missing an Opportunity to Strengthen the Ties that Bind*, 61 Brook L Rev 1399 [Winter 1995]).

the intrinsic value of Duke and the post-accident veterinary costs, including any burial, cremation, and memorialization costs are concerned, AND GRANTED IN PART with respect to Trevor DeBlase's cause of action for negligent infliction of emotional distress.

The trial on damages shall be scheduled in due course and be limited to Nan DeBlase's damages for emotional distress resulting from witnessing Duke's death and fear for her own safety, and Trevor DeBlase's damages in the form of the intrinsic value of Duke and the post-accident veterinary costs, including any burial, cremation, and memorialization costs.

The foregoing constitutes the Decision and Order of the Court.

E N T E R

HON. AARON D. MASLOW
Justice of the Supreme Court of the
State of New York

For Clerk's use only:
MG ____ MD ____ Motion Sequence No(s): _____

CPLR 5513 (a) provides: "Time to take appeal as of right. An appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof."