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22 IN THE SUPERIOR COURT OF CALIFORNIA  
23 FOR THE COUNTY OF LOS ANGELES – **CENTRAL DISTRICT**

24 KIM HABA, an individual,  
25 individually and on behalf of the  
26 general public,

27 Plaintiff,

28 vs.

29 CHIEN ET CHAT, INC., a California  
30 corporation, d/b/a **BARKWORKS PET**  
31 **STORES d/b/a BARKWORKS, and**  
32 **DOES 1-100 inclusive,**

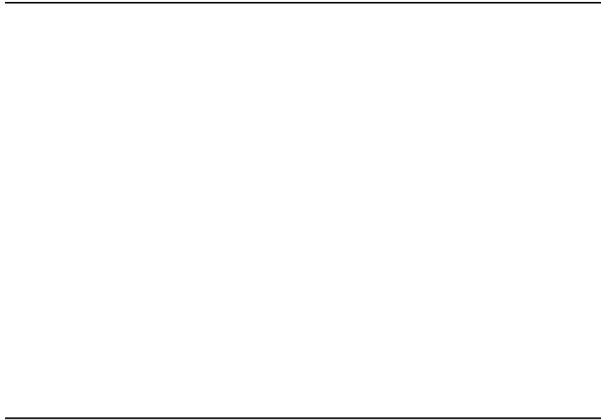
33 Defendants.

Case No.:

**VERIFIED COMPLAINT FOR  
DAMAGES, INJUNCTIVE RELIEF,  
AND OTHER EQUITABLE RELIEF:**

- (1) Unlawful, Unfair and Deceptive Business Practices *in Violation of Cal. Bus. & Prof. Code §17200 et seq. (Unfair Competition Law)*
- (2) False and Misleading Advertising in Violation of Cal. Bus. & Prof. Code §17500 et seq.
- (3) **Negligent Misrepresentation**
- (4) Fraud – Intentional Misrepresentation
- (5) Fraud – Concealment
- (6) Violation of Cal. Health & Safety Code §122125 et seq. (Lockyer-Polanco-Farr Pet Protection Act)
- (7) **Breach of Express Warranty**
- (8) **Breach of Implied Warranty of Fitness (Song-Beverly Consumer Warranty Act)**

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- (9) *Unjust Enrichment*
- (10) *Violation of Cal. Civil Code §1750 et seq. (Consumer Legal Remedies Act)*
- (11) Breach of Implied Covenant of Good Faith and Fair Dealing
- (12) Intentional Infliction of Emotional Distress
- (13) Breach of Contract
- (14) Injunctive Relief

**JURY TRIAL DEMANDED**

1 Plaintiff Kim Haba (the “Plaintiff”) complains of the above-named Defendants Chien Et  
2 Chat, Inc., a California corporation, d/b/a Barkworks Pet Stores, d/b/a Barkworks  
3 (“Barkworks”), and Does 1 through 100, inclusive (collectively, the “Defendants”), as follows:

4 **I. SUMMARY OF THE ACTION**

5 1. This private attorney general action seeks to put an end to intentional and  
6 despicable false advertising and deceptive and unfair business practice violations committed by  
7 Defendants against persons who purchased puppies (“puppies”) from Defendants within the  
8 State of California. Defendants’ business policies and practices consist of systematic intentional  
9 and/or negligent misrepresentations to the public by posting public notices throughout the State  
10 of California claiming that their puppies are not bred at puppy mills<sup>1</sup>, when, in fact, Defendants  
11 are aware, or should reasonably be and have been aware, that their puppies are sourced directly  
12 from puppy brokers<sup>2</sup> who procure their puppies directly from puppy mills.

13 2. A puppy mill is a large-scale commercial dog breeding operation where profit is  
14 given priority over the well-being of the dogs. Unlike responsible breeders, who place the utmost  
15 importance on producing the healthiest puppies possible, breeding at puppy mills is performed  
16 without consideration of genetic quality. This results in generations of dogs with unchecked  
17 hereditary defects. Puppy mills usually house dogs in overcrowded and unsanitary conditions,  
18 without adequate veterinary care, food, water and socialization. Puppy mill dogs do not receive  
19 adequate attention, exercise or basic grooming. To minimize waste cleanup, dogs are often kept  
20 in cages with wire flooring that injures their paws and legs. It is not unusual for cages to be  
21 stacked up in columns. Breeder dogs at mills might spend their entire lives outdoors, exposed to

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22  
23 <sup>1</sup>A “puppy mill” is a commercial breeding facility that mass-produces dogs for resale to pet shops to  
24 individuals, and over the Internet. These breeding facilities are required to be licensed as “Class A” dog  
25 breeding facilities by the U.S. Department of Agriculture (“USDA”). This lawsuit concerns only the sale  
26 and resale of “puppy mill” puppies to pet shops by puppy mills and puppy brokers, to pet shops, namely  
Barkworks, and Barkworks’ subsequent sales of these puppy mill puppies to their customers under false  
pretenses and by means of false advertising.

27 <sup>2</sup> Puppy brokers are required to be licensed as “Class B” by the USDA. Brokers purchase puppies  
28 from these “Class A” licensed, USDA-regulated “puppy mills” and then sell them to Barkworks which  
purchases puppies directly from these brokers. The brokers typically hold the puppies for a few days  
before transporting them to Barkworks by truck or by plane. Some brokers also breed.

1 the elements, or kept inside indoor cages all their lives. Oftentimes, after the breeder dog has  
2 reached the age of 4 years, it is no longer needed and killed.

3         3. Defendants are in the business of selling puppies to the general public.  
4 Defendants promoted, and continue to promote, themselves openly and notoriously at their stores  
5 and in advertisements as dealing exclusively with “reputable breeders” who “demand that  
6 responsible care and breeding take place” in the sourcing of the puppies offered for sale at their  
7 stores. In fact the puppies were and are born at puppy mills and were and are sold to Defendants  
8 either directly by the puppy mills or through intermediaries, such as puppy brokers (“brokers”).  
9 Defendants posted, and continue to post, on Barkworks’ public website statements which  
10 claimed and continue to claim that Barkworks “does not purchase puppies from puppy mills” and  
11 “does not knowingly sell any pups with health issues without full disclosure” when Defendants  
12 knew or should have known that such statements were untrue. Barkworks’ website further stated,  
13 and continues to state, that all of its puppies “are checked by two separate licensed veterinarians  
14 prior to being offered for sale, receive “ongoing weekly wellness checks by a licensed  
15 veterinarian,” and that all puppies sold by Barkworks “will be covered by a Health Guarantee,”  
16 all of which implies that the puppies sold by Defendant were and are in good health at the time  
17 of sale and that the puppies were and are free from any chronic health issues, such as genetic  
18 defects or contagious diseases, at the time of sale.

19         96. Contrary to their advertising and marketing scheme, Defendants sold, and  
20 continue to sell, puppies sourced from puppy mills and did so either intentionally or negligently,  
21 and continue to do so, and that all of these actions by Defendants were undertaken in bad faith.

22         97. Defendants have misrepresented and continue to misrepresent to their customers  
23 and to the general public the following material facts:

24                 a. Their puppies originate from commercial puppy mills, sometimes on an  
25 industrial scale, and not from private breeders or family homes;

26                 b. Their puppies are often ill due to diseases caused directly or indirectly by  
27 puppy mill breeding practices, poor nutrition, lack of socialization, emotional and  
28 psychological neglect, and a low standard of health and veterinary care;

1 c. Their puppies that are too visibly ill to offer for sale are force-fed and  
2 given drugs, oxygen and IV fluids so that they appear healthy to unsuspecting  
3 consumers unaware of the deception. The consumers were and are not informed that  
4 such puppies were and are made to appear healthy by such means, when in fact they are  
5 ill;

6 d. Their appointed veterinarians, who provide a “First Free Vet Exam” for  
7 puppies purchased from Defendants, knowingly hide the seriousness of the various  
8 medical conditions, which plague the puppies sold by Defendants.

9 e. They do not reimburse customers for their out-of-pocket veterinary  
10 expenses related to the puppies’ pre-existing medical conditions.

11 98. Plaintiff Kim Haba (“Haba”) purchased a Maltese/Yorkie mixed breed puppy (the  
12 “Maltese/Yorkie”) on December 17, 2009 at the Westside Pavilion Barkworks. Haba paid  
13 \$1,099 for the Maltese/Yorkie. Haba noticed that the Maltese/Yorkie could barely keep its eyes  
14 open and fell back whenever it attempted to stand. When she questioned a Barkwork’s employee  
15 about the dog’s health, this employee told Haba that the Maltese/Yorkie had already been taken  
16 to a veterinarian and just needed to be fed every couple of hours. When Haba asked if she could  
17 take the Maltese/Yorkie to a veterinarian, the clerk told Haba that she could buy the  
18 Maltese/Yorkie. After the purchase, Haba took the Maltese/Yorkie to a veterinarian, who  
19 immediately put the Maltese/Yorkie on IV fluids and antibiotics. The veterinary diagnosis for  
20 the Maltese/Yorkie was Bordetella, Corona, Canine Herpes Virus and Pneumonia. The  
21 Maltese/Yorkie died seven days later, on December 24, 2009, at the veterinary hospital, in  
22 Haba’s arms.

23 99. Haba spent \$1,460.84 in veterinary expenses on care for the Maltese/Yorkie.  
24 Although Defendants reimbursed Haba for all of her veterinary bills and for the purchase price of  
25 the Maltese/Yorkie, Haba suffered great emotional distress from spending hours at the veterinary  
26 clinic watching the dog suffer and eventually die.

27 100. At all times, Defendants’ in-store employees represented that all of their puppies,  
28 including the Maltese/Yorkie purchased by Plaintiff, were not sourced from puppy mills and  
were warranted to be healthy and illness-free. These representations, which concerned facts  
regarding the breeding, health and pedigree of the puppies, were false, deceptive, untrue,

1 misleading and made in contravention of law. In fact, Defendants’ puppies were and are bred at  
2 puppy mills, were and are frequently sick or have congenital defects, and were and are not  
3 illness-free and thus require constant and costly veterinary examinations and care as a result. At  
4 all relevant times, Defendant knew, or was negligent in not knowing, that the puppies were bred  
5 at puppy mills and were and are frequently sick or have hereditary/genetic defects, and are not  
6 disease and illness-free and thus require constant and costly veterinary examinations and care as  
7 a result. Defendant continues to sell puppies by making unlawful, false, deceptive, untrue,  
8 misleading statements in contravention of law.

9         101. Defendants knew, or reasonably should have known, that their puppies were and  
10 are from puppy mills and were and are often sick with congenital and contagious diseases,  
11 including, but not limited to Coccidia, Giardia, Hydrocephalus, Parvovirus, Distemper,  
12 Tapeworm, Demodectic or Sarcoptic Mange, Pneumonia, Hygroma, Hypoglycemia,  
13 life-threatening dehydration, ear mites, severe ear infections, eye infections, kennel cough and  
14 upper respiratory infections, flea and tick infestations, and other diseases. Defendants knew, or  
15 reasonably should have known that some of these puppies also had or have hereditary/genetic  
16 defects, including, but not limited to hip dysplasia, luxating patellas, and progressive retinal  
17 atrophy.

18         102. Defendants have engaged in unlawful, false and misleading advertising by  
19 misrepresenting the sourcing, breeding, health and express and implied warranties of the puppies  
20 Defendants offered and continue to offer for sale to the public. Defendants have also breached  
21 said express and implied warranties by their actions.

22         103. Each Defendant was and is a “pet dealer” within the statutory, common law and  
23 plain meaning of that term. As pet dealers, Defendants have intentionally and/or negligently  
24 unlawfully sold sick puppies and failed to provide an adequate information statement to  
25 purchasers in violation of the *Lockyer-Polanco-Farr Pet Protection Act*<sup>3</sup>.

26                 12. The Lockyer-Polanco-Farr Pet Protection Act provides in relevant part:

27 \_\_\_\_\_  
28 <sup>3</sup> CA Health and Safety Code, Sections 122125-122220

1  
2 **122140. Every pet dealer shall deliver to the purchaser of each dog and cat at the**  
3 **time of sale a written statement in a standardized form prescribed by the**  
4 **Department of Consumer Affairs containing the following information:**

5 \*\*\*

6 **(b) For puppies:**

7 **(1) The breeder's name and address, if known, or if not known, the source of**  
8 **the dog. If the person from whom the dog was obtained is a dealer licensed by the**  
9 **United States Department of Agriculture, the person's name, address, and federal**  
10 **dealer identification number.**

11 **(2) The date of the dog's birth, and the date the dealer received the dog. If**  
12 **the dog is not advertised or sold as purebred, registered, or registerable, the date of**  
13 **birth may be approximated if not known by the seller.**

14 **(3) The breed, sex, color, and identifying marks at the time of sale, if any. If**  
15 **the dog is from a United States Department of Agriculture licensed source, the**  
16 **individual identifying tag, tattoo, or collar number for that animal. If the breed is**  
17 **unknown or mixed, the record shall so indicate.**

18 **(4) If the dog is being sold as being capable of registration, the names and**  
19 **registration numbers of the sire and dam, and the litter number, if known.**

20 **(5) A record of inoculations and worming treatments administered, if any, to**  
21 **the dog as of the time of sale, including dates of administration and the type of**  
22 **vaccine or worming treatment.**

23 **(6) A record of any veterinarian treatment or medication received by the dog**  
24 **while in the possession of the pet dealer and either of the following:**

25 **(A) A statement, signed by the pet dealer at the time of sale,**  
26 **containing all of the following:**

27 **(i) The dog has no known disease or illness.**

28 **(ii) The dog has no known congenital or hereditary condition**  
that adversely affects the health of the dog at the time of the sale or that is likely to  
adversely affect the health of the dog in the future.

**(B) A record of any known disease, illness, and any congenital or**  
hereditary condition that adversely affects the health of the dog at the time of sale,  
or is likely to adversely affect the health of the dog in the future, along with a  
statement signed by a veterinarian  
licensed in the State of California that authorizes the sale of the dog, recommends  
necessary treatment, if any, and verifies that the disease, illness, or condition does  
not require hospitalization or nonelective surgical procedures, nor is it likely to  
require hospitalization or nonelective surgical procedures in the future. A  
veterinarian statement is, not required for intestinal or external parasites unless  
their presence makes the dog clinically ill or is likely to make the dog clinically ill.  
The statement shall be valid for seven days following examination of the dog by the  
veterinarian.

**(C) For the purpose of this article, "nonelective surgical procedure"**  
means a surgical procedure that is necessary to preserve or restore the health of the  
dog, to prevent the dog from experiencing pain or discomfort, or to correct a

1 **condition that would interfere with the dog's ability to walk, run, jump, or**  
2 **otherwise function in a normal manner.**

3 **(D) For the purposes of this article, "clinically ill" means an illness**  
4 **that is apparent to a veterinarian based on observation, examination, or testing of**  
5 **the dog, or upon a review of the medical records relating to the dog.**

6 **(E) A disclosure made pursuant to subdivision (b) shall be signed by**  
7 **both the pet dealer certifying the accuracy of the statement, and the purchaser of**  
8 **the dog acknowledging receipt of the statement. In addition, all medical**  
9 **information required to be disclosed pursuant to subdivision (b) shall be made**  
10 **orally to the purchaser.**

11 **(F) For purposes of this article, a disease, illness, or congenital or**  
12 **hereditary condition that adversely affects the health of a dog at the time of sale or**  
13 **is likely to adversely affect the health of the dog in the future shall be one that is**  
14 **apparent at the time of sale or that should have been known by the pet dealer from**  
15 **the history of veterinary treatment disclosed pursuant to this section.**

16 13. During the course of their campaign of deception and false representations,  
17 Defendants sold thousands of puppies and continue to sell puppies to date. All or almost  
18 all of the puppies were and are falsely represented as not coming from puppy mills and  
19 many were and are ill. All or almost all were sold by means of false and misleading  
20 statements as to origin, health and warranty, which statements induced consumers to  
21 purchase the puppies from Defendants. Plaintiff has suffered injury and continues to  
22 suffer injury as a result of Defendants' false representations as does the consuming  
23 public. Plaintiff also lost money in the form of unreimbursed veterinary care and  
24 expenses and continues to lose money as a result of Defendants' false representations  
25 and deceptive trade practices. Likewise, consumers throughout Southern California who  
26 bought puppies at Barkworks lost money and continue to lose money in the form of  
27 unreimbursed veterinary care and expenses and continue to lose money as a result of  
28 Defendants' false representations and deceptive trade practices.

14. The puppies offered for sale by Barkworks were and are extensively marketed and  
advertised and were and are extensively marketed and advertised through online media  
and in-store representations, which affirmatively emphasized and continue to emphasize  
that Defendants' puppies were not obtained from puppy mills, and were represented and  
warranted as healthy and illness-free. Such practices and representations were and are  
undertaken by Defendants in order to induce the consuming public to purchase their

1 puppies based upon the pretext that the puppies were not obtained from puppy mills and  
2 would be sold as healthy and illness-free. Defendants disseminated, or caused to be  
3 disseminated, these representations throughout California and continue to do so today.  
4 In reliance on Defendants’ marketing and advertising, the consuming public purchased,  
5 and continues to purchase, puppies from Defendants, and Defendants thereby profited,  
6 and continue to profit, as a result of their misrepresentations and deceptive trade  
7 practices.

8 15. Plaintiff purchased her puppy from Barkworks. Other consumers purchased their  
9 puppies either directly from Barkworks or received the puppies from consumers who  
10 purchased the puppies, based upon the false and misleading representations of  
11 Defendants as described herein.

12 **II. THE INVESTIGATION INTO BARKWORKS**

13 16. Barkworks, a chain of six pet stores in the Southern California vicinity, purported  
14 and purports to sell puppies from “reputable breeders” and puppies “who will be healthy  
15 and happy and who will bring you years of love and companionship.” Barkworks  
16 claimed and continues to claim that they offer “a complete medical history of each  
17 puppy available for sale” and that “keeping their puppies healthy is important” to them.  
18 Barkworks also claimed and continues to claim that their puppies are not from inhumane  
19 commercial breeding operations, also known as puppy mills. Barkworks also claims that  
20 their puppies are from “private breeders” or “home-bred” and “raised in families.”

21 17. Companion Animal Protection Society (“CAPS”) launched an undercover  
22 investigation of Barkworks and its suppliers and the kennels where the puppies offered  
23 for sale were bred. CAPS also reviewed inspection reports of the United States  
24 Department of Agriculture (“USDA”). The CAPS investigation shows that Barkworks  
25 does not sell puppies from “responsible breeders” at all, but, instead, sells puppies from  
26 inhumane commercial dog breeding factories (i.e. puppy mills) where puppies are often  
27 mistreated, neglected, suffering, caged for life, living in excrement and pools of urine,  
28 exposed to the elements and to toxic levels of ammonia, and confined in harsh

1 temperatures indefinitely without any socialization. Although the puppy mills are often  
2 USDA licensed commercial breeding operations, almost all such puppy mills are  
3 inhumane commercial facilities with multiple past and present violations of Animal  
4 Welfare Act (“AWA”) regulations. In addition, many undocumented violations of the  
5 AWA regulations existed and continue to exist at such puppy mills. All such puppy  
6 mills are inhumane and the breeding, nutrition, socialization, veterinary care and  
7 sanitation practices create and produce congenital and contagious illnesses in the  
8 puppies offered for sale by Barkworks. The conditions at puppy mills can cause serious  
9 injury and death to puppies. Moreover, evidence compiled by CAPS during  
10 investigations at more than 1,000 puppy mills, most of them USDA licensed, and  
11 evidence documented in a 2010 report by the Office of Inspector General for the USDA  
12 prove that USDA inspectors fail to cite AWA violations and when they do, they rarely  
13 return to see if the corrections have been made by the correct-by date. At all relevant  
14 times, Barkworks was and is aware of these practices and continues to source puppies  
15 originating in puppy mills because that is where Barkworks can obtain a steady supply  
16 of puppies at the lowest price. Barkworks deceived and continues to deceive consumers  
17 and its employees about the conditions of the commercial breeding operations (puppy  
18 mills) that supply the stores by claiming that Barkworks does not sell puppies from  
19 puppy mills. Given the choice, most consumers are averse to purchasing a puppy  
20 originating from a puppy mill because of a variety of reasons, including, but not limited  
21 to, health and disease concerns, concerns about socialization, developmental concerns of  
22 poor breeding socialization and nutrition, and humane concerns based upon not wishing  
23 to support the cruel and inhumane conditions of puppy mills directly or indirectly.

24 18. Barkworks’ claims that the puppies they sell are “healthy and happy” is untrue.  
25 Barkworks knowingly, and possibly negligently, deceives consumers about the health of  
26 the puppies they sell. The veterinary records of dozens of Barkworks puppies that were  
27 hospitalized after receipt from the commercial breeders or brokers and before sale to  
28 consumers show a pervasive and ongoing pattern of deception regarding the health of

1 the puppies sold at the stores. Many puppies for sale were, or are, clinically ill with  
2 medical conditions including, but not limited to Coccidia, Giardia, Hydrocephalus,  
3 Parvovirus, Distemper, Tapeworm, Demodectic or Sarcoptic Mange, Pneumonia,  
4 Hygroma, Hypoglycemia, life-threatening dehydration, ear mites, severe ear infections,  
5 eye infections, kennel cough and upper respiratory infections, flea and tick infestations,  
6 and other diseases. Some of these puppies also had or have hereditary/genetic defects,  
7 including, but not limited to hip dysplasia, luxating patellas, and progressive retinal  
8 atrophy. Barkworks and its employees knew or were negligent in not knowing that such  
9 congenital conditions and contagious diseases were not properly addressed, treated and  
10 cured, where possible, before the puppies were offered for sale to consumers. Some  
11 Barkworks puppies were so sick while being offered for sale that they died in their  
12 enclosures in the store (three in 2010 in just one location) while others died in veterinary  
13 hospitals and still others died soon after purchase. At least one dog is known to have  
14 been so ill when sold that a veterinarian determined it had to be euthanized and did so.

15 19. Barkworks offers a “First Free Vet Exam” by a Barkworks’ appointed  
16 veterinarian. This offer appears to be little more than a conspiracy between Barkworks  
17 and its veterinarians to deceive the customer for profit while pretending to offer a “free”  
18 gift to the buyer. In many cases, both the veterinarian and Barkworks, who have  
19 information concerning the breeding and sourcing of the puppy and its health records,  
20 already know that the puppies offered for sale by Barkworks will require multiple  
21 veterinary exams for chronic health conditions. Often, a very weak and sick puppy,  
22 visibly too ill to sell, not eating or drinking on its own, will be brought to one of several  
23 Barkworks’ appointed veterinary offices. If the puppy survives, the puppy will be put  
24 right back into the store enclosure for sale. The dog is then presented to consumers as a  
25 “happy” and “healthy” puppy. When the unsuspecting consumer brings the new pet to  
26 the veterinarian for the “free visit,” the veterinarian will not disclose to the puppy’s  
27 owner the medical record of the puppy or the ordeal that that *same* puppy just went  
28

1 through. The serious medical problems that linger are minimized by the veterinarian and  
2 typically referred to in layman's terms, for the unsuspecting consumer, as "a cold."

3 20. As part of the CAPS investigation into Barkworks, Carole Davis, the West Coast  
4 Director of CAPS went to a Barkworks store in 2010, posing as a consumer, on several  
5 occasions between 2008 and 2010 as part of a city-wide investigation of Los Angeles pet  
6 stores that CAPS believes are supplied by puppy mills.

7 21. On each occasion, Davis observed puppies at Barkworks who showed obvious  
8 signs of clinical illness and indicated the need for immediate veterinary care for  
9 symptoms including, but not limited to, listlessness; diarrhea; mucous in the eyes; green  
10 mucous coming out of the nose; visible ear infections with pungent, dark brown, tar-like  
11 discharge; coughing; labored breathing and lethargy; wobbliness; vomiting; and puppies  
12 eating their feces. The ill and infected puppies were placed in enclosures with other  
13 puppies, putting the others at risk of cross-contamination and infection.

14 22. When Davis mentioned the ill puppies to Barkworks employees, she was either  
15 ignored or told that the puppies were "just sleepy" or "fine." When Davis asked to play  
16 with the puppies, some were too weak to play. On one particular occasion in December  
17 2010, when Davis mentioned that there was a visibly ill Bulldog in need of immediate  
18 medical attention, a manager named Adam told Davis, "It's none of your business."

19 23. On each occasion, Davis asked Barkworks employees if they were certain that the  
20 puppies for sale were not from puppy mills. On each occasion, Davis was assured by  
21 Barkworks employees that the puppies came from "private, home breeders" or "private  
22 breeders," and that the puppies were "raised in homes." When Davis asked Barkworks  
23 employees how many breeding puppies the breeders owned, Davis was told "very few."  
24 When Davis asked Barkworks employees what happened to the breeding puppies when  
25 they could no longer breed puppies, Davis was told that they "are retired into homes" or  
26 "go back to their families."  
27  
28

1 24. Bryan Monell is a Senior Investigator with Last Chance for Animals (“LCA”). In  
2 2009 2010, Monell visited several commercial puppy breeders at locations in the  
3 Midwest from which Barkworks get their puppies.

4 25. Every location in the Midwest that Monell visited was a puppy mill. Monell  
5 observed dogs and puppies forced to stand on wire floors, placed in cages with several  
6 other dogs and puppies, unable to have any privacy or personal space. Monell typically  
7 observed a couple hundred puppies at a facility. Monell observed dogs and puppies,  
8 which were later sold to Barkworks, standing in a windswept muddy pens, exposed to  
9 the elements, with the only form of shelter being a blue tattered tarp. None of the  
10 facilities that Monell visited could reasonably be considered “responsible breeders,” as  
11 Barkworks claims and none of the puppies were raised in private homes.

12 26. Monell observed Barkworks employees using legally-allowed medications in  
13 inconsistent manners, which can be dangerous to puppies, and falsifying medical  
14 records.

15 27. LCA conducted an undercover investigation, which resulted in the following  
16 statements being obtained directly from two Barkworks employees:

- 17 ■ “The whole basis of this company is selling on emotions.”
- 18 ■ “Employees are given bonuses for selling the puppies above the listed price. The  
19 greater the rip-off, the greater the bonus.”
- 20 ■ “When the customer is reimbursed for a medical issue, that amount comes out of  
21 the employee’s paycheck.”
- 22 ■ “Puppies are fed adult dog food.”
- 23 ■ “50% of the puppies become sick.”
- 24 ■ “Shoddy medical records keeping – drugs not properly administered for the  
25 required length of time.”
- 26 ■ “Two very similar looking yellow labs in the same cage; one had medical issues  
27 but was not labeled so the employees had no idea which one is which.”

- 1 ■ “Employees do not tell customers of pre-existing conditions like umbilical
- 2 hernias. The customers may find out later after taking the puppies to their vet.”
- 3 ■ “Medical records are signed off on without actually medicating the animals.”
- 4 ■ “Management, other employees say, when a dog is getting sick, sell it quick so it
- 5 gets “better.”
- 6 ■ “Puppies with ‘URI’ (upper respiratory infection) exposed to the rest of the
- 7 puppies in the cage.”
- 8 ■ “Puppies are coming in with Giardia from the mills.”
- 9 ■ “Inadequate space for large puppies to properly move around – dogs like
- 10 Labrador Retrievers are confined to small cages until they are sold. They do not
- 11 get to walk around or exercise in any meaningful way except when they are put
- 12 up front in another holding pen.”
- 13 ■ “Cats/kittens are brought to the store and given away free by their owners. The
- 14 store then resells the cats for about \$200. There is a lack of a background check
- 15 on where these cats are originating from (unlicensed back yard breeders).”
- 16 ■ “The employees tell the prospective clients that the puppies do not come from
- 17 puppy mills despite air tight evidence to the contrary. We tell customers she’s a
- 18 world famous breeder and sells her puppies for \$6,000.”
- 19 ■ “Puppies arrive in cages full of feces and urine.”
- 20

### 21 **III. PARTIES**

22 28. Plaintiff Kim Haba is now, and at all times herein mentioned, has been a and  
23 resident of citizen of California, County of Los Angeles.

24 29. Plaintiff purchased the Maltese/Yorkie in the County of Los Angeles. In doing  
25 so, Plaintiff relied upon advertising and other promotional materials which were  
26 prepared and approved by Defendants and their agents and disseminated through  
27 national advertising media, containing the misrepresentations alleged herein and  
28

1 designed to promote that Defendants’ puppies were obtained from private breeders and  
2 not from puppy mills, and that the puppies were healthy and illness-free.

3 30. Defendant Chien Et Chat, Inc., doing business as “Barkworks Pet Stores” or  
4 simply “Barkworks,” is a California corporation with its principal place of business  
5 located in Mission Viejo in Orange County. Barkworks owns and operates six stores in  
6 California, including one at the Westside Pavilion shopping center in the County of Los  
7 Angeles.

8 31. Defendants Does 1-100 are the fictitious names of other defendants whose true  
9 names are unknown to Plaintiffs, and whose true capacities, whether as individuals,  
10 corporations partnerships, joint ventures and/or associations, are also unknown to  
11 Plaintiffs. In accordance with Code of Civil Procedure §474, when Plaintiffs ascertain  
12 such true names, they will amend this Complaint by inserting true names in the place of  
13 these fictitious names.

14 33. Plaintiff is informed and believe and thereon allege that whenever the named  
15 defendants are the subject of any charging allegations, Does 1-100 are also responsible  
16 in some manner for the alleged events. Consequently, the Doe defendants, and each of  
17 them, are deemed to also be the subject of Plaintiff’s charging allegations.

18 34. Plaintiff is informed and believe and thereon allege that Defendants, and each of  
19 them, were and are the knowing co-conspirators, agents, servants, employees, joint  
20 venturers, successors-in-interest, and/or alter egos of their co-defendants, and each was  
21 acting (i) within the course and scope of such conspiracy, agency, employment,  
22 successorship, and/or venture; or (ii) with the authority, authorization, and/or ratification  
23 of the co-defendants.

24 35. In committing the wrongful acts alleged herein, Defendants planned and  
25 participated in and furthered a common scheme by means of false, misleading, deceptive  
26 and fraudulent representations, and continue to do so, in order to induce members of the  
27 public to purchase their puppies. Defendants participated in the making of such  
28

1 representations in that each did disseminate, or cause to be disseminated, said  
2 misrepresentations.

3 36. Defendants, upon becoming involved with the advertising and sale of the puppies,  
4 knew or reasonably should have known that their puppies came from puppy mills, were  
5 not necessarily purebred, and were sick with disease, including, but not limited to  
6 Bordetella, Corona, Canine Herpes Virus and Pneumonia. Defendants affirmatively  
7 misrepresented the breeding and health of their puppies in order to convince the public  
8 to purchase the puppies, resulting in profits of millions of dollars to Defendants, all to  
9 the damage and detriment of the consuming public. Defendants knew or should have  
10 known the untruth of the affirmative misrepresentations they made regarding the  
11 breeding and health of the puppies they offered for sale to the public. Thus, in addition  
12 to the wrongful conduct herein alleged as giving rise to primary liability, Defendants  
13 further aided and abetted and knowingly assisted each other in breach of their respective  
14 duties and obligations as herein alleged.

15 37. Plaintiff is informed and believe, and thereon allege, that, at all times herein  
16 mentioned, the employees of Defendants, their subsidiaries and related entities, as well  
17 as the employees of those subsidiaries and related entities, were the agents, servants and  
18 employees of Defendants, and, at all times herein mentioned, each was acting within the  
19 purpose and scope of said agency and employment.

20 38. All allegations in this Complaint are based on information and belief and/or are  
21 likely to have evidentiary support after reasonable opportunity for further investigation  
22 and discovery except where such allegations are based upon documentary evidence in  
23 the file kept and maintained by CAPS or are based upon personal knowledge.

24 **IV. JURISDICTION AND VENUE**

25 39. This action arises under the laws of the State of California. The Court has subject  
26 matter jurisdiction over these claims pursuant to Code of Civil Procedure §§ 85, 86 and 88.

27 40. Venue for this action is determined to be in Los Angeles County by virtue of the  
28 fact that the Defendants conducted and continue to conduct business within this County. The

1 nexus of the misconduct as set forth in this Complaint occurred, in part, within this County and  
2 Plaintiff(s) was/were damaged by the Defendants within this County.

3 **V. FACTUAL ALLEGATIONS**

4 41. Defendants advertise and sell puppies, which Defendants purportedly obtain from  
5 private breeders and not from puppy mills.

6 42. Defendants, at all times relevant, promoted, marketed, advertised and labeled the  
7 puppies as healthy, illness-free, and not obtained from a puppy mill.

8 43. Plaintiff Haba was a purchaser of a Maltese/Yorkie from Defendants. In  
9 purchasing the Maltese/Yorkie, which was later diagnosed with illnesses, Plaintiff Haba  
10 was deprived of what Defendants promised – a non-puppy-mill, healthy, and illness-free  
11 puppy.

12 44. Defendants knew or should have known that the Puppies were from puppy mills  
13 and were sick with disease and illnesses, including, but not limited to Coccidia, Giardia,  
14 Hydrocephalus, Parvovirus, Distemper, Tapeworm, Demodectic or Sarcoptic Mange,  
15 Pneumonia, Hygroma, Hypoglycemia, life-threatening dehydration, ear mites, severe ear  
16 infections, eye infections, kennel cough and upper respiratory infections, flea and tick  
17 infestations, and other diseases. Defendants knew or should have known that some of  
18 these puppies also had or have hereditary/genetic defects, including, but not limited to  
19 hip dysplasia, luxating patellas, and progressive retinal atrophy.

20 **FIRST CAUSE OF ACTION**

21 **Unlawful, Unfair and Deceptive Business Practices *in Violation of***  
22 **Cal. Bus. & Prof. Code §17200 et seq. (*Unfair Competition Law*)**

23 (Against All Defendants)

24 **45. *Plaintiff repeats and realleges the allegations contained in each***  
25 ***preceding paragraph above as if fully set forth herein.***

26 **46. *This cause of action is brought on behalf of Plaintiff and members of***  
27 ***the general public pursuant to Cal. Bus. & Prof. Code §17200, the Unfair***  
28 ***Competition Law (the “UCL”), which states, in pertinent part, that “unfair***

1            ***competition shall mean and include any unlawful, unfair or fraudulent***  
2            ***business act or practice and unfair, deceptive, untrue or misleading***  
3            ***advertising and any act prohibited by Chapter I (commencing with Section***  
4            ***17500) as Part 3 of Division 7 of the Business and Professions Code.”***

5            47. Plaintiff is informed and believes, and, based on such information and belief,  
6            alleges that Defendants committed unfair business acts and/or practices. The utility, if  
7            any, of Defendants’ misleading and/or deceptive advertising, promotion or marketing of  
8            the puppies for the purpose of selling its misrepresented puppies is negligible when  
9            weighed against the extent of harm to plaintiff and the general public. The harmful  
10           impact upon members of the general public who were, and are, misled and deceived  
11           with respect to Defendants’ labeling, advertising, promotion or marketing of the puppies  
12           as non-puppy mill, healthy and illness-free when, in fact, they are not, far outweighs any  
13           reasons or justifications by Defendants in using that characterization of the Puppies in  
14           their labeling, advertising, promotion or marketing of the puppies. Defendants had an  
15           improper motive (as alleged in this Complaint) in labeling, advertising, promotion or  
16           marketing the Puppies as non-puppy mill, healthy and illness-free when, in fact, they are  
17           not. The utilization of unlawful, unfair and/or deceptive practices was and is under the  
18           sole control of Defendants, and was fraudulently and deceptively hidden from members  
19           of the general public in its labeling, advertising, promotion or marketing. As purchasers  
20           and consumers of Defendants’ Puppies and as members of the general public in  
21           California who have been injured by Defendants’ unlawful, unfair and/or deceptive  
22           practices, Plaintiffs are entitled to and do bring this action seeking all available remedies  
23           under the UCL, including declaratory and injunctive relief and restitution, as well as  
24           attorneys’ fees and costs.

25           48. Defendants committed deceptive business acts and/or practices by making written  
26           and/or oral material misrepresentations (and material omissions) that have a capacity,  
27           tendency, or likelihood to deceive or confuse reasonable consumers by representing that  
28           the Puppies are non-puppy mill, healthy and illness-free when, in fact, they are not.

1 Defendants have purchased puppies from the following breeders, each of whom operate  
2 commercial facilities which mass produce puppies:

- 3 ■ Cricks Kennels (owned and operated by Barb Crick), 46785 828th Road, Burwell,  
4 Nebraska 68823 (USDA license No. 47-A-0426; Crick has been under  
5 investigation by USDA for more than one year; she had five USDA violations,  
6 including one repeat violation, on her April 2012 inspection report);
- 7 ■ Larry and Pat Peters (no kennel name), 44372 West End Loop, Taylor, Nebraska  
8 68879 (USDA license No. 47A-0444; they had nine violations, including two  
9 report violations on their August 2012 inspection report);
- 10 ■ Amos Slabaugh (no kennel name), 11551 Bergers Ridge Court, Prairie Home,  
11 Missouri 65058 (USDA license No. 43-A-3971; he had three direct, meaning very  
12 serious violations, on his March 2011 inspection report; he cancelled his license  
13 in July 2011); and
- 14 ■ Prairie Creek Kennels (owned and operated by Phillip Van Bibber), 4210 West  
15 Chapman Road, Grand Island, Nebraska 68803 (USDA license No. 47-A-0562;  
16 had three violations on his July 2010 inspection report; he cancelled his license in  
17 March 2011).

18 49. Plaintiff and members of the general public were, and are likely to be, deceived  
19 by Defendants' scheme to misrepresent the breeding and health of Defendants' puppies.

20 50. Defendants committed unlawful business acts and/or practices by acting in  
21 violation of federal and state statutory and regulatory laws, rules and codes, including, but not  
22 limited to, Cal. Health & Safety Code §§122155 and 122350 et seq. Additionally, the sources  
23 from which Defendants obtained puppies have acted in violation of provisions of the Animal  
24 Welfare Act (7 U.S.C. § 2143).

25 51. Defendants' acts, misrepresentations, concealment of material facts and failures to  
26 disclose (as alleged in this Complaint) constitute unlawful, unfair and/or deceptive business  
27 practices within the meaning of the UCL.  
28

1           52. Plaintiff is informed and believes, and thereon alleges, that Defendants continue  
2 these unlawful, unfair and/or deceptive business practices alleged herein.

3           53. Pursuant to *Cal. Bus. & Prof. Code §§ 17203 and 17204*, Plaintiff, on  
4 *behalf of themselves and members of the general public, seek an order of this Court:*  
5 *(a) enjoining Defendants from continuing to engage, use, or employ any unlawful,*  
6 *unfair and/or deceptive business act or practice and unfair, deceptive, untrue or*  
7 *misleading labeling, advertising, promotion or marketing and any act prohibited by*  
8 *Chapter I (commencing with Section 17500) as Part 3 of Division 7 of the Business*  
9 *and Professions Code; and (b) Restoring all monies that may have been acquired by*  
10 *Defendants as a result of such unlawful, unfair and/or deceptive business acts or*  
11 *practices.*

12           54. Plaintiff and members of the general public may be irreparably harmed and/or  
13 denied an effective and complete remedy if such an order is not granted. The unlawful, unfair  
14 and/or deceptive business acts and practices of Defendants, as described above, present a serious  
15 threat to Plaintiff and members of the general public. Pecuniary compensation alone would not  
16 afford adequate relief for these unlawful practices, and in any event it would be extremely  
17 difficult to ascertain the amount of compensation which would afford adequate relief. Upon  
18 information and belief, the defendants continue to commit the acts, as alleged, and these acts  
19 continue to deceive consumers and members of the general public by such means as described  
20 herein, and continue to cause damages to consumers and members of the general public who  
21 purchase and will purchase puppies from defendants based upon such representations and other  
22 acts. As a result, injunctive relief is sought in order to require defendants to cease and desist from  
23 making affirmative representations which act to deceive consumers and members of the general  
24 public concerning the sourcing and health of the puppies and the post purchase responsibilities of  
25 the defendants.

26           55. As a result of Defendants' violation of the UCL, Plaintiff was harmed by  
27 spending money on a puppy that originated in a puppy mill, was not healthy, and was not  
28 illness-free.



1 *cause to be so made or disseminated any such statement as part of a plan or scheme*  
2 *with the intent not to sell that personal property... as so advertised.”*

3 60. Defendants have disseminated, or caused to be disseminated, false and  
4 misleading statements and representations (oral and written) in labeling,  
5 advertisements, promotion and/or marketing of the puppies. These include labeling,  
6 advertising, promoting and marketing the puppies as not originating from puppy mills  
7 and being healthy and illness-free when, in fact, they are not.

8 61. Plaintiff is informed and believes, and thereon alleges, that Defendants continue  
9 to disseminate, or cause to be disseminated, such false and misleading statements alleged herein.

10 62. Defendants are disseminating representations and advertising concerning the  
11 Puppies which, by its very nature, is unfair, deceptive, untrue and/or misleading within the  
12 meaning of **Cal. Bus. & Prof. Code §17500 et seq.** *Such advertisements are likely to*  
13 *deceive, and continue to deceive, the consuming public.*

14 63. In making and disseminating the statements alleged herein, Defendants **knew, or,**  
15 **by the exercise of reasonable care should have known, or, were negligent in not knowing,**  
16 **that their statements were untrue and/or misleading, and thereby acted in violation of**  
17 **Cal. Bus. & Prof. Code §17500 et seq.**

18 64. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has  
19 suffered substantial monetary and non-monetary damage. Pecuniary compensation would not  
20 afford adequate relief for this wrongful conduct, and in any event it would be extremely difficult  
21 to ascertain the amount of compensation which would afford adequate relief. Upon information  
22 and belief, the defendants continue to commit the acts, as alleged, and these acts continue to  
23 deceive consumers and members of the general public by such means as described herein, and  
24 continue to cause damages to consumers and members of the general public who purchase and  
25 will purchase puppies from defendants based upon such representations and other acts. As a  
26 result, injunctive relief is sought in order to require defendants to cease and desist from making  
27 affirmative representations which act to deceive consumers and members of the general public

28



1 general public, including Plaintiff, was true and correct, including the information contained in  
2 Defendants' labeling, advertisements, promotion and/or marketing.

3 71. At the time Defendants made the misrepresentations herein alleged, Defendants  
4 had no reasonable grounds for believing the representations to be true, thereby breaching their  
5 duty owed to Plaintiffs and other members of the general public.

6 72. Plaintiff and other members of the general public saw, believed, and relied on  
7 Defendants' labeling and advertising representations and, in reliance on them, purchased  
8 Defendants' puppies.

9 73. The reliance by Plaintiff and other members of the general public was reasonable  
10 and justifiable in that Defendants had been in business for many years and appeared to be  
11 running a reputable business. Plaintiff and other members of the general public would not have  
12 purchased Defendants' puppies had they known the true facts regarding them.

13 74. As a proximate result of Defendants' negligent misrepresentations, Plaintiff and  
14 other members of the general public were induced to purchase Defendants' puppies, spending an  
15 amount to be determined at trial on the puppies and receiving puppies they otherwise would not  
16 have purchased had they known the true facts regarding them. Pursuant to Cal. Civil Code  
17 §3287(a), Plaintiff is further entitled to pre-judgment interest as a direct and proximate result of  
18 Defendants' wrongful conduct. The amount of damages suffered as a result is a sum certain and  
19 capable of calculation, and Plaintiff is entitled to interest in an amount according to proof.  
20 Consumers and members of the general public who purchased puppies based upon the  
21 misrepresentations by defendants are also further entitled to pre-judgment interest in a  
22 quantitative amount to be determined at trial of this action.

23  
24 **FOURTH CAUSE OF ACTION**

25 **Fraud – Intentional Misrepresentation**

26 (Against All Defendants)

27 75. ***Plaintiffs repeats and realleges the allegations contained in each***  
28 ***preceding paragraph above as if fully set forth herein.***

1           76.     Beginning at an exact date unknown to Plaintiff, but at least since three years  
2 prior to the filing date of this action, Defendants represented to the general public, including  
3 Plaintiff, by means of labeling, advertisements, promotion and/or marketing, that Defendants'  
4 puppies are non-puppy mill, healthy and illness-free when, in fact, they are not.

5           77.     Defendants' representations were untrue as set forth above.

6           78.     At the time Defendants made the misrepresentations herein alleged, Defendants  
7 knew that the representations were false.

8           79.     Defendants made the misrepresentations herein alleged with the intention of  
9 inducing Plaintiffs and other members of the general public to purchase Defendants' puppies.

10          80.     Plaintiff and other members of the general public saw, believed, and relied on  
11 Defendants' labeling and advertising representations and, in reliance on them, purchased  
12 Defendants' puppies.

13          81.     The reliance by Plaintiff and other members of the general public was reasonable  
14 and justifiable in that Defendants had been in business for many years and appeared to be  
15 running a reputable business. Plaintiff and other members of the general public would not have  
16 purchased Defendants' Puppies had they known the true facts regarding them.

17          82.     Defendants made these misrepresentations with the intention of depriving  
18 Plaintiff and other members of the general public of property or otherwise causing injury, and  
19 Defendants were guilty of fraud.

20          83.     As a proximate result of Defendants' intentional misrepresentations, Plaintiff and  
21 other members of the general public were induced to purchase Defendants' puppies, spending an  
22 amount to be determined at trial on the puppies and receiving puppies they otherwise would not  
23 have purchased had they known the true facts regarding them.

24          84.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew that  
25 the puppies were bred in puppy mills and were ill, and that Defendants intended that customers  
26 and the unknowing public should rely on their representations as set forth herein and their  
27 suppression of facts regarding Defendants' puppies. Plaintiff and other members of the general  
28 public, in purchasing Defendants' puppies as herein alleged, did reasonably and justifiably rely

1 on Defendants' misrepresentations, all to their damage as hereinabove alleged. In doing these  
2 things, Defendants were guilty of malice, oppression and fraud, and Plaintiffs are, therefore,  
3 entitled to recover punitive damages.

4 **FIFTH CAUSE OF ACTION**

5 **Fraud – Concealment**

6 (Against All Defendants)

7 **85. Plaintiff repeats and realleges the allegations contained in each**  
8 **preceding paragraph above as if fully set forth herein.**

9 86. Defendants suppressed the material facts regarding the puppies' origination from  
10 puppy mills and the puppies' ill health.

11 87. Defendants were bound to disclose the material facts regarding the puppies'  
12 breeding history and health truthfully, but did not.

13 88. Defendants concealed these material facts when they each knew the true and  
14 correct facts regarding the puppies.

15 89. The concealment of the true facts from Plaintiff was done with the intention of  
16 inducing Plaintiff and other members of the general public to purchase Defendants' Puppies.

17 90. The reliance by Plaintiff and other members of the general public was reasonable  
18 and justifiable in that Defendants had been in business for many years and appeared to be  
19 running a reputable business. Plaintiff and other members of the general public would not have  
20 purchased Defendants' Puppies had they known the true facts regarding them.

21 91. Defendants concealed these material facts with the intention of depriving Plaintiff  
22 and other members of the general public of property or otherwise causing injury, and Defendants  
23 were guilty of fraud.

24 92. As a direct and proximate result of the fraud and deceit alleged, Plaintiff and other  
25 members of the general public were induced into purchasing puppies from Defendant and have  
26 suffered damages in an amount to be determined at trial in that, among other things, they have  
27 been deprived of the benefit of their bargain in that they were deceived into buying unhealthy,  
28 puppy-mill puppies when plaintiff and other members of the general public thought they were

1 buying healthy puppies not originating in a puppy mill and without the attendant health and other  
2 issues of puppy mill puppies.

3 93. Plaintiff is informed and believes, and thereon alleges, that Defendants knew that  
4 the puppies originated from puppy mills and were ill, and that Defendants intended that  
5 customers and the unknowing public should rely on their representations as set forth herein and  
6 their suppression of facts regarding Defendants' puppies. Plaintiff and other members of the  
7 general public, in purchasing Defendants' puppies as herein alleged, did reasonably and  
8 justifiably rely on Defendants' misrepresentations, all to their damage as hereinabove alleged. In  
9 doing these things, Defendants were guilty of malice, oppression and fraud, and Plaintiff and  
10 other members of the general public are, therefore, entitled to recover punitive damages.

11 **SIXTH CAUSE OF ACTION**

12 **Violation of Cal. Health & Safety Code §122125 et seq.**

13 **(Lockyer-Polanco-Farr Pet Protection Act)**

14 (Against All Defendants)

15 94. ***Plaintiff repeats and realleges the allegations contained in each***  
16 ***preceding paragraph above as if fully set forth herein.***

17 95. Defendants each satisfy the requirements to be classified under "pet dealer" (as  
18 defined by Cal. Health & Safety Code §122125(b)) because they are a retail operation(s)  
19 engaged in the business of selling puppies.

20 96. By virtue of their selling of puppies, Defendants are required to possess a permit  
21 or permits pursuant to Section 6066 of the Revenue and Taxation Code.

22 97. Plaintiff is a "purchaser" (as defined by Cal. Health & Safety Code §122125(c))  
23 because Plaintiff purchased a Puppy from Defendants without the intent to resell the Puppies.  
24 Each member of the general public who purchased a puppy is also a "purchaser" within Cal.  
25 Health & Safety Code §122125(c).

26 98. As to each member of the general public whose puppies have not died,  
27 California-licensed veterinarians determined, and stated in writing, that the Puppies purchased by  
28 these members of the general public were sick within 15 days after the Plaintiffs took physical

1 possession of the puppy after sale by Defendants. Alternatively, the puppies so purchased had a  
2 congenital or hereditary condition that was discovered by a California-licensed veterinarian  
3 within 1 year of physical possession.

4 99. As to the Plaintiff and each member of the general public whose Puppies have  
5 died, in certain cases, California-licensed veterinarians determined, and stated in writing, that the  
6 Puppies purchased by these members of the general public died due to an illness or disease that  
7 existed within 15 days after the member of the general public took physical possession of the  
8 puppies after sale by Defendants. Alternatively, the puppies died due to a congenital or  
9 hereditary condition that was discovered by a California-licensed veterinarian within 1 year of  
10 physical possession.

11 100. The puppies became ill due to illnesses that existed in the puppies at the time of or  
12 before the delivery of the puppies to Plaintiff and members of the general public.

13 101. Plaintiff notified Defendants of the puppy's illnesses. Many members of the  
14 general public have also notified Defendants.

15 102. Pursuant to Cal. Health & Safety Code §122160(a), members of the general  
16 public whose puppies have not died are entitled to reimbursement for reasonable veterinary fees  
17 in diagnosing and treating the puppies in amounts not to exceed more than 150% of the original  
18 purchase price plus sales tax.

19 103. Pursuant to Cal. Health & Safety Code §122160(b), Plaintiff and members of the  
20 general public whose puppies have died are entitled to a refund of the purchase price of the  
21 puppies and reimbursement for reasonable veterinary fees in diagnosing and treating the Puppies  
22 in amounts not to exceed the original purchase price plus sales tax.

23 **SEVENTH CAUSE OF ACTION**

24 **Breach of Express Warranty**

25 (Against All Defendants)

26 **104. Plaintiff repeats and realleges the allegations contained in each**  
27 ***preceding paragraph above as if fully set forth herein.***

1           105. Plaintiff is informed and believes, and thereon alleges, that Defendants made  
2 express warranties to Plaintiff and member of the general public, including, but not limited to,  
3 that each puppy comes with an “Official Health Guarantee, ”; that Defendants did not purchase  
4 the puppies from puppy mills; that Defendants did not knowingly sell the puppies with health  
5 issues without full disclosure; and that the puppies were checked by two separate licensed  
6 veterinarians prior to being available for sale, as well as ongoing weekly wellness checks by a  
7 licensed veterinarian.

8           106. Plaintiff is informed and believes, and thereon alleges, that the Purchase  
9 Agreement provided by Defendants with the purchase of each puppy does not contain any  
10 section entitled “Official Health Guarantee.”

11           107. Plaintiff is informed and believes, and thereon alleges, that the Purchase  
12 Agreement provided by Defendants with the purchase of each Puppy contains an article entitled  
13 “Pet Dealer Certification”, signed and dated by an employee of Defendants, which states: “(1)  
14 The dog has no known disease or illness [...] (2) The dog has no known congenital or hereditary  
15 condition that adversely affects the health of the dog at the time of the sale or this is likely to  
16 adversely affect the health of the dog in the future.”

17           108. As stated hereinabove, Defendants’ puppies are not healthy, are not illness-free,  
18 and were purchased from puppy mills.

19           109. As stated hereinabove, Defendants did not fully disclose the facts regarding the  
20 puppies’ breeding history and health when they each knew the true and correct facts regarding  
21 the puppies to Plaintiff and members of the general public who bought puppies from Defendant.

22           110. As stated hereinabove, Defendants did not have the puppies “checked” by  
23 veterinarians as expressly warranted since the veterinarians performing these checks were  
24 already aware of the puppies’ illnesses, but minimized their seriousness to Plaintiff and members  
25 of the general public.

26           111. The failure of Defendants’ puppies to conform as expressly warranted by  
27 Defendants has caused plaintiff and members of the general public damages, including, but not  
28 limited to, the purchase price and medical expenses, as herein described.



1 **NINTH CAUSE OF ACTION**

2 **Unjust Enrichment**

3 (Against All Defendants)

4 **120. Plaintiff repeats and realleges the allegations contained in each**  
5 **preceding paragraph above as if fully set forth herein.**

6 121. Defendants marketed and sold the ill, unhealthy, puppy-mill puppies as being  
7 non-puppy mill, healthy and illness-free.

8 122. Plaintiff and other members of the general public paid Defendants for the puppies  
9 believing, based on Defendants' marketing representations, that the puppies were non-puppy  
10 mill, healthy and illness-free.

11 123. Defendants accepted payment by Plaintiff and other members of the general  
12 public for the purchase of the ill, unhealthy, puppy-mill Puppies.

13 124. It would be inequitable for Defendants to retain the money received from these  
14 transactions in light of the fact that Plaintiff and other members of the general public did not  
15 receive the benefit that was marketed to them.

16 125. Plaintiff and other members of the general public are entitled to restitution of their  
17 purchase money, disgorgement of Defendants' profits accrued from its unlawful practices, and  
18 attorneys' fees and costs.

19 **TENTH CAUSE OF ACTION**

20 Violation of Cal. Civil Code §1750 et seq.

21 **(Consumer Legal Remedies Act)**

22 (Against All Defendants)

23 126. Plaintiff repeats *and realleges the allegations contained in each preceding*  
24 *paragraph above as if fully set forth herein.*

25 127. The acts and practices described above were undertaken by Defendants, which are  
26 each a "person" (*as defined by Cal. Civil Code §1761(c)*), *in connection with the sale of*  
27 *the puppies, which are "goods" (as defined by Cal. Civil Code §1761(a)), to plaintiff*  
28 *and other members of the general public who are each a "consumer" (as defined by Cal.*

1 **Civil Code §1761(d)). The purchase by Plaintiffs and** other members of the general public  
2 of the Puppies from Defendants were each a “transaction” **(as defined by Cal. Civil Code**  
3 **§1761(e)).**

4 128. This cause of action is brought on behalf of Plaintiff and members of the general  
5 public pursuant to the Consumer Legal Remedies Act (“CLRA”), which **states, in pertinent**  
6 **part, that “[t]he** following unfair methods of competition and unfair or deceptive acts or  
7 practices undertaken by any person in a transaction intended to result or which results in the sale  
8 or lease of goods or services to any consumer are unlawful: ... (5) [r]epresenting that goods...  
9 have... characteristics... which they do not have; ... (7) [r]epresenting that goods... are of a  
10 particular standard, quality or grade... if they are of another; ... (9) [a]dvertising goods... with  
11 intent not to sell them as advertised; ... (16) [r]epresenting that the subject of a transaction has  
12 been supplied in accordance with a previous representation when it has not...” **(Cal. Civil**  
13 **Code §1770(a)).**

14 129. Defendants’ acts and practices, as alleged in detail above, violated, and continue  
15 to violate, **the provisions of Cal. Civil Code §1770(a) set forth above in that Defendants**  
16 **represented to the general public, including Plaintiff, by means of labeling,**  
17 **advertisements, promotion and/or marketing, that the puppies were non-puppy mill,**  
18 **healthy and illness-free when, in fact, they were not.**

19 130. Plaintiff, **on behalf of herself** and other members of the general public, **seeks**  
20 **and is entitled to equitable relief in the form of an order: (a) enjoining Defendants**  
21 **from continuing to engage in the deceptive business practices described above; (b)**  
22 **requiring Defendants to make full restitution of all money wrongfully obtained as a**  
23 **result of the conduct described above; (c) requiring Defendants to disgorge all**  
24 **ill-gotten gains flowing from the conduct described above; and (d) enjoining**  
25 **Defendants from such deceptive business practices in the future.**

26 131. Pursuant to **Cal. Civil Code §1782, Plaintiff notifies Defendants in writing**  
27 **of the particular CLRA violations (the “Notice”) and are demanding, among other**  
28 **things, that Defendants cease marketing the** ill, unhealthy, puppy-mill puppies as set forth

1 in detail above, and that Defendants provide restitution to all consumers who purchased the  
2 puppies. Plaintiff is sending the Notice by means of certified mail, return receipt requested, to  
3 Defendants at their principal place of business concurrent with the service of this Complaint. If  
4 Defendant fails to respond to Plaintiffs' demand within thirty days of receipt of the Notice,  
5 Plaintiff will amend this Complaint to request statutory damages, actual damages, plus punitive  
6 damages, interest and attorneys' fees. Regardless of such an amendment to seek damages,  
7 however, Plaintiff seeks and is entitled to, pursuant to Cal. Civil Code §1780(a)(2), ***an order***  
8 ***as set forth herein enjoining the above-described wrongful acts and practices, plus***  
9 ***costs and attorneys' fees (pursuant to Cal. Civil Code §1780(e)) and any other relief***  
10 ***that the Court deems proper.***

11 **ELEVENTH CAUSE OF ACTION**

12 Breach of Implied Covenant of Good Faith and Fair Dealing

13 (Against All Defendants)

14 132. Plaintiff repeats ***and realleges the allegations contained in each preceding***  
15 ***paragraph above as if fully set forth herein.***

16 133. A contract existed between Defendants ***and Plaintiff, and between***  
17 ***Defendants and each*** member of the general public who purchased a puppy from Defendants.  
18 ***Inherent in a contractual relationship is a covenant of good faith and fair dealing,***  
19 ***which implies, inter alia, (a) each party in the relationship must act with good faith***  
20 ***toward the other concerning all matters related to the transaction; (b) each party in***  
21 ***the relationship must act with fairness toward the other concerning all matters***  
22 ***related to the transaction; (c) neither party would force any action of unfairness***  
23 ***preventing the other from obtaining the benefits of the transaction; (d) Defendants***  
24 ***would comply with their own responsibilities, rules, policies and procedures in***  
25 ***dealing with Plaintiff and each member of the general public who bought a puppy***  
26 ***from Defendants; (e) Defendants would not change or modify the terms of the***  
27 ***contract with Plaintiff and each member of the general public who bought a puppy***  
28 ***from Defendants without a fair and honest reason; (f) Defendants would not deal***

1 *with Plaintiff and each member of the general public who bought a puppy from*  
2 *Defendants in a fraudulent or dishonest manner; and (g) Defendants would show the*  
3 *interests of Plaintiff, and the interests of each member of the general public who*  
4 *bought a puppy from Defendants, as much consideration as they do their own*  
5 *interests.*

6 Defendants' sales to Plaintiff *and each member of the general public who bought a puppy*  
7 *from Defendants of a puppy born and raised in a puppy mill breached this covenant*  
8 *in that, inter alia, (a) through (g), and in other ways set forth herein.*

9 As a direct and proximate cause of Defendants' breaches, Plaintiff *and each member of the*  
10 *general public who bought a puppy from Defendants have and continue to suffer*  
11 *actual damages, including but not limited to veterinary bills, emotional distress.*

12 **TWELFTH CAUSE OF ACTION**

13 Intentional Infliction of Emotional Distress

14 (Against All Defendants)

15 134. Plaintiffs repeats and realleges the allegations contained in each preceding  
16 paragraph above as if fully set forth herein.

17 135. Beginning at an exact date unknown to Plaintiffs, but at least since three years  
18 prior to the filing date of this action, Defendants represented to the general public, including  
19 Plaintiff, by means of labeling, advertisements, promotion and/or marketing, that Defendants'  
20 puppies are non-puppy mill, healthy and illness-free when, in fact, they are not.  
21

22 136. Defendants' representations were untrue as set forth above.  
23

24 137. At the time Defendants made the misrepresentations herein alleged, Defendants  
25 knew that the representations were false.  
26

27 138. Defendants made the misrepresentations herein alleged with the intention of  
28 inducing Plaintiffs and other members of the general public to purchase Defendants' puppies.

1           139. Plaintiff and other members of the general public saw, believed, and relied on  
2 Defendants' labeling and advertising representations, implied and claimed expertise as concerns  
3 puppies, the representations of the Defendant and their agents and employees that the Defendant  
4 Barkworks stores sold healthy puppies free from illness and congenital defects and diseases,  
5 and/or that any illnesses the puppies for sale had or might have were not serious or  
6 life-threatening and would be promptly by Defendants' veterinarians and that puppies would  
7 recover and enjoy a healthy and normal quality of life and lifespan for such puppies (and later as  
8 dogs).  
9

10  
11           140. Defendants made these misrepresentations concerning the sourcing and health  
12 issues of the puppies with the intention of depriving Plaintiff and other members of the general  
13 public of property or otherwise causing financial and emotional injury, in order to make sales to  
14 Plaintiff and other members of the general public, and thereby obtain their money, at all costs.  
15

16           141. Plaintiff is informed and believes, and thereon alleges, that Defendants knew that  
17 the puppies were bred in puppy mills and were ill, and that Defendants intended that customers  
18 and the unknowing public should rely on their representations as set forth herein and their  
19 suppression of facts regarding Defendants' puppies. Plaintiff and other members of the general  
20 public, in purchasing Defendants' puppies as herein alleged, did reasonably and justifiably rely  
21 on Defendants' misrepresentations, all to their damage as hereinabove alleged. In doing these  
22 things, Defendants were guilty of intentional misrepresentation, and Plaintiff and other members  
23 of the general public are, therefore, entitled to recover damages.  
24

25  
26           142. The reliance by Plaintiff and other members of the general public was reasonable  
27 and justifiable in that Defendants had been in business for many years and appeared to be  
28 running a reputable business.

1           143. Plaintiff and other members of the general public would not have purchased  
2 Defendants' Puppies had they known the true facts regarding their sourcing in Puppy Mills and  
3 health issues because of emotional and financial concerns and, in many cases, a refusal to  
4 support the existence of Puppy Mills by means of purchasing dogs sources at Puppy Mills.  
5

6           144. Plaintiff and other members of the general public relied upon the Defendants'  
7 representations as to the sourcing and health of the puppies prior to forming emotional  
8 attachments and bonds to the puppies and purchasing them from Defendants. Plaintiff and other  
9 members of the general public would not have formed or pursued these emotional attachments  
10 and bonds by purchasing the puppies from Defendants had Plaintiff and other members of the  
11 general public known the true sourcing of the puppies and the health issues of the puppies.  
12

13           145. Defendants knew or were so reckless and/or grossly negligent that they should  
14 have reasonably known that that their sales of puppies to Plaintiff and other member of the  
15 general public were predicated upon the immediate emotional attachment of human purchaser to  
16 puppy that forms when a prospective purchaser sees, holds, cuddles, plays with and interacts  
17 with a puppy for sale. Defendants used this emotional attachment in its marketing, sales talk,  
18 warranties and other representations to Plaintiff and other member of the general public and  
19 knew that these emotional attachments were the basis of Defendant's sales of puppies.  
20  
21

22           146. Defendants knew or were so reckless and/or grossly negligent that they should  
23 have reasonably known that plaintiffs would become mentally and emotionally upset,  
24 disappointed, sick, and traumatized if they knew the source of the puppies as originating in  
25 Puppy Mills or knew the extent of the puppies issues, or if the puppies were or became sick or  
26 dies after sale by the Defendants.  
27  
28

1           147. The express intent and object of the contracts between Defendants, on one hand,  
2 and Plaintiff Haba and other members of the general public, on the other, was the mental and  
3 emotional well-being of Plaintiff Haba and other members of the general public who bought  
4 puppies based upon emotional attachments and bonds with the puppies and based upon the  
5 representations, as alleged, made by Defendants.  
6

7           148. Defendant's acts in selling sick puppies and/or omissions in failing to truthfully  
8 disclose the source of the puppies as bred in Puppy Mills and/or the serious health issues of the  
9 puppies offered for sale, constituting breaches of Defendants duty of good faith and fair dealing,  
10 and other such duties under California statutory and common law.  
11

12           149. Defendant's acts in selling sick puppies and/or omissions in failing to truthfully  
13 disclose the source of the puppies as bred in Puppy Mills and/or the serious health issues of the  
14 puppies offered for sale, constituting breaches of contract by Defendants by means of  
15 Defendants' violation of their duty of good faith and fair dealing, and other such duties under  
16 California statutory and common law, all of which constitute breach of contract.  
17  
18

19           150. In reliance on the representations made by Defendants as to source of the Puppies  
20 and health Plaintiff and members of the general public entered into contracts for the purchase of  
21 puppies from Defendants.  
22

23           151. Defendant's conduct was intentional and malicious and done for the purpose of  
24 causing Plaintiff and members of the general public to suffer humiliation, mental anguish, and  
25 emotional and physical distress.  
26

27           152. As a proximate result of Defendants' intentional misrepresentations, Plaintiff and  
28 other members of the general public were induced to purchase Defendants' puppies, spending an

1 amount to be determined at trial on the puppies and the veterinary care that such puppies would  
2 need.

3  
4 153. Plaintiff and other members of the general public received puppies they otherwise  
5 would not have purchased, or purchased at the price they paid, had they known the true facts  
6 regarding the source and health of the puppies and the representations made by Defendants.

7  
8 154. Defendants sold Plaintiff Haba and other members of the general public puppies  
9 based upon all of the foregoing.

10  
11 155. Plaintiff Haba's puppy died soon after purchase after receiving emergency  
12 veterinary care. Plaintiff Haba later found out that the puppy was bred in a puppy mill.

13  
14 156. Upon information and belief, other members of the general public also bought  
15 sick puppies from Defendants which Defendants' knew or should have known were sick when  
16 offered for sale, and these puppies required veterinary care, and in some cases died. Upon  
17 information and belief, other members of the general public also found out after purchase that the  
18 puppies they bought were bred in Puppy Mills.

19  
20 157. As a result of Defendants' infliction of emotional distress caused by Defendants'  
21 acts including their breach in selling her a sick puppy mill puppy and the consequences  
22 proximately caused by it, as alleged, Plaintiff Haba became emotionally upset, distraught,  
23 distressed and suffered severe humiliation, mental anguish, and emotional and physical distress  
24 as a result of the sickness, suffering and death of her puppy as well as the revelation that her  
25 puppy was bred in a puppy mill.  
26

27  
28 158. Upon information and belief, other members of the general public became  
emotionally upset, distraught, distressed and suffered severe humiliation, mental anguish, and

1 emotional and physical distress and have also suffered in a similar manner as a result of  
2 Defendants' infliction of emotional distress caused by Defendants' acts including their breach in  
3 selling her a sick puppy mill puppy and the consequences proximately caused by it, as alleged.

4  
5 159. As a further proximate result of Defendant's acts as alleged and the consequences  
6 proximately caused by them, as alleged, Plaintiff Haba suffered severe humiliation, mental  
7 anguish, and emotional and physical distress, and has been injured in mind and body in an  
8 amount to be determined at trial plus all medical and related expenses incurred or paid.

9  
10 160. Upon information and belief, as a further proximate result of Defendant's acts as  
11 alleged and the consequences proximately caused by them, as alleged, other members of the  
12 general public suffered severe humiliation, mental anguish, and emotional and physical distress,  
13 and has been injured in mind and body in an amount to be determined at trial plus all medical  
14 and related expenses incurred or paid.

15  
16  
17 **THIRTEENTH CAUSE OF ACTION**

18 **Breach of Contract**

19 **(Against All Defendants)**

20 161. Plaintiffs repeats and realleges the allegations contained in each preceding  
21 paragraph above as if fully set forth herein.

22 162. Beginning at an exact date unknown to Plaintiffs, but at least since three years  
23 prior to the filing date of this action, Defendants represented to the general public, including  
24 Plaintiff, by means of labeling, advertisements, promotion and/or marketing, that Defendants'  
25 puppies are non-puppy mill, healthy and illness-free when, in fact, they are not.

26  
27 163. Defendants' representations were untrue as set forth above.  
28

1           164. Plaintiff and other members of the general public saw, believed, and relied on  
2 Defendants' labeling and advertising representations and, in reliance on them, purchased  
3 Defendants' puppies.

4  
5           165. The reliance by Plaintiff and other members of the general public was reasonable  
6 and justifiable in that Defendants had been in business for many years and appeared to be  
7 running a reputable business which had specialized knowledge and expertise regarding puppies  
8 and promoted a desired reputation for quality puppies not bred at Puppy Mills and sold free of  
9 defects and health issues.  
10

11           166. Plaintiff and other members of the general public would not have purchased  
12 Defendants' puppies had they known the true facts regarding them.  
13

14           167. On or about December 17, 2009, in the City of Los Angeles, County of Los  
15 Angeles, State of California, Plaintiff and defendant entered into a written agreement. By the  
16 terms of said written agreement, Plaintiff Haba agreed to buy, and Defendants agreed to sell, a  
17 puppy to Haba about which Defendants made certain representations as stated above as above.  
18

19           168. Upon information and belief, other members of the general public also entered  
20 into similar contracts with defendant under similar circumstances based upon similar  
21 representations.  
22

23           169. Defendants suppressed the material facts regarding the puppies' origination from  
24 puppy mills and the puppies' ill health.  
25

26           170. Defendants were bound to disclose the material facts regarding the puppies'  
27 breeding history and health truthfully, but did not.  
28

1           171. Defendants concealed these material facts when they each knew the true and  
2 correct facts regarding the puppies.

3           172. The concealment of the true facts from Plaintiff and other members of the general  
4 public was done with the intention of inducing Plaintiff and other members of the general public  
5 to purchase Defendants' Puppies.  
6

7           173. The consideration set forth in the agreement was the amount agreed to by the  
8 parties as stated in the contact or contracts.  
9

10           174. Plaintiff Haba has performed all conditions, covenants, and promises required by  
11 her on his part to be performed in accordance with the terms and conditions of the contract.  
12

13           175. Defendants breached the contract with Haba, as alleged above, by among other  
14 things, selling Haba a sick puppy who died soon after purchase, telling Haba she was required to  
15 use Defendants' veterinarian instead of her own veterinarians, and affirmatively representing that  
16 the puppy was not bred in a Puppy Mill.  
17

18           176. Upon information and belief, Defendants breached their contracts with other  
19 members of the general public, as alleged above, by among other things, selling sick puppies,  
20 telling other member so the general public they were required to use Defendants' veterinarians  
21 instead of their own veterinarians, and affirmatively representing that the puppies was not bred in  
22 a Puppy Mill.  
23

24           177. Plaintiff Haba, and other members of the general public, performed each and  
25 every covenant, condition and obligation to be performed by him under the contract, except to  
26 the extent excused, waived or made impossible by Defendants' conduct.  
27  
28



1           WHEREFORE, Plaintiff, *on behalf of herself and for members of the general*  
2 *public as private attorneys general under Cal. Bus. & Prof. Code §17204, pray for*  
3 *relief, jointly and severally, pursuant to each cause of action set forth in this*  
4 *Complaint as follows:*

5           1. For an order *of equitable relief as follows:*

6           (a) Enjoining Defendants *from continuing to engage in unlawful, unfair and*  
7 *fraudulent business practices and deceptive representations and*  
8 *advertising described in this Complaint;*

9           (b) Requiring Defendant to make full restitution of all money wrongfully obtained as  
10 a result of the conduct described in this Complaint;

11           (c) Requiring Defendants *to disgorge all ill-gotten gains flowing from the*  
12 *conduct described in this Complaint; and*

13           (d) Enjoining *Defendants from marketing and selling the adulterated,*  
14 *misbranded and mislabeled Puppies and/or misrepresenting the puppies*  
15 *they sell.*

16           2. For *actual and punitive damages under CLRA in an amount to be proven at*  
17 *trial, including any damages as may be provided for by statute upon filing*  
18 *of an amended Complaint should the demanded corrections not take place*  
19 *within the thirty-day notice period;*

20           3. For an award *of attorneys' fees pursuant to, inter alia, Cal. Civil Code*  
21 *§1780(d) and Cal. Code of Civil Procedure §1021.5;*

22           4. For actual damages, including, but not limited to, the purchase price and any medical  
23 expenses, in an amount to be determined at trial;

24           5. For punitive damages in an amount to be determined at trial for the Fourth and Fifth  
25 Causes of Action;

26           6. For an award of costs and any other award the Court might deem appropriate; and

27           7. For pre- and post-judgment interest on any amounts awarded.  
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1 **JURY DEMAND**

2 Plaintiffs hereby demand *a trial by jury of all issues so triable that are raised or*  
3 *which hereinafter may be raised in this action.*

4  
5  
6 Dated: \_\_December 3, 2012

7 By: \_\_\_\_\_  
8 Jill Ryther, Esq.  
9 **LAW OFFICE OF JILL L. RYTHER**  
10 6911 Topanga Canyon Blvd., Suite #300  
11 Canoga Park, CA 91303  
12 Telephone: (818) 347-4126

13 **COUNSEL TO BE NOTICED:**

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John T. Maher, General Counsel (admission *pro hac vice* requested)  
**COMPANION ANIMAL PROTECTION SOCIETY**  
90 Broad Street, Third Floor  
New York, NY 10004  
Telephone: (646) 675-8909

**VERIFICATION**

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I, KIM HABA, am a PLAINTIFF in the above-entitled action. I have read the foregoing COMPLAINT and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at \_\_\_\_\_, California.

\_\_\_\_\_  
Kim Haba

\_\_\_\_\_  
Address