

CAUSE NO. D-1-GN-08-001811

JOETTE WATSON, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

KRISTY DANIELLE O'NEAL, an individual  
CHARLES SCOTT O'NEAL, an individual  
d/b/a EPUPPYPRO.COM

Defendants.

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IN THE DISTRICT COURT

261 JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Filed in The District Court  
of Travis County, Texas

BP MAY 27 2008  
At Amalia Rodriguez-Mendoza, Clerk

**PLAINTIFF'S ORIGINAL CLASS ACTION PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Joette Watson, through her attorneys, on behalf of herself and all others similarly situated, hereinafter called the plaintiff, brings this action as a class action against Kristy Danielle O'Neal, Charles Scott O'Neal, d/b/a ePuppypro.com, hereinafter called the defendants, as follows:

**I. DISCOVERY CONTROL PLAN LEVEL**

- 1. Discovery is intended to be conducted under Level 3.

**II. JURISDICTION AND VENUE**

- 2. This is a class action brought under Rule 42 of the Texas Rules of Civil Procedure seeking legal and equitable relief for the individual plaintiff and the class she represents.
- 3. Venue is proper in this County because Kristy Danielle O'Neal, Charles Scott O'Neal d/b/a/ ePuppyPro.com, defendants, transact business in Travis County, Texas and are situated in the State of Texas.
- 4. Venue is proper in this County under Section 15.002 of the Civil Practice and Remedies Code because a substantial part of the events or omissions giving rise to plaintiffs' claims occurred

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in this County. Tex. Civ. Prac. & Rem. Code §15.002(a)(1). In the alternative, venue is proper in Travis County pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(4).

### III. PARTIES

5. Plaintiff Joette Watson, a Travis County resident, is the owner of a French bulldog purchased from defendants.

6. Defendants are individuals doing business as “epuppypro.com” with its/their base of operations in the State of Texas. Defendants engaged in business within the State of Texas and/or Travis County and “does business” and “engages in business” in this State within the meaning of the Texas Civil Practice and Remedies Code, Ch. 17. Defendants may individually and collectively receive service of process at **9013 Wild Horse Drive, North Richland Hills, Texas, 76180**.

Defendant also maintain on ongoing internet presence/e-commerce site at [www.epuppypro.com](http://www.epuppypro.com).

7. A good faith search by plaintiff’s counsel with the Texas Secretary of State’s SOS Direct search service revealed no information as to “epuppypro” or “epuppypro.com” having ever been established as commercial entities with the Texas Secretary of State. Nor does epuppypro or epuppypro.com hold itself out to be incorporated, or similar.

8. As set forth below, plaintiff has experienced and experiences harm in Travis County, Texas arising from defendants’ unlawful acts or omissions.

9. As set forth below, defendants continue to engage in their unlawful acts or omissions within Travis County.

10. This Court therefore has jurisdiction (1) over defendants under principles of general and special jurisdiction and (2) over the subject matter of this litigation.

### IV. FACTS REGARDING DEFENDANT’S UNLAWFUL CONDUCT

11. Defendants advertise to Texas consumers and users of the internet (“consumers”) that, “We

breed English Bulldogs & French Bulldogs...” See Exhibit 1, attached hereto.

12. Defendants promise consumers that the bulldogs defendants breed and/or sell are healthy and of good merchantable quality. Specifically, “We know that we are the #1 Place for Top Quality Bulldog Puppies you can find, with excellent health...” See Exhibit 2, attached hereto.

13. Defendants inform consumers of the caring manner in which it purportedly treats its bulldog puppies, e.g., “We consider all the puppies we have part of our family & we love and care for them...” See Exhibit 1.

14. Defendants represent to consumers that defendants and/or their bulldogs are endorsed by, sanctioned, or otherwise affiliated with the American Kennel Club (“AKC”), United Kennel Club (“UKC”), Australian National Kennel Council (“ANKC”) and other reputable organizations. Defendants prominently display said organizations’ logos on its epuppypro.com homepage. See Exhibit 1.

15. Defendants pledge to consumers that “Full Registration [is] Included” with each and every puppy purchased from defendants. Such “Full Registration” is for a “Champion Bloodline” and/or “Champion Sired” bulldog puppy. See Exhibit 3, attached hereto.

16. Defendants do not breed English or French bulldogs.

17. Defendants admit, instead, that they are a bulldog “broker” and run “an internet based marketing company for English and French bulldogs” that distributes bulldogs. See Exhibit 4, attached hereto.

18. The bulldogs defendants purportedly breed in Texas are, in fact, shipped *en masse* by “heads” and “boxes” from Russia and signed for at Houston airport by defendants. See Exhibit 5, attached hereto.

19. Defendants do not raise or wean the bulldogs, hence are never in a position to, “love and

care for them” or make them “part of our family” within the normally recognized meaning of these words.

20. Defendants admit, instead, that “most are already sold [prior to their arrival in the U.S.] and [domestic] flights are scheduled to leave the next day” for delivery of the bulldogs to U.S. consumers. See Exhibit 6, attached hereto, and Exhibit 4.

21. Those bulldogs not “already sold” by defendants are stored in cages in defendants’ garage at the 9013 Wild Horse Drive, North Richland Hills address. See Exhibit 7, attached hereto.

22. The City of North Richland Hills Humane Division has been inundated with enough consumer complaints regarding the poor health of defendants’ bulldogs that said Humane Division launched an investigation into defendants’ activities due the large number of complaints.\* See Exhibit 8, attached hereto, and Exhibit 7.

23. Defendants do not furnish purchasers with “Full Registration,” or any registration whatsoever, for its bulldog puppies. Hence it is impossible to ascertain whether in fact these puppies are “Champion Sired” or possess “Champion Bloodline[s].”†

24. Defendants charge consumers between \$1,500 and \$2,500, or more, for each puppy. See Exhibit 3.

25. Upon information and belief, defendants have sold in excess of 50 (fifty) bulldogs with serious and/or fatal medical issues for between \$1,500 to \$2,500, or more.

#### V. PLAINTIFF’S ALLEGATIONS

26. Plaintiff Joette Watson, a Travis County resident, is a customer of defendants and

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\* Ms. Chun Mezger is a Humane Division Supervisor for the City of North Richland Hills, hence Ms. Mezger is the recipient of many of the sample communications presented.

† “Champion” is a term of art in the field of dog breeding, symbolized by “Ch.” a coveted status subject to stringent requirements.

purchased a French Bulldog puppy from defendants on May 28, 2006 for a purchase price of \$2,000. See Exhibit 9, attached hereto. Plaintiff named her French bulldog puppy purchased from defendants, "Bijou."‡

27. In consideration for Bijou's purchase price, defendants made express affirmative representations that Bijou was, a) in good overall health; and, b) suitable for breeding. See Exhibit 10, attached hereto.

28. Shortly after purchasing Bijou from defendants, a veterinarian examined Bijou and informed plaintiff that Bijou was in poor health and not suitable for breeding.

29. Plaintiff repeatedly attempted to contact defendants and apprise them of and discuss Bijou's health issues, but defendants would either not return plaintiffs calls or otherwise meaningfully respond.

30. Plaintiff then informed defendants in writing of Bijou's health issues and defendants' false representations concerning Bijou's bloodline. Defendants continued to ignore plaintiff. See Exhibit 10.

31. In response, plaintiff filed complaints with the City of North Richland Hills Humane Division and The Humane Society of the United States. See Exhibits 11 and 12, attached hereto.

32. On or about May 15, 2008 Barak Benaryeh DVM, DABVP (canine and feline practice), an accomplished and experienced veterinarian, examined Bijou and reported that Bijou "was never a healthy dog" nor otherwise of good and merchantable quality within the meaning of the legally relevant definition. See Exhibit 13, attached hereto.

33. Plaintiff has experienced and continues to experience damages in Travis County arising from defendants' acts or omissions.

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‡ Carol J. Stevens is the plaintiff's Mother.

34. Plaintiff has not incurred, and does not seek to recover, damages in excess of \$75,000.

35. There is no federal diversity jurisdiction under 23 U.S.C. §1332.

#### **VI. CLASS ACTION ALLEGATIONS**

36. Pursuant to Rule 42 of the Texas Rules of Civil Procedure, plaintiff Joette Watson brings this action on behalf of herself and all other similarly situated, as representative of the following class: all U.S. consumers who purchased less than good and/or merchantable quality bulldogs from defendants since May 27, 2006 through the present (hereinafter "members of the class").

37. As described below, this action satisfies the numerosity, commonality, typicality and adequacy representation requirements of Civil Procedure Rule 42.

38. Numerosity: the persons in the class are so numerous that joinder of all members is impracticable. Although the exact number of class members is unknown to plaintiff at this time, it is ascertainable by appropriate discovery, and plaintiff is informed and believes that the class would readily exceed 50 and could easily total hundreds. The identity and location of class members may be identified from the records maintained and possessed by the defendants or its representatives.

39. Commonality: there are common questions of law or fact affecting the class. Specifically, predominant questions include:

- whether defendants represented that defendants actually bred the puppies it sells, and whether defendant in fact breeds puppies;
- whether the puppies defendants sell are of good and merchantable quality;
- whether defendants cared for the puppies in its possession prior to its sale to consumers in the manner in which defendants describe;
- whether defendants represent that they are endorsed by or affiliated with the AKC, UKC, ANKC, and whether defendants are in fact affiliated the AKC, UKC, ANKC, or similar;

- whether defendants represent that its puppies are registered and whether such registrations demonstrate champion lineage;
- whether defendants' conduct constitutes a violation of the Texas Deceptive Trade Practices Act;
- whether defendants' conduct constitutes a legal breach of warranty, either express or implied, to members of the class;
- whether defendants acted with a malicious manner and callous disregard for the rights of its customers, whereby it should be subjected to the assessment of punitive damages;
- whether the members of the class have sustained damages; and
- whether damages can be established on a class-wide basis and, if so, what is the proper measure of damages.

40. Typicality: the claims of plaintiff are typical of the claims of the rest of the members of the class in that plaintiff Joette Watson and all members of the class sustained damages arising out the defendants' unfair trade practices and/or breach of warranty.

41. Fair and Adequate Representation: plaintiff Joette Watson will fairly and adequately represent the interests of the class. In support of this proposition, plaintiff shows: (i) the class representative is a member of the proposed class. (ii) The class representative has expressed interest in representing the class. (iii) the class representative has no interests adverse to other members of the class. (iv) the class representative has suffered the same harm as the class. (v) The class representative is willing to bear the costs of notice and litigation.

42. Proposed Class Counsel is Adequate: the Texas law firm of Sutton Kleinman PLLC ("SK") requests appointment as class counsel. SK has class action and litigation experience: (i) SK has spent months researching the issues, investigating the facts, interviewing expert(s) and engaging in ongoing contact with plaintiff concerning her rights, class representative responsibilities and other

aspects of this litigation. (ii) the lawyers at SK filed a petition for a nationwide class action against a legal document company before this District Court on March 4, 2008 (Cause No. D-1-GN-000766)) prompting the defendant to engage in a mass mailing of \$50 refund checks to putative class members less than 30 days after plaintiff's filing; SK is also lead counsel in a nationwide class action suit in Federal court (No. CV-06-1743RAJ, U.S. Dist. Court, Western District of Washington State at Seattle). (iv) SK will be able to devote sufficient time and resources to this case. SK has database, file management, and office services fully capable of providing the support needed for such a case.

43. The prosecution of separate suits by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the party opposing the class.

44. The prosecution of separate suits by individual members of the class would create a risk of adjudications with respect to individual members of the class, which would be dispositive of, or would substantially impair or impede, the interests of other members of the class who are not parties to the adjudications.

45. Common questions of law or fact predominate over any questions affecting only individual members. The substantive issues that control the outcome of the litigation are whether defendant engaged in deceptive or unfair trade practices and/or breach of warranty. The issues that will predominate in the trial on the merits of the case are whether plaintiff and members of the class were improperly provided with goods of less than merchantable quality and/or whether they were lawfully warranted. Those issues are common to the class. In addition, a class action in this case is superior to the other available methods for the fair and efficient adjudication of the controversy because there are dozens or hundreds of putative plaintiffs over a vast geographic area.

46. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

**VII. FIRST CAUSE OF ACTION, DECEPTIVE TRADE PRACTICES**

47. Plaintiff realleges and incorporates herein by reference the above paragraphs of the petition.

48. Plaintiffs are consumers having sought and acquired goods or services from defendant, and defendants represented to plaintiffs to be a quality provider of same.

49. Plaintiffs tendered consideration to defendants for quality goods or services but defendants then failed to provide quality goods or services to plaintiffs despite accepting consideration from plaintiffs.

50. The defendants' actions or course of action, to the plaintiffs' detriment, took advantage of the lack of knowledge, ability, experience or capacity of plaintiffs to a grossly unfair degree. Therefore, this transaction is actionable under DTPA Chapter 17 and § 17.46 *et seq.*

51. The conduct described in the preceding paragraphs was a producing and proximate cause of actual damages to the plaintiffs. The amount of plaintiffs' damages exceeds the minimum jurisdictional limits of this Court.

52. Pursuant to § 17.505(b) 60 days' written notice has been rendered impracticable due to an imminently tolling statute of limitations and plaintiffs are obligated and entitled to file suit forthwith.

53. Section 17.45(6) provides:

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, lease or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

54. Plaintiff and members of the class are “consumers” within the meaning of the Texas Deceptive Trade Practices - Consumer Protection Act.

55. Defendants engage in “trade or commerce” of “goods” and/or “services” within the meaning of the Texas Deceptive Trade Practices - Consumer Protection Act.

56. Defendants acts or omissions alleged herein were intended to or did result in the sale of its goods or services to consumers in violation of the Texas Deceptive Trade Practices - Consumer Protection Act.

57. By committing the acts and practices alleged herein, defendants violated the Texas Deceptive Trade Practices - Consumer Protection Act by falsely advertising that its product had certain characteristics or benefits that it did not possess, and by omitting material facts contradicting these representations. Such conduct also violated the Texas Deceptive Trade Practices - Consumer Protection Act in that defendants either knew, recklessly disregarded or reasonably should have known that consumers who purchased and used these products and services would not receive the quality, characteristics and benefits advertised.

58. Such violations of law are ongoing. Plaintiff reserves the right to identify additional violations of the law as circumstances warrant.

59. Defendants’ misrepresentation of itself as a “breeder” is likely to deceive the class regarding the actual benefits and characteristics of defendants’ product and/or services.

60. Defendants’ misrepresentation of itself as a provider of healthy puppies of good and merchantable quality is likely to deceive the class regarding the actual benefits and characteristics of defendants’ product and/or services.

61. Defendants’ misrepresentation of itself as a caring provider for puppies is likely to deceive

the class regarding the actual benefits and characteristics of defendants' product and/or services.

62. Defendants' misrepresentation of itself as being endorsed by the AKC, UKC, ANKC or similar is likely to deceive the class regarding the actual benefits and characteristics of defendants product and/or services.

63. Defendants' pledge to provide registrations which the puppies it sells, and that such registrations relate to champion lineage, but then failing to provide any registration is deceptive, unfair or unlawful conduct.

64. The acts, omissions, misrepresentations, practices and non-disclosures of defendant as alleged herein thus constitute "fraudulent" business acts or practices within the meaning of Texas Deceptive Trade Practices - Consumer Protection Act.

65. Defendants have thus engaged in unlawful, unfair and/or fraudulent business acts and practices, entitling plaintiff to judgment and relief against defendants, as set forth in the Prayer for Relief. Plaintiff and each member of the class have suffered individual damages less than \$75,000 but in excess of this Court's minimum jurisdictional amount.

#### **VIII. SECOND CAUSE OF ACTION, BREACH OF WARRANTY**

66. Plaintiff realleges and incorporates herein by reference the above paragraphs of the petition.

67. Defendants have made affirmations of fact or promises to buyers which relate to the goods in question and were the basis of the bargain.

68. Defendants have displayed samples of its goods which formed the basis of the bargain at [www.epuppypro.com](http://www.epuppypro.com).

69. Defendants are a merchant of goods with respect to goods of a certain kind, i.e. English and French bulldogs.

70. Defendants pledge that its goods are “Fully Registered” and possess champion (Ch.) lineage. As a merchant of goods with respect goods of a certain kind, defendants should be held responsible for the accepted meaning of these industry specific terms.

71. Defendants goods are not merchantable within the meaning the Business and Commerce Code’s Implied Warranty of Merchantability § 2.314.

72. Plaintiff and the class have been harmed by defendants’ breach of its express and/or implied warranties under the Texas Business and Commerce Code, in an individual amount less than \$75,000 but greater than this Court’s minimum jurisdictional amount, to be proven at trial.

### **IX. PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully requests that judgment be entered in their favor and against defendants, awarding the following:

- that the Court certify the class as described in this petition, and appropriate subclasses, if any;
- that the Court appoint Sutton Kleinman PLLC class counsel;
- compensatory damages and/or restitution relief in an amount to be established at trial;
- punitive damages in an amount sufficient to punish and make an example of defendants;
- costs and attorneys’ fees to the extent permitted by law;
- such other and further relief as the Court deems just and proper.

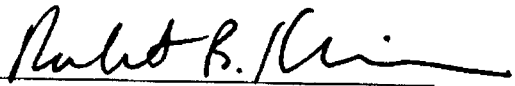
**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: May 27, 2008

Respectfully submitted,

**SUTTON KLEINMAN PLLC**

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