

MICHAEL K. JEANES  
Clerk of the Superior Court  
By Kristy Kee, Deputy

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Description	Amount
CASE# CV2010-001344	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00

Receipt# 20283452

**RAKE PETTI, P.C.**

2701 E. CAMELBACK ROAD  
SUITE 160  
PHOENIX, ARIZONA 85016  
TELEPHONE (602) 264-9081  
FACSIMILE (602) 265-2628

M.E. "Buddy" Rake, Jr. #003452

Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

GEORGE HEITZMAN and DEBORAH  
HEITZMAN, husband and wife,

Plaintiffs,

vs.

PETCO ANIMAL SUPPLIES  
STORES, INC., a Delaware  
corporation; W & K PETS, INC., and  
Arizona corporation (doing business as  
PET'S PARADISE); and DOES I-X,  
inclusive,

Defendants.

Case No.

CV 2010-001344

**COMPLAINT**

Plaintiffs, by and through undersigned counsel, for their complaint against the Defendants, each of them, allege as follows:

**JURISDICTIONAL ALLEGATIONS**

1. Plaintiffs GEORGE HEITZMAN and DEBORAH HEITZMAN are residents of Maricopa County.

2. Defendant PETCO ANIMAL SUPPLIES STORES, INC. ("PETCO"), was and is a corporation doing business in the State of Arizona.

**RAKE PETTI, P.C.**  
2701 E. Camelback Road, Suite 160  
PHOENIX, ARIZONA 85016  
Telephone (602) 264-9081

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3. PETCO was at all times stated in this complaint engaged in the business selling animals and animal related products in Arizona.

4. PETCO is subject to personal jurisdiction in Arizona.

5. Defendant W & K PETS, INC. was and is a corporation doing business in the State of Arizona as PET'S PARADISE ("PET'S PARADISE").

6. PET'S PARADISE was at all times stated in this complaint engaged in the business selling animals and animal related products in Arizona.

7. PET'S PARADISE is subject to personal jurisdiction in Arizona.

8. The true names and capacities of Defendants DOES I-X, inclusive, are presently unknown, and therefore Plaintiffs sue these Defendants by such fictitious names. Plaintiffs will seek to amend this complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe, and thereon allege that each of the fictitiously named Defendants is an agent, employee or affiliate of Defendants and is responsible for the unlawful conduct herein alleged, and that said Defendants proximately caused the harm alleged herein.

9. Jurisdiction and venue are appropriate in this Court.

10. The amount in controversy exceeds the minimal jurisdictional limits of this Court.

**GENERAL/FACTUAL ALLEGATIONS**

11. On September 28, 2008 Plaintiff GEORGE HEITZMAN purchased a rat from a PETCO store located at 1015 Baseline Road, in Gilbert, Arizona.



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20. The Plaintiffs were relying on the skill and judgment of the Defendants to ensure that the rat would be suitable for the purposes for which they would be using the rat.

21. It was economically, technologically and practicably feasible at the time the rat was sold to ensure that the rat did not carry any dangerous diseases.

22. As a direct and proximate result of the defective and unreasonably dangerous condition of the rat, GEORGE HEITZMAN sustained life threatening, serious and permanent injury.

**COUNT II- STRICT PRODUCT LIABILITY**  
**(MARKETING DEFECT)**  
**(Against PETCO)**

23. Plaintiffs hereby incorporate by reference each allegation contained in all preceding paragraphs of this complaint, as if fully set forth herein.

24. At the time the rat in question left the possession of PETCO, it did not have adequate warnings of the product's dangers that were known by, or should have been known by Defendants.

25. Defendants failed to give adequate instructions to avoid the dangers posed by the infectious diseases that the rat carried when it was sold to Plaintiffs.

26. These failures rendered the product unreasonably dangerous as marketed.

27. The marketing defect was a producing cause of the bite and damages to Plaintiffs.

**COUNT III- BREACH OF WARRANTY OF MERCHANTABILITY**  
**(Against PETCO)**

28. Plaintiffs hereby incorporate by reference each allegation contained in all preceding paragraphs of this Complaint, as if fully set forth herein.

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29. At all times relevant to this Complaint, PETCO was a "merchant seller" in the business of supplying "goods". The rat in question was a "good" sold for consumer usage.

30. The rat in question was unmerchantable when it left PETCO's possession, as it was in a defective and unreasonably dangerous condition at the time of the sale.

31. Due to the dangerous diseases the rat carried, it was unfit for the purposes for which such products are sold.

32. Due to the diseases the rat carried, it was not of fair and average quality.

33. As a direct and proximate result of Defendants' breach of warranty, the Plaintiffs sustained injury and damages.

**COUNT IV- NEGLIGENCE**  
**(Against all Defendants)**

34. Plaintiffs hereby incorporate by reference each allegation contained in all preceding paragraphs of this complaint, as if fully set forth herein.

35. The Defendants acted negligently in selling and placing the diseased rat into the stream of commerce.

36. The Defendants acted negligently in failing to provide adequate warnings and instructions that would place Plaintiffs on notice of the diseases which the rat carried.

37. The Defendants acted negligently in breeding and/or handling the rat in a manner which caused the rat to carry such diseases.

38. The Defendants acted negligently in failing to determine whether the rat carried such diseases before placing it into the stream of commerce.



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45. As a further direct and proximate result the acts and omissions of the Defendants, each of them, Plaintiff Deborah Heitzman has been denied the love, affection and consortium of her husband due to the injuries that he incurred. She has been denied and will continue to be denied such love, affection and consortium as a result of the acts and omissions of Defendants. She has also incurred expenses paid by the marital community, and has further been denied wages owned by the marital community.

**WHEREFORE**, Plaintiffs pray for judgment against the Defendants, and each of them, as follows:

- a. For general damages to reasonably compensate Plaintiffs for pain, suffering, emotional distress, and other emotional damages;
- b. For specific damages to reasonably compensate Plaintiffs for medical expenses incurred and which will continue to be incurred in the future;
- c. For lost wages and out-of-pocket expenses incurred and which will continue to be incurred in the future;
- d. For loss of consortium;
- e. For punitive damages necessary to curb Defendants' future conduct and ensure the safety of Defendants' customers; and
- f. For such other relief as this Court deems just and proper.

**DATED** this 12th day of January, 2010.

**RAKE PETTI, P.C.**  
  
M.E. "Buddy" Rake, Jr.  
Attorneys for Plaintiffs