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Attorney for Plaintiffs,
Debra Hosley, Amber Waves; Donna Elkins,
Proverbial Pygmies; Barbara Crane, Critter Craze
Ranch; Mike Heim, Citrus Lane Pygmies;
Rhonda Moore, #1 Moore Kidd; Chelsea Bates,
Picture Perfect Pygmies

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DEBRA HOSLEY, AMBER
WAVES; DONNA ELKINS,
PROVERBIAL PYGMIES;
BARBARA CRANE, CRITTER
CRAZE RANCH; MIKE HEIM,
CITRUS LANE PYGMIES;
RHONDA MOORE, #1 MOORE
KIDD; CHELSEA BATES,
PICTURE PERFECT PYGMIES

Plaintiffs,

v.

NATIONAL PYGMY GOAT
ASSOCIATION; and DOES 1 TO
10, INCLUSIVE,

Defendants.

Case No. **'14CV0290 H BLM**

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF FOR
VIOLATIONS OF THE
SHERMAN ACT, CARTWRIGHT
ACT, LANHAM ACT, AND
INTERFERENCE WITH
BUSINESS RELATIONS**

1 Plaintiffs allege as follows:

2 PARTIES

3 1. Plaintiff, Donna Elkins is an individual who is a citizen of the State
4 of California residing in this judicial district. Plaintiff does business under the
5 name “Proverbial Pygmies”, and has its principle place of business in this judicial
6 district.

7 2. Plaintiff, Debra Hosley is an individual who is a citizen of the State of
8 California. Plaintiff does business under the name “Amber Waves”.

9 3. Plaintiff, Barbara Crane is an individual who is a citizen of the State
10 of California. Plaintiff does business under the name “Critter Craze Ranch”,

11 4. Plaintiff, Rhonda Moore is an individual who is a citizen of the State
12 of California. Plaintiff does business under the name “#1 Moore Kidd”

13 5. Plaintiff, Mike Heim is an individual who is a citizen of the State of
14 California residing in this judicial district. Plaintiff does business under the name
15 “Citrus Lane Pygmies”, and has its principle place of business in this judicial
16 district.

17 6. Plaintiff, Chelsea Bates is an individual who is a citizen of the state of
18 California residing in this judicial district. Plaintiff does business under the name
19 “Picture Perfect Pygmies

20 7. All Plaintiffs have been and currently are members of the San Diego
21 Pygmy Goat Association, which is an Affiliated Club of Defendant National
22 Pygmy Goat Association.

23 8. Defendant National Pygmy Goat Association is a non-profit
24 organization with its principle place of business at 1932 149th Avenue SE,
25 Snohomish, WA 98290. Defendant NPGA sanctions shows in almost every state
26 including California and has affiliated clubs in many states, including California.
27 Defendant has substantial contacts with California including members and
28 affiliated clubs in California, numerous NPGA competitions and showings in the

1 state of California some of which are the subject matter of this complaint. In
2 addition, the commodity of this action, pygmy goats, are purchased, showed,
3 registered and sold by Defendants in the state of California and annual board
4 meetings have been held in the state of California.

5 9. Plaintiff is ignorant of the true names, capacities and identities,
6 whether corporate, partnership, individual or otherwise, of defendants sued herein
7 as DOES 1 through 10, inclusive, and therefore, sues each defendant by such
8 fictitious names. Plaintiff is informed and believes, and on that basis alleges, that
9 each of the fictitiously named defendants is legally responsible for the events and
10 actions referred to in this Complaint and wrongfully caused injury and damages to
11 Plaintiff, as alleged below. Plaintiff will seek leave to amend this Complaint to
12 state these defendants' true names and capacities when they are ascertained.

13 10. Plaintiff is informed and believes, and thereon alleges, that each of
14 the defendants herein was at all times relevant to this action, the agent, employee,
15 representing partner, or joint venturer, or successor in interest of the remaining
16 defendants and in doing the things hereinafter alleged was acting within the course
17 and scope of that relationship. Plaintiff is informed and believes, and thereon
18 alleges, that each of the defendants herein gave consent to, acquiescence, ratified,
19 and authorized the acts alleged herein to each of the remaining defendants.

20 21 **JURISDICTION AND VENUE**

22 11. This complaint alleges violations of Sections 1 and 2 the Sherman
23 Antitrust Act 15 U.S.C §§ 1 and 2 (the "Sherman Act") and under the laws of the
24 State of California. It is filed under, and jurisdiction is conferred upon this Court
25 by Sections 4, and 16 of the Clayton Act, (15 U.S.C. §§ 15 and 26). The Plaintiff
26 also alleges violations of the Lanham Act § 43(A) (15 U.S.C § 1125). The Plaintiff
27 also alleges violation of State Antitrust (Cartwright Act, Cal. Bus. Pro. Code §
28 16720 et. seq.) consumer protection and/or unfair competition and related laws,

1 and seeks civil penalties and /or other equitable relief under those State laws. All
 2 claims under federal and state law are based upon common nucleus of operative
 3 facts, and the entire action commenced by this complaint constitutes a single case
 4 that would ordinarily be tried in one judicial proceeding.

5 12. Jurisdiction is conferred upon this judicial district pursuant to 28
 6 U.S.C. §1337, and has supplemental jurisdiction over the state law claims under
 7 28 U.S.C. §§ 1367 because those claims are so related to the federal claims that
 8 they form part of the same case or controversy. The exercise of supplemental
 9 jurisdiction avoids unnecessary duplication and multiplicity of actions and is in
 10 the interests of judicial economy, convenience and fairness.

11 13. Venue in the Southern District of California is proper under (15
 12 U.S.C. §§ 15 and 26) and 28 U.S.C. §1391 (b). A substantial part of the events or
 13 omissions giving rise to Plaintiffs' claims occurred in this judicial district, and a
 14 substantial part of property that is the subject of this action is situated. The
 15 interstate and commerce described in this complaint is being carried on, at least in
 16 part, within this District.

17
 18 **SHERMAN ANTITRUST ACT, CLAYTON ACT, CALIFORNIA**
 19 **CARTRIGHT ACT, LANHAM ACT, TORTIOUS INTERFERENCE WITH**
 20 **PROSPECTIVE BUSINESS RELATIONS**

21 14. Plaintiffs seek relief under § 1 of the Sherman Antitrust Act (15
 22 U.S.C. § 1) which provides in part that "every contract, combination in the form of
 23 trust or otherwise, or conspiracy, in restraint of trade or commerce among several
 24 states, or with foreign nations, is declared illegal" and § 2 of the Sherman
 25 Antitrust Act (15 U.S.C. § 2) which provides in part that "every person who shall
 26 monopolize or attempt to monopolize, or combine or conspire with any other
 27 person or person to monopolize any part of the trade or commerce among the
 28 several states, or with foreign nations, shall be deemed guilty of..."

1 15. Plaintiffs seek damages from NPGA under §4 of the Clayton Act, (15
2 U.S.C. §15) which provides in part that “any person who shall be injured in his
3 business or property by reason of anything forbidden in the antitrust laws may sue
4 therefore...and recover threefold damages by him sustained, and the cost of the
5 suit, including a reasonable attorney’s fee.”

6 16. Plaintiffs seek a permanent injunction, under § 16 of the Clayton Act,
7 (15 U.S.C. § 26) which provides in part that: “any person, firm, corporation, or
8 association shall be entitled to sue for and have injunctive relief...against
9 threatened loss or damage by a violation of the antitrust laws...”

10 17. Plaintiffs seek relief under the Cartwright Act (Cal. Bus. & Prof.
11 Code, § 16720 et. seq.) which provides in part that “A trust is a combination of
12 capital, skill or acts by two or more persons for any of the following purposes: (a)
13 to create or carry out restrictions in trade or commerce. (b) to limit or reduce the
14 production, or increase the price of merchandise or of any commodity. (c) To
15 prevent competition in the manufacturing, making, transportation, sale or purchase
16 of merchandise, produce or any commodity.”

17 18. Plaintiffs seek damages and a permanent injunction under the
18 California Cartwright Act which provides in part that “any person injured in his
19 business or property by reason of anything forbidden or declared unlawful by this
20 act... and to recover three times the damages sustained by him or her, interest on
21 his or her actual damages... and preliminary or permanent injunctive relief... and
22 a reasonable attorneys’ fee together with the costs of the suit.” (Bus. & Prof. Code,
23 §§ 16726, 16750.)

24 19. Plaintiff seeks relief for violation of the Lanham Act § 43(A) (15
25 U.S.C. §1125) which provides in part “any person who, on or in connection with
26 any goods or services uses in commerce...any false designation of origin, false or
27 misleading description of fact, or false or misleading representation of fact which:
28 is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation

1 connection or association of such person with another person, or as to the origin,
2 sponsorship, or approval of his goods... origin commercial advertising or
3 promotion misrepresent the nature characteristics, qualities, or geographic origin
4 of his or her or another person's goods, services...shall be liable in a civil action
5 by any person who believes that he or she is or is likely to be damaged by such act.

6 20. Plaintiff seeks damages and an injunction under 15 U.S.C. §1117
7 which provides in part: "When...a violation under section 43(a)...shall have
8 been established in any civil action arising under this Act, the plaintiff shall be
9 entitled....subject to the principles of equity, to recover (1) Defendants profits, (2)
10 any damages sustained by Plaintiff, and (3) the costs of the action.

11 21. Plaintiff seeks relief for the common law causes of actions of
12 Tortious Interference of Prospective Business Relations.

13 14 **INTRODUCTION**

15 22. The pygmy goats known as the grey/brown or agoutis with tan
16 highlights, (hereinafter the "grey/brown agoutis") have been registered and shown
17 in the National Pygmy Goat Association for at least thirty years. The grey/brown
18 goats have existed not only as a genetic possibility since the inception of the
19 NPGA, but have existed in reality and have been registered by the NPGA for
20 decades. The first documented Permanent Grand Champion with the grey/brown
21 markings of a grey/brown agouti was born in 1986 and color photographs confirm
22 the markings were visible. Numerous offspring, siblings, and related goats of that
23 color were shown and won awards.

24 23. Plaintiffs are well-known and highly successful breeders of pygmy
25 goats and are currently and/or were past members of the National Pygmy Goat
26 Association (the "NPGA"). They raise, market and show pygmy goats throughout
27 the United States. Plaintiffs are members of the "San Diego Pygmy Goat
28 Association" which is an affiliate club of NPGA.

1 24. Plaintiff Elkins produced a grey/brown agouti in 1997 from a
2 registered pygmy doe bred to a registered pygmy buck. This goat was shown
3 numerous times and placed very high, including a Reserve Grand Champion doe
4 in 1998 and won first place in her class at the 2001 Convention. Another of
5 Plaintiff Elkins' doe with a grey/brown kid was featured on the cover of the NPGA
6 magazine called MEMO in 2005. Since 1998, all Plaintiffs have bred, raised,
7 registered, exhibited and sold their grey/brown agouti goats throughout the years
8 without incident.

9 25. Because of the acceptance of these grey/brown goats for over 30
10 years, Plaintiffs have been encouraged to breed this color, sell this color, show this
11 color, and promote this color. Plaintiffs have spent a lot of time, effort and money
12 promoting this color pygmy goat in reliance on the past ability to register them.
13 Plaintiffs have been successfully breeding, registering, showing and selling the
14 grey/brown agoutis for many years until the breeders without this type of goat
15 began a campaign to eliminate them from the registry. The result of which would
16 render these goats useless in a business capacity as well as decrease competition
17 and raise sales for those breeders without the grey/brown agoutis.

18 26. The breeders without any grey/brown agoutis intended to injure the
19 Plaintiffs and their business interests. They maliciously composed and published
20 numerous false, misleading and untrue oral and written statements regarding
21 Plaintiffs and their pygmy goat herds. As a result of these statements Plaintiffs'
22 reputation as a breeder of high-quality pygmy goats had been damaged and
23 impaired, as has their personal reputation and standing among the goat industry
24 and goating community.

25 27. Since on or about June 2013, Plaintiffs can no longer enter their
26 grey/brown agoutis into the show ring to compete, even if they were previously
27 registered, nor can grey/brown offspring of a grey/brown agouti be registered.
28

FACTS

28. The NPGA is the world's largest pygmy goat registry and membership organization. According to its Bylaws "The Association shall be the official breed association of the pygmy Goat Breed." NPGA has registered more than 113,700 pygmy goats since its inception over 35 years ago. As NPGA represents, it was formed and exists for the purpose to "support the pygmy goat in the United States by collection and disseminating information protecting the breed standard, and recording their lineage through our registry." Its objectives are to:

- Facilitate communication and cooperation among breeders and researchers;
- Encourage the breeding and registering of characteristic pygmy goats;
- Establish regional affiliate clubs;
- Gather and disseminate practical and theoretical knowledge of the pygmy goat;
- Promote and popularize the breed by exposure and through publications; and
- Facilitate the registration of certified pygmy goat seed stock and their offspring.

29. The membership of NPGA is composed of various individuals and entities, some of which compete with Plaintiffs and with each other in the breeding and showing of high quality registered pygmy goats. The NPGA is controlled by a group of competitors and modifies its rules through its Board of Directors, most of which are also competitors in the pygmy goat industry.

30. NPGA's rules and its Breed Standards control not only whether a particular pygmy goat can be registered or not, but also whether a goat is valuable or relatively worthless. What constitutes an economically viable pygmy goat is in the control of the NPGA.

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1 31. At the inception of the NPGA registry the Breed Standard was the
2 priority and was developed in 1975 and revised in 1979. It was developed and
3 refined by a very learned and dedicated group of individuals with specialized
4 knowledge and expertise in the areas of biology, zoology, physiology, medicine,
5 genetics and breeding and judging livestock.

6 32. In the Breed Standard under Breed Characteristics it read for over 30
7 years, "Color – all body colors are acceptable, the predominant coloration is a
8 grizzled, agouti pattern produced by the intermingling of light and dark hairs of
9 any color". Under Markings it reads,

10 "a. Breed-specific markings are required: muzzle, forehead, eyes, and
11 ears are accented in tones lighter than the dark portion of the body in
12 goats of all colors, except in goats that are solid black. Front and rear
13 hoofs and cannons (socks) are dark, as are crown, dorsal stripe, and
14 martingale. On caramel and on white agouti goats, light vertical
15 stripes on dark socks are acceptable."

16 33. There were only 5 changes during the first twenty-five (25) years to
17 the Breed Standard. The only change referring to color had to do with requiring
18 the light vertical stripes on caramel goat stockings in 1991 and one change
19 regarding eye color, requiring pygmy goats to
20 have brown eyes was made in 1999.

21 34. In a one-year period from 2004-2005, over 15 changes were made to
22 the Standard with all but one of those changes occurring in one motion, (motion
23 2005-2). The main change relevant to this matter is that the colors were broken
24 down to 4 categories: Solid, Black, Agouti and Caramel. Under Agouti the
25 standard read "Body colors: All body colors are acceptable. The predominant
26 coloration is formed by the intermingling of lighter and darker hairs producing an
27 appearance ranging from highly grizzled to nearly solid."

28 ///

1 35. While many changes regarding patches, bellybands, girth belts were
2 made that year, one thing remained constant; the agouti goat always had been and
3 still could be “any color”. Because of this, there are numerous colors in the
4 Association’s herd book and over the years added to applications for registration.
5 They were never specifically added to the Breed Standard because they always
6 existed as part of the “any color” definition.

7 36. Choices of colors were added over the years to the application for
8 registration, to include different shades of brown agouti, different shades of grey
9 agouti, and more recently additional choices for caramels. These changes did
10 change the language in the Breed Standard.

11 37. Immediately prior to the June 2008 Board meeting, a complaint was
12 received about the color pattern grey/brown in that it was “undesirable” and
13 believed to be a trait of a Nigerian Dwarf goat instead of a pygmy goat. Plaintiff
14 Elkins was pointed to as the source of the alleged cross breeding that produced the
15 grey/brown goat in 1997. Both parents of this goat were registered with the
16 NPGA.

17 38. A committee report was submitted based on this complaint, seeking to
18 change the 30-year language in the Breed Standard which allowed “all colors”.
19 Instead of removing the language, the board then made the recommendation that
20 two body color combinations; black and white hairs intermingled to be called Grey
21 Agouti, and brown and white hairs intermingled to be called Brown Agouti to be
22 defined in the breed standard under “Agouti – Body colors” but it was not
23 approved.

24 39. Instead, the decision was made clarify the color pattern not by
25 changing the Breed Standard, but rather by giving it a designator that could
26 uniformly be identified in writing to assist breeders/owners in identifying the
27 genetic component of the color. Thus, one new color was added to the list of
28 colors for Agoutis both on the *Registration application* and the *color chart* to be

1 identified as Grey/Brown Agouti to be defined as black and white hairs
2 intermingled producing an appearance ranging from highly grizzled to nearly solid
3 brown hairs mingled with white and black hairs. These changes were NOT made
4 to the breed standard itself. Since all body colors are acceptable for agoutis under
5 the Breed Standard, this action was deemed to not represent a change in the
6 NPGA's philosophy on agouti body colors.

7 40. The fact that the Breed Standard Committee recommended the
8 addition of another color choice on the registration application at the June 2008
9 Board meeting does not represent a change to the Standard itself nor the quality of
10 animals represented by any given color description on the application for
11 registration.

12 41. Those in favor of changing the breed standard (the "proponents") to
13 remove the "all colors" language did not own, breed, register and/or enter into
14 competitions any grey/brown pygmy goats.

15 42. Removing the all colors language would effectively make registering,
16 breeding and showing the grey/brown goats useless. Those wanting to remove the
17 language did not, and at the time of filing this complaint do not, have any
18 grey/brown agoutis.

19 43. Removing an entire "color" of pygmy goat would eliminate
20 competition among all the pygmy goats, and those without the grey/brown agoutis
21 would have less competition and thus statistically more likely to win or place in
22 the competition which in turn improves their business as high ranked goats can be
23 sold or bred for more money for numerous generations.

24 44. Because removing the "all colors" language was not approved, the
25 proponents were upset and mounted an email campaign that continues to falsely
26 allege that the grey/brown coloring was from a cross breeding with a Nigerian
27 Dwarf goat. They alleged that since they do not have the grey/brown color in their
28 herds, it would be impossible to show up in Plaintiffs' herds except through

1 fraudulent and impure crossbreeding.

2 45. In defense of such false allegations, Plaintiff Elkins gathered in a
3 short time photographs of grey/brown goats registered back in the early 1980's
4 and early 1990's that were not related to her own goats as well as information
5 from the herd book documenting the color.

6 46. Plaintiff Elkins wrote, at the request of the board, outlining the
7 history of the breed standard and that specific color, yet was refused publication
8 by the proponents on the board.

9 47. Before the board convened again in 2009, a "task force" of
10 proponents of the removal of "all colors", those without the grey/brown goats,
11 mounted another campaign against the grey/brown agouti. They prepared a
12 presentation ("the color workshop") which further attempted to falsely convince
13 the viewer that the color pattern in question was only achieved in the cross
14 breeding of pygmies with non-pygmy breeds and in addition to the Nigerian
15 pygmy goat, they added a "San Clemente island goat" breeding as another false
16 source of the color pattern in grey/brown agoutis.

17 48. This presentation went against NPGA's regulations in that it took
18 place the day prior to the board meeting and was never presented for review or
19 approval at the board meeting as required by NPGA's rules and regulations. An
20 email was sent to the Board by the Director cautioning the board that this task
21 force was not an NPGA entity and it was done outside of the rules and could not
22 operate as an NPGA sanctioned committee.

23 49. The color workshop presentation falsely attempted to show that two
24 offspring of Plaintiff Elkin's doe were allegedly produced by crossbreeding to a
25 Nigerian Dwarf. Yet these goats received the highest honor in NPGA and had
26 been awarded National Championships. They used the term "tri-color" throughout
27 the presentation which is commonly used to describe dairy goats which in turn
28 immediately causes a negative connotation when speaking of an NPGA pygmy

1 goat.

2 50. In order to show that this was untrue, Plaintiff Elkins continued to
3 bring documents from the herd book showing the existence of a variety of colors,
4 including grey/browns that had been accepted for registration over the years. She
5 also gathered some photographs of the grey/brown agoutis that were registered
6 back in the 1980's and early 1990's that were not related to her herd.

7 51. The motion was made again in January 2009 to remove the "all
8 colors" language in the Breed Standard, and failed again. Proponents then, in
9 trying to gain votes, assured everyone that this change would not prevent the
10 grey/brown agoutis from being registered. Yet the color choice of grey/brown
11 agouti still remained.

12 52. An assertion was made just prior to this vote that directors who
13 owned or bred grey/brown agoutis should not be allowed to vote on this motion
14 and that it was a conflict of interest. However, eliminating any opposing votes
15 creates an inherent conflict of interest in itself for those members in favor of
16 removing the "all colors" language. It would essentially let only those who do not
17 have grey/brown agoutis to successfully vote to effectively eliminate them from
18 the registry.

19 53. Prior to the January 2009 Board meeting, the Business Manager who
20 registers the pygmy goats, held grey/brown agouti registrations from normal
21 processing. This was done even though the color designator of grey/brown agouti
22 was a valid choice and had been approved in June of 2008.

23 54. The Business Manager not only held them from processing, she held
24 three registrations sent with "rush order" fees and two other registrations all of
25 which were delayed for three weeks against rules and regulations.

26 55. The failure again of the motion in January 2009 resulted in another
27 new effort by opponents of the grey/brown color to start a group commentary
28 social media site named "Just Say No to Tri-Color" for the purpose to further

1 distribute the defamatory propaganda against the grey/brown agoutis and the
2 Plaintiff breeders that have them in their herd. It was started and administered by a
3 NPGA judge that did not own any grey/brown agoutis. There was continuous
4 repetition of false statements about the origins of the grey/brown agouti and that
5 they are not pure pygmy goats. They asserted that the color was being “created”
6 by the Plaintiff breeders through the intentional and fraudulent crossbreeding of
7 registered pygmy goats to other breeds of goats in order to make more money.

8 56. The site continued posting of numerous, derogatory, defamatory and
9 false statements. One comment posted by the administrator of the site stated “If
10 we wish to keep the purity of the breed, then we will stop this from going any
11 further”. The word purity and unpure became a repeated word to sway members
12 into changing the Breed Standard.

13 57. In June 2009, the motion to remove “all colors” failed again.

14 58. At the national show the following day after the June 2009 meeting,
15 the judge of the “Just Say No to Tri-Color” campaign was the judge of the day.
16 He borrowed a black and tan dairy goat from a local breeder and brought it into
17 the show ring during a scheduled class to attempt to show that the grey/brown
18 agoutis were from a dairy goat. The grey/brown agoutis were being shown that
19 day and were judged by him. He later posted animals he had judged on his site
20 with negative comments posted below the photo. He was asked to remove the
21 pictures by the goat’s owner and he refused.

22 59. On June 22, 2009, the effort to defame and call into question the
23 integrity of the breeders continued with a posting from a current judge that he saw
24 a pen of San Clemente island goats for sale at a show in Alpine & that one of the
25 early breeders must have bought some and that was the cause of the grey/brown
26 agoutis. This was sited as absolute proof that this color resulted from
27 crossbreeding.

28 60. The proponents continued the campaign to get rid of the grey/brown

1 agoutis by continuing to assure members that removing the “all colors” language
2 would in no way prevent the grey/brown agoutis from being registered. In 2010,
3 after three prior failed attempts, due to the campaign and the garnered votes from
4 the assurance that it wouldn’t effect the grey/brown agoutis, a motion passes
5 removing “all color” language from the Breed Standard.

6 61. A procedure & guidelines were put into place in order to register the
7 grey/brown agoutis since the color choice of “grey/brown” agouti could not be
8 used anymore. Thus members were falsely assured that the grey/brown agouti is
9 still a registerable goat. It was in the minutes of the meeting that they would print
10 on the website and in the MEMO publication the procedure the “animals formerly
11 known as grey/brown agoutis” would use for registration. They posted photos of
12 some examples of grey brown agoutis on the website.

13 62. Plaintiffs submitted registration forms following the advice laid out in
14 the MEMO and on the NPGA website, listing the animal and making a notation of
15 “tan highlights” on the line labeled “random markings” On the registration form,
16 the color designator was changed to “brown agouti with “black dorsal stockings”
17 or “black points” During this year the grey/brown goats were registered without
18 incident.

19 63. Once again one of the proponents, the Breed Standard chairperson,
20 took issue with the grey/brown goat, placing a false label for color on a photo of
21 one of Plaintiff Elkins’ goats postulating that the breeders of the grey/brown goats
22 were mislabeling the goats color in order to mislead or confuse the members.

23 64. At the June 2011 meeting it was taken even farther by the members
24 without the Grey/brown goats, suggesting that the grey/brown goats should not
25 even be allowed to be registered because they did not match, in their opinion, the
26 new color description in the Breed Standard that finally passed in 2010.

27 65. The minutes from this meeting indicate that straw polls were taken (in
28 violation of Robert’s Rules of Order) and that after much discussion it was agreed

1 that no changes would be made at that time, but a motion regarding the issue
2 would be put on the agenda for the January 2012 meeting.

3 66. At the January 2012 meeting, the agenda item did not appear, nor did
4 it appear under “old business”. There was no recommendation made to change the
5 procedure as it appeared on the NPGA’s website and in the MEMO of 2010.

6 67. On or about March of 2012, an application to register a grey agouti
7 with tan highlights was denied. In April three more registration applications were
8 held for processing, but after intervention by the NPGA President were issued at
9 the end of May.

10 68. In June of 2012 grey/brown agouti registration applications submitted
11 by Plaintiff Hosley were denied. Even applications submitted by Hosley for a
12 Certificate of Recorded Ancestry for her non-breeding grey/brown goats were
13 denied. Since then, Plaintiffs grey/brown goats have been denied registration.

14 69. Again in December of 2012 and January 2013, more serious
15 defamatory and false statements were made by various NPGA officials and
16 members regarding the breeding that produces Elkins first grey/brown agouti.
17 These statements directly and negatively impact Elkins reputation as a breeder. It
18 not only brings into question her grey/brown goats, but all of her goats now. False
19 statements were made including that Plaintiff Hosley’s business (Amber Waves)
20 was a “puppy mill” type of business for pygmy goats. Also that Plaintiff Elkins
21 had been fraudulently working on creating “interesting colors” all along and has
22 succeeded in developing her own line of small goats through impure
23 crossbreeding.

24 70. At the June 2013 meeting, a motion was passed to add a new
25 disqualifying fault for “non-conformity of color/pattern”. Now animals that are
26 fully registered, some with Grand Champion wins, will no longer be able to enter
27 the show ring to compete. Animals that are Permanent Grand Champions will not
28 be able to compete for Master Champion or National Champion.

1 71. Prior to the June 2013 meeting, the grey/brown agouti was not only
2 accepted, but encouraged through the awarding of placings and championships by
3 NPGA judges. The popularity of the grey/brown agouti grew and Plaintiffs
4 incorporated that color pattern into their herds in reliance on the practices and
5 procedures of the NPGA.

6 72. The growing popularity created competition in the show ring and the
7 sales market for breeders that did not prefer that color and did not have it in their
8 herds. Plaintiffs spent money breeding, raising, show and selling the grey/brown
9 agoutis. Plaintiff Elkins even sold a few breeding animals of the grey/brown
10 agoutis to various NPGA judges who liked the coloring and those animals were
11 also exhibited and many of them received high placings and championships in the
12 show ring under a variety of judges, including at a National show held in 2001 in
13 San Diego.

14 73. A false propaganda campaign of a malicious and defamatory nature
15 was carried out from 2008 to present. Yet, wins in the show ring continued,
16 despite those efforts, and further defamatory statements were published and
17 motions enacted designed to prevent the registration of the grey/brown agouti. In
18 order to further their agenda, the proponents fraudulently promised to continue to
19 register the color pattern in order to eventually achieve its goal to change the
20 Breed Standard after three failed attempts.

21 74. Proponents, who are breeder members of the NPGA, do not breed the
22 grey/brown color. Because of this, they have, and continue to try, to disqualify this
23 color through changes to rules, standards, and applications for registrations.
24 Changing the breed standard which now denies registrations to offspring from
25 previously registered pygmy goats seriously devalued the grey/brown agouti and
26 impacted Plaintiffs entire breeding operation. By removing the “all color”
27 language from the Breed Standard, previously registered grey/brown agoutis have
28 been effectively removed from registerable goats.

1 75. These breeders are Plaintiffs' potential competitors and have
2 economic incentives to exclude grey/brown agoutis; to keep prices for their own
3 goats high by avoiding competition against additional animals in breeding sales,
4 etc. A pygmy goat without NPGA papers is a virtually worthless breeding animal.
5 Meaningful economic participation in the pygmy goat industry is nearly
6 impossible without NPGA registration, as most profits come from breeding and
7 buyers require NPGA registration.

8 76. Defendants have effectively imposed a restraint of trade on members
9 who hereto were encouraged and charged fees by the NPGA for registration and
10 breeding use of this color pattern. Defendants know that it's refusal to register
11 Plaintiffs' grey/brown pygmy goats forecloses competition by Plaintiffs and
12 precludes and bars competitive entry into the market.

13 77. The rules that passed eliminating the grey/brown agouti unreasonably
14 restricted the supply of pygmy goats by eliminating an entire color (that was
15 previously accepted) thus raising the price. These rules are naked restraints in
16 violation of Section I of the Sherman Act and corresponding state antitrust laws.

17 78. The registry has registered the grey/brown color since the beginning
18 of the registry. Some of the original pygmy goats were this color. All pygmy goats
19 descend from these early lines therefore, if a certain colors and/or markings of
20 pygmy goat is questioned so will all the colors/markings.

21
22 **COUNT ONE-VIOLATION OF SECTION 1 OF THE SHERMAN**
23 **ANTITRUST ACT**

24 79. Plaintiffs hereby realleges and incorporates herein by reference the
25 allegations set forth in paragraphs 1 through 78.

26 80. Defendant's conduct described above constitutes a conspiracy and
27 combinations which unreasonably restrict restrains interstate trade.

28 ///

1 81. Defendants are an organization controlled by a group of competitors
2 which is routinely considered to be a conspiracy. The NPGA is controlled by
3 competitors with interests in banning grey/brown pygmy goats. Banning these
4 goats severely limits the competition in those competitors' favor by removing an
5 entire "color" of goat, the same color that these competitors do not have in their
6 herds. It also limits the supply of registerable pygmy goats.

7 82. Its rules are modified by the Board of Directors some of whom
8 compete against Plaintiffs in the showing of pygmy goats and have an incentive to
9 restrict competition. By passing a rule that eliminates an entire color of pygmy
10 goats from competing, these Directors have a greater chance of their own goats
11 winning, thus increasing the value of their goats. By eliminating an entire color of
12 pygmy goats, the pygmy goat market will have to go elsewhere from Plaintiff
13 breeders to competitor breeders to purchase, breed and show high-quality
14 registered pygmy goats.

15 83. By the conduct described above and through rules to exclude
16 grey/brown pygmy goats and their offspring from the NPGA registry, Defendants
17 and its membership have unreasonably restrained competition in the market for
18 high-quality pygmy goats in violation of Section 1 of the Sherman Antitrust Act.

19
20 **COUNT TWO-VIOLATION OF SECTION 2 OF THE SHERMAN**
21 **ANTITRUST ACT**

22 84. Plaintiffs hereby realleges and incorporates herein by reference the
23 allegations set forth in paragraphs 1 through 83.

24 85. By engaging in the acts and practices described above, Defendants
25 possess a monopoly power in the relevant market of the Pygmy Goat Industry.

26 86. By the conduct described above, NPGA has deliberately used, and is
27 continuing to use monopoly power in the market for high-quality registered pygmy
28 goats to exclude Plaintiffs and other competitors from the market and to restrict

1 supply.

2 87. Such conduct constitutes a monopolization in violation of Section 2
3 of the Sherman Antitrust Act.

4
5 **COUNT THREE-VIOLATION OF THE CARTWRIGHT ACT**

6 88. Plaintiffs herby realleges and incorporates herein by reference the
7 allegations set forth in paragraphs 1 through 87.

8 89. By its conduct described above, NPGA has violated the Cartwright
9 Act (Cal. Bus. & Prof. Code, § 16720 et. seq.) by creating or carrying out
10 restrictions in trade or commerce and/or prevent competition in the breeding,
11 showing and sale of the pygmy goat market.

12
13 **COUNT FOUR-VIOLATION OF THE LANHAM ACT**

14 90. Plaintiffs herby realleges and incorporates herein by reference the
15 allegations set forth in paragraphs 1 through 89.

16 91. Defendants made false and misleading representations in commerce
17 for the purpose of influencing consumers not to purchase Plaintiffs' pygmy goats
18 and such statements have been widely disseminated to the goat purchasing public.

19 92. Defendants made such false and misleading representations in the
20 course of promoting their own pygmy goats for sale in interstate commerce.

21 93. The deception is material and has or will likely influence the goat
22 purchasing public and has been widely disseminated.

23 94. The Plaintiffs' have been damaged by, and are likely to continue to be
24 damaged by Defendants' false and misleading representations in that consumers
25 have or will likely decline to purchase Plaintiffs' pygmy goats and Defendant is
26 therefore liable.

27 ///

28 ///

COUNT FIVE-INTERFERENCE WITH BUSINESS RELATIONS

95. Plaintiffs hereby reallege and incorporates herein by reference the allegations set forth in paragraphs 1 through 94.

96. Defendants are and have been aware that Plaintiffs' are highly successful breeders of Pygmy goats and that Plaintiffs' goats are highly sought after by other breeders.

97. Defendants purposefully and with intent to thwart Plaintiffs' sale of its pygmy goats, cast Plaintiffs' goats in a false light with actual and prospective purchasers by accusing Plaintiffs' goats of being of impure bloodlines and false pedigrees.

98. Defendants actions were wrongful, wholly unjustified and independently actionable.

99. As a result of Defendants' false and misleading statements, rumor spread among the goating community and Plaintiffs' were besieged with e-mails and telephone calls from present, prospective and former customers questioning the pedigree and quality of Plaintiffs' goats.

100. As a result of Defendants' statements and actions Plaintiffs have, and will continue to, lose sales of their pygmy goats and Defendants are liable therefore.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests relief as follows:

1. Issue a permanent injunction restraining, enjoining, and prohibiting NPGA from continuing their illegal conduct and, more specifically, from engaging in any of the following:

- a. Continuing to enforce any rules, motions that refuse to register Plaintiffs' grey/brown agouti pygmy goats and/or their offspring's.

- b. Any other actions having the effect of refusing to register Plaintiffs' grey/brown agouti pygmy goats.
- c. Imposing upon Plaintiffs any other new and anti-competitive limitations relating to the registration of grey/brown agouti pygmy goats and/or their offspring.

2. Issue a permanent injunction ordering NPGA to register Plaintiffs' grey/brown agouti pygmy goats;

3. Issue a permanent injunction requiring that Defendants' cease and desist from making any false and derogatory statements regarding any of the Plaintiff's goats, their businesses and themselves.

4. Award Plaintiffs' actual damages, including the diminution in value of Plaintiffs' high-quality pygmy goats, incidental and consequential damages including lost profit damages and treble the amount of damages determined to have been sustained by them and enter a judgment in favor of Plaintiffs against Defendants, for such sum, together with all prejudgment and post-judgment interest provided by law;

5. Order that Plaintiffs' recover from Defendants, the cost of this suit and all reasonable attorneys' fees incurred, such amounts to be fixed by the Court as required by §§ 4 and 16 of the Clayton Act, and under the Cartwright Act (Cal. Bus. & Prof. Code, § 16720 et. seq.);

6. For general and special damages according to proof;

7. For punitive damages in an amount appropriate to punish Defendants for their wrongful conduct and set an example of others;

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1 8. For such other relief the court deems just and proper.
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3 Dated: February 6, 2014

BURNS, SCHALDENBRAND & RODRIQUEZ

4 By: /s/Edward W. Burns

5 EDWARD W. BURNS

6 Attorney for Plaintiffs,

7 Debra Hosley, Amber Waves; Donna Elkins,

8 Proverbial Pygmies; Barbara Crane, Critter Craze

9 Ranch; Mike Heim, Citrus Lane Pygmies;

10 Rhonda Moore, #1 Moore Kidd; Chelsea Bates,

11 Picture Perfect Pygmies

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