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12 *Attorneys for Plaintiffs*

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 **JESSICA LOY, BRITTANY SWIGART,**  
16 **BRANDON SWIGART, JANE DOE,**  
17 **RAMTIN MEHRVIJEH, JULIA SUMMER**  
18 **EVANS, AUSTIN MATELSON, EMILY**  
19 **KOVACH, JANE ROE, ANTHONY V.**  
20 **PARADISE JR., BOBBY NEWBERRY and**  
21 **CARU SOCIETY FOR THE PREVENTION**  
22 **OF CRUELTY TO ANIMALS**

23 Plaintiffs,

24 v.

25 **TRINA KENNEY, RICK KENNEY, ELIJAH**  
26 **KENNEY, JEZRIEL KENNEY, and DOES 1-**  
27 **50, inclusive**

28 Defendants.

**FILED**  
Superior Court of California  
County of Los Angeles

07/15/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By:           C. Wilson           Deputy

Case No. 19STCV45035

~~PROPOSED~~ **ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

**Date:** July 8, 2021

**Time:** 8:30 a.m.

**Judge:** Hon. Barbara Scheper

**Dept.:** 30

**Reservation ID:** 932433736552310427259757

1 On July 8, 2021 at 8:30 a.m., in Department 30 of the above-entitled court, located at 111 N.  
2 Hill Street, Los Angeles, CA 90012, this matter came for a hearing before the Hon. Barbara Scheper.  
3 The Court has considered Plaintiffs' Notice of Motion and Motion for Preliminary Injunction,  
4 Defendants' Opposition to the motion, Plaintiffs' Reply, other materials submitted by the parties, and  
5 the arguments of counsel. Plaintiffs' Motion for Preliminary Injunction is hereby GRANTED. The  
6 Court has adopted its tentative ruling issued July 7, 2021, attached hereto as Exhibit 1.

7 Therefore, as of the date of this order and until a final determination is reached in this case,  
8 the Court hereby enjoins Defendants Trina Kenney, Rick Kenney, Elijah Kenney, and Jezriel Kenney  
9 from advertising and selling dogs, via any means and method, either personally or through any agent  
10 or other person. Such means or methods may include, but are not limited to:

- 11 (1) Advertising or selling dogs in-person at any location, including any residence, public  
12 place (including in a parking lot or on a sidewalk), or private location;
- 13 (2) Physically posting or placing any image or text of an advertisement for a dog in any  
14 location;
- 15 (3) Advertising or selling dogs using any website or online application, including but not  
16 limited to: Craigslist.org, Recycler.com, Facebook.com, Facebook Marketplace,  
17 Nextdoor.com, Twitter.com, Instagram.com, TikTok.com, eBay.com, 5Miles.com,  
18 OfferUp.com, Letgo.com, PuppyFind.com, PuppyFinder.com, NextDayPets.org,  
19 Onebarkplaza.com, Puppiesforsaletoday.com, Puppyspot.com, Petzlover.com,  
20 Friendapuppy.com, GoodDog.com, OliverPetCare.com, Pawbe.com, NorCalPups.com,  
21 PremierPups.com, CaliforniaPuppiesForSale.com; and
- 22 (4) Advertising or selling dogs via phone call, text message, instant messaging service or  
23 application, or email.

24 Further, as Plaintiffs are required to post bond pursuant to Cal. Code Civ. P. § 529 with  
25 respect to the foregoing Preliminary Injunction, and given the absence of evidence by Defendants to  
26 support any damages Defendants allegedly may suffer by reason of the injunction if the Court  
27 subsequently decides that Plaintiffs were not entitled to the injunction, the Court hereby finds that a  
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1 nominal bond in the amount of \$100 is proper. Plaintiffs are hereby ordered to post a bond in this  
2 amount no later than seven (7) days after the signing of this order.

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**IT IS SO ORDERED.**

Dated:   R 1 2020  



*Barbara M. Schep*  
The Honorable Barbara Schep  
Judge of the Superior Court  
Barbara M. Schep / Judge

# **Exhibit 1**

**DEPARTMENT 30 LAW AND MOTION RULINGS**

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**Case Number:** 19STCV45035 **Hearing Date:** July 8, 2021 **Dept:** 30

Dept. 30

Calendar No.

Loy, et. al. vs. Kenney, et. al., Case No. 19STCV45035

Tentative Ruling re: Plaintiffs' Motion for a Preliminary Injunction

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Plaintiffs Jessica Loy, Brittany Swigart, Brandon Swigart, Ramtin Mehrvijeh, Julia Summer Evans, Austin Matelson, Emily Kovach, Anthony V. Paradise Jr., Bobby Newberry, and Caru Society for The Prevention of Cruelty to Animals (Caru SCPCA) (collectively, Plaintiffs) move to enjoin the Defendants from selling or advertising dogs through the conclusion of this litigation. The motion is granted.

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Improper Request for Continuance

As an initial matter, Defendants request a continuance to obtain evidence and deposition testimonies.

A motion for continuance is addressed to the sound discretion of the trial court. (*Link v. Cater* (1998) 60 Cal.App.4th 1315, 1321.) "A party seeking a continuance . . . must make the request for a continuance, by a noticed motion or an ex parte application . . . The party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered." (Cal. Rules of Court, rule 3.1332(b).)

Defendants did not file a motion or an ex parte application. In addition, this case was filed in December 2019. In that time, the Plaintiffs have taken depositions. Defendants offer no explanation as to why they waited until now to serve deposition notices. Accordingly, the request for a continuance is denied.

Legal Standard

Preliminary injunctions can only be granted after the moving party shows there is no adequate remedy at law. (*Wilkison v. Wiederkehr* (2002) 101 Cal.App.4th 822, 832.) A showing of irreparable harm is a "threshold requirement" to obtain a preliminary injunction. (*Costa Mesa City Employees Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 306.) To show irreparable harm, the moving party must ordinarily show that his injuries cannot be adequately compensated in damages. (*Intel Corp. v. Hamidi* (2003) 30 Ca.4th 1342, 1352.)

"The trial court's decision rests on the consideration of two interrelated factors: (1) the likelihood that [moving party] will prevail on the merits at trial and (2) the interim harm that [moving party] is likely to suffer if the injunction is denied, compared to the harm the [opposing party] is likely to suffer if the injunction

issues.” (*Perez v. Hastings College of the Law* (1996) 45 Cal.App.4th 453, 456, citing *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286.)

Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing of the grounds for relief. (See, e.g., *ReadyLink Healthcare v. Cotton* (2005) 126 Cal.App.4th 1006, 1016; *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 150.) Injunctive relief may be granted based on a verified complaint only if it contains sufficient evidentiary, not ultimate, facts. (See Code Civ. Proc. § 527, subd. (a).) The burden of proof is on the plaintiff as moving party. (*O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

A trial court has broad discretionary powers to grant or deny a request for a preliminary injunction, so long as it does not act capriciously. The court should exercise its judgment in favor of the party most likely to be injured. (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 205.) If denial of an injunction would result in great harm to plaintiff, and defendant would suffer little harm if it were granted, it is an abuse of discretion to fail to grant the preliminary injunction. (*Ibid.*)

### Plaintiffs’ Likelihood of Success on the Merits

Purchaser Plaintiffs allege causes of action for violation of the CLRA and the UCL, while Caru SPCA seeks injunctive relief to prevent Defendants from violating animal cruelty laws.

The CLRA is intended to protect consumers against unfair and deceptive business practices, to provide efficient and economical procedures to secure such protection and is cumulative to other legal remedies. (Civ. Code, §§ 1752, 1760.) The CLRA expressly defines “unfair methods of competition and unfair or deceptive acts or practices.” (Civ. Code, § 1770.)

The Unfair Competition Law (UCL) applies to acts that are either “unlawful, or unfair, or fraudulent.” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 [“a practice is prohibited as ‘unfair’ or ‘deceptive’ even if it is not ‘unlawful’ and vice versa”].) To prevail on a claim for unfair business practices, a plaintiff must allege that he “suffered injury in fact and has lost money or property as a result of the unfair competition.” (Bus. & Prof. Code, § 17204.)

“A business practice is unfair within the meaning of the UCL if it violates established public policy or if it is immoral, unethical, oppressive, or unscrupulous and causes injury to consumers which outweighs its benefit.” (*McKell, supra*, 142 Cal.App.4th at p. 1473.) To allege an “unlawful” business practice, a plaintiff must allege a practice that is “forbidden by law,” such that the business practice “violates any law, civil or criminal, statutorily or judicially made.” (*Id.* at pp. 1473-1474.)

By proscribing “any unlawful” business practice, “the UCL borrows violations of other laws and treats them as unlawful practices that the UCL makes independently actionable.” (*Gutierrez, supra*, at p. 1265.) “[V]irtually any law or regulation—federal or state, statutory or common law—can serve as [a] predicate for a ... [section] 17200 ‘unlawful’ violation. [Citations].” (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1383 (*Klein*).)

Corporations Code section 10404 empowers humane societies incorporated under section 10400 to enjoin individuals from violating laws related to or affecting animals by “proffer[ing] a complaint against any person, before any court or magistrate having jurisdiction, for violation of any law relating to or affecting animals.”

The Animal Cruelty laws prohibit subjecting any animal to needless suffering or cruelty by depriving the animal of necessary food, drink, or shelter or keeping animals in any enclosure without proper care or

attention (Penal Code, §§ 597, 597.1, 597f). Cruelty includes “every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.” (Penal Code, § 597b.) Sales of dogs in parking lots or of dogs under the age of eight weeks are also prohibited. (Penal Code, §§ 597.4, subd. (a)(1), 597z.)

Plaintiffs’ claims are based on Defendants’ unlawful advertising and sale of puppies who have been neglected and kept in unsanitary conditions, resulting in their contracting life-threatening diseases.

The evidence Plaintiffs present in support of the motion shows a consistent pattern. Plaintiffs’ primary evidence is the testimony from Jessica Loy, Brandon Swigart, and Anthony V. Paradise Junior (Purchaser Plaintiffs). The testimony and experiences of each of these Plaintiffs are similar and are consistent with Plaintiffs’ claims in the Second Amended Complaint (SAC). Purchaser Plaintiffs testify that Defendants sell the puppies to families who respond to online advertisements promising healthy, purebred Labradoodle and Goldendoodle puppies of at least eight weeks in age. (Loy Decl., ¶¶ 2-5, Swigart Decl., ¶¶ 2-11, Paradise Jr. Decl., ¶¶ 2-8.)

The evidence shows that Defendants’ online advertisements were either false or misleading. Some of the puppies were dyed a different color than their natural fur color to match the online advertisements and in the case of Jessica Loy, the puppy was a different sex than what was advertised. (Loy Decl., ¶ 3, Swigart Decl., ¶ 10, Vitale Decl., Ex. 16.) Each of the Purchaser Plaintiffs were told that the puppies were immunized and were in good condition. However, the evidence shows that this was false because within the first day each of the puppies sold to the Purchaser Plaintiffs began to grow ill and their condition would rapidly deteriorate until they died. (Loy Decl., ¶¶ 3-7, Swigart Decl., ¶¶ 8-12, Paradise Jr. Decl., ¶¶ 7-9.) Finally, when purchasers informed Defendants of the poor health of the puppies, Defendants engaged in a pattern of insults and obstructive behavior including using racial slurs. (Loy Decl., ¶ 7, Paradise Jr. Decl., ¶ 10, Swigart Decl., ¶ 13, Vitale Decl., Exs. 10-15.)

In the opposition, Defendants argue that Plaintiffs have not presented evidence that it was specifically the Defendants that sold them the puppies. However, the Purchaser Plaintiffs identified Trina Kenny and Jezriel Kenney as the ones who sold them the puppies. (See Loy Decl., ¶ 7, Paradise Jr. Decl., ¶ 4, Swigart Decl., 8.) In addition, Trina Kenny admitted to buying puppies from the internet and reselling them on the internet and Jezriel Kenny admitted to selling puppies and advertising them on social media websites like “Craigslist.” (Vitale Decl., Ex. 1 at p. 82, Ex. 3 at pp. 93-94.)

Defendants also argue that Plaintiffs have not completely proven their case. That is not the issue on this motion because this is not a final adjudication of rights. “The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy. It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or should not be restrained from exercising the right claimed by him.” (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.)

Furthermore, Defendants fail to make any arguments opposing Plaintiff Caru SPCA’s showing of a likelihood of success on the merits of their Corporations Code sections 10404 claim. As stated above, Plaintiffs have shown that the animals were sick and in poor health when they were sold to Plaintiffs. Plaintiffs have also presented evidence that Defendants would conduct the sales in public places like parking lots in violation of Penal Code section 597.4. Moreover, Defendants did not provide the Purchaser Plaintiffs with the required written material about the dogs being sold. (Health & Saf. Code, §§ 122140, subd. (b), 122190.) Plaintiffs also presented evidence that some of the dogs were under eight weeks, in violation of Health & Safety Code section 122155, subdivision (b). (See Loy Decl., ¶ 5, Swigart Decl., ¶ 10, Paradise Jr.

Decl., ¶ 7.) Thus, Plaintiffs have presented evidence demonstrating that Defendants have violated animal cruelty laws.

### Plaintiffs Will Suffer Irreparable Harm

Plaintiffs have shown that they will likely suffer irreparable harm if an injunction is not issued because other consumers will potentially be harmed by buying sick puppies and because allowing sick puppies to be fraudulently sold would damage the mission of Caru SPCA. In addition to the Purchaser Plaintiffs' testimony, Plaintiffs present evidence of an officer of the Humane Society of San Bernardino Valley (HSSBV). Defendants argue that this is improper character evidence. (Evid. Code, § 1101.) The Court disagrees. This evidence is being offered to demonstrate the identity of the sellers as Defendants, as well as opportunity, intent, and a common plan. (Evid. Code, § 1101; see e.g., *People v. Edwards* (2013) 57 Cal.4th 658, 713.)

Dating back to at least 2012, HSSBV began receiving complaints regarding the Defendants selling sick puppies that were advertised online. (Padilla Decl., ¶¶ 2-3.) In 2018, HSSBV obtained a warrant to search Defendants' home in Phelan. (Padilla Decl., ¶ 6.) HSSBV seized approximately 32 dogs and puppies from the Defendants' home. (Padilla Decl., ¶ 7.) Padilla offers testimony that the dogs were kept in unhealthy conditions. (Padilla Decl., ¶ 7.) This testimony, along with the testimony of the Purchaser Plaintiffs, shows a probability of irreparable harm to the public and future consumers who may view the online advertisements and to Caru SPCA, whose mission is to prevent animal cruelty.

There is also no adequate legal remedy. Money damages would not stop the sale of unhealthy puppies or the false advertising of puppies. Nor would money damages stop the sale of dogs without the appropriate paperwork.

Defendants do not offer any argument on irreparable harm.

### Balance of Hardships

As discussed above, an injunction will prevent irreparable harm to Plaintiffs and future consumers who may wish to purchase puppies from Defendants. The hardships to the public and future consumers who might be misled weighs in favor of granting the injunction. Defendants do not offer any arguments on this point in the opposition.

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles. I am over the age of 18 years and not a party to this action. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP, 2716 Ocean Park Blvd., Suite 3088, Santa Monica, CA 90405. On this day, I served the following document(s) in the manner described below:

**1. [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

X **VIA E-MAIL:** My e-mail address is mbressick@cpmlegal.com. I am readily familiar with this firm's practice for causing documents to be served by e-mail. Following that practice, I caused the aforementioned document(s) to be e-mailed to the addressee(s) specified below.

Richard M. Ewaniszyk  
**EWANISZYK LAW FIRM**  
rick@ewaniszyklaw.com

Donald W. Reid  
**LAW OFFICE OF DONALD W. REID**  
don@donreidlaw.com

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Santa Monica, CA s, on July 9, 2021.

  
\_\_\_\_\_  
MELISSA BRESSICK