

CAUSE NO. \_\_\_\_\_

**KALLE MCWHORTER and,  
PRESTIGIOUS PETS, LLC,**

**PLAINTIFFS,**

**V.**

**ROBERT DUCHOUQUETTE and  
MICHELLE DUCHOUQUETTE,**

**DEFENDANTS.**

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**IN THE DISTRICT COURT OF**

**DALLAS COUNTY, TEXAS**

\_\_\_\_\_ **JUDICIAL DISTRICT**

**PLAINTIFFS’ ORIGINAL PETITION**

Plaintiffs Kalle McWhorter and Prestigious Pets, LLC file this Original Petition and would respectfully plead as follows:

**I.  
SUMMARY AND KEY FACTS**

1. Prestigious Pets, LLC is a small, local pet care company founded in 2009 by Kalle (nee Gregory) McWhorter. To this day, Kalle has been the sole owner of what was previously a well-regarded and successful business in the DFW Metroplex. Kalle has had a nearly 365-days-a-year commitment to the business of pet care since day one based on her love of animals. Her husband assists her in managing their team of independent pet sitters.

2. In October 2015, Prestigious Pets agreed to care for the two dogs of Defendants Robert and Michelle Duchouquette while the couple vacationed in Napa Valley, California. Prestigious Pets and Mr. Duchouquette signed a contract regarding the care of the two dogs, along with a variety of other provisions regarding how to get visit updates (email daily) and a bar on disparaging the company (the “Agreement”). At the in-home meet and greet with the independent pet sitter, the Duchouquettes demanded for the first time that the sitter also take care of the Duchouquettes’ betta fish. The Duchouquettes had never told Prestigious Pets, however, they even

had a fish, much less that they expected Prestigious Pets to care for it. The Agreement did not mention fish care, but the independent sitter agreed to feed the fish on her own, no charge. No request was made to clean the filter-less bowl or change the water during the five-day vacation.

3. During the Duchouquettes' vacation while the independent pet sitter was regularly visiting their home, they sent an email claiming that their in-home camera had seen the fish bowl become cloudy. The Duchouquettes did not mention any concern about the health of the fish or request that any action be taken to protect the fish except just to feed it less (even though the sitter was feeding in only a "pinch or two" per day as instructed).

4. After returning home, the Duchouquettes admitted that their two dogs were well cared for. However, the Duchouquettes have made it an ongoing campaign to tell the world that Prestigious Pets and Kalle almost killed their fish or at least potentially harmed it (without any evidence to support such a claim)—statements that for a pet care company go to the heart of their business. These statements have been made repeatedly by the Duchouquettes, both on Yelp!, birdeye.com, and in at least one national television interview that featured the fish alive and well. Furthermore, Mr. Duchouquette has made numerous negative statements (in television interviews, on social media, etc.) about Prestigious Pets disparaging the company's policies, actions, contractors, and owners in complete disregard for the non-disparagement clause he agreed to in the Agreement. When the Duchouquettes refused to acquiesce to Plaintiffs' requests to modify the online review to be truthful (and reflect that the dogs were well cared for, and the fish apparently also just fine), Plaintiffs were forced to take legal action.

5. As a result of the defamatory and disparaging statements of the Duchouquettes, Kalle and her husband have had to deal with numerous rape and death threats that have come on the heels of the Duchouquettes' media campaign, in addition to other forms of harassment such as

identity theft, impersonations, crank calls, etc. Prestigious Pets and Kalle have also seen a dramatic decrease in new business and the loss of current clients that has left Prestigious Pets a shell of its former success. This lawsuit seeks to enforce the common-law, statutory, and contractual rights of Prestigious Pets as a small, local business and Kalle as its owner and to recover the damages caused by the Duchouquettes.

## **II. PARTIES**

6. Plaintiff Prestigious Pets, LLC is a Texas limited liability company with its principal place of business in Dallas County, Texas.

7. Plaintiff Kalle McWhorter is a Texas citizen that resides in Dallas County, Texas.

8. Defendant Robert Duchouquette is a Texas citizen that resides in Collin County, Texas. Mr. Duchouquette may be served at 6428 Brandon Court, Plano, Texas 75903.

9. Defendant Michelle Duchouquette is a Texas citizen that resides in Collin County, Texas. Mrs. Duchouquette may be served at 6428 Brandon Court, Plano, Texas 75903.

## **III. RELIEF SOUGHT, CONDITIONS PRECEDENT, JURISDICTION, and VENUE**

10. All conditions precedent to Plaintiffs' claims and recovery of damages have occurred, been satisfied, or been waived, including but not limited to compliance with Chapter 73 of the Texas Civil Practice and Remedies Code. This Court has jurisdiction over Defendants because they are Texas citizens and residents of Collin County, Texas.

11. The amount in controversy is within the jurisdictional limits of this Court. Pursuant to TEX. R. CIV. P. 47, Plaintiffs seeks monetary relief over \$200,000 but not more than \$1,000,000 for, *inter alia*, reputational harm, lost sales/profits, reduction in enterprise value, and mental anguish. Plaintiffs also demand judgment for all other relief to which Plaintiffs deem themselves entitled. Plaintiffs contend this suit is best managed under a Level 3 discovery order.

12. Venue in Dallas County, Texas is proper pursuant to Chapter 15 of the TEX. CIV. PRAC. & REM. Code because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Dallas County, Texas, the contract at issue was at least partially performable in Dallas County, Texas, and Plaintiffs resided/were domiciled in Dallas County, Texas when the causes of action accrued.

#### **IV. CAUSES OF ACTION**

##### **A. Breach of Contract (Non-Disparagement Clause)**

13. Prestigious Pets incorporates all preceding paragraphs by reference.

14. Prestigious Pets has a valid, enforceable contract with Mr. Duchouquette via the Agreement. Under the Agreement, Mr. Duchouquette agreed not to make negative comments about Prestigious Pets and to not disparage Prestigious Pets. In pertinent part, the non-disparagement clause states: “[Y]our acceptance of this agreement prohibits you from taking any action that negatively impacts Prestigious Pets, LLC, its reputation, products, services, management, employees or independent contractors....Any violation of this clause is to be determined by Prestigious Pets LLC in its sole discretion....” The non-disparagement provision was in the same legible typeface, size, and font as the remainder of the Agreement, began with the heading “NON-DISPARAGEMENT / INJUNCTION,” and it was immediately above the signature line on the second page of the two-page contract.

15. Mr. Duchouquette voluntarily, knowingly, and intelligently signed the Agreement and agreed to the non-disparagement provision after it was provided to him by Prestigious Pets' independent contractor pet sitter. In fact, the pet sitter specifically pointed out to Mr. Duchouquette the non-disparagement provision by reading the title of that paragraph as part of her explanation

of the entire Agreement. Further, Mr. Duchouquette's signature is immediately under the non-disparagement provision.

16. Mr. Duchouquette breached the Agreement by, *inter alia*, making negative comments disparaging the policies and conduct of Prestigious Pets, LLC and its management (including but not limited to the inclusion of the non-disparagement clause and filing of suit) in a variety of written and broadcast mediums, including but not limited to via Facebook, Inc., ABC.com, CBS.com, and other media outlets.

17. As the result of Mr. Duchouquette's breaches, Prestigious Pets has suffered actual and consequential damages, including lost profits, devaluation of its business, and loss of the value of certain assets no longer viable due to the current state of its business. Prestigious Pets seeks such damages, along with its attorneys' fees, costs, pre-judgment interest, and post-judgment interest. Prestigious Pets performed or was excused from performance.

## **B. Defamation**

18. Plaintiffs incorporate all preceding paragraphs by reference.

19. The Duchouquettes published multiple false, defamatory statements of fact that referred to Prestigious Pets. Prestigious Pets is a limited liability company owned solely by Kalle McWhorter. Plaintiffs are private figures. The Duchouquettes are non-media defendants. The false, defamatory statements of fact each regarded a private issue—i.e., the execution of, performance of, and resolution of disputes regarding the Agreement.

20. One of the false, defamatory statements by the Duchouquettes was in their Yelp! review that alleged Plaintiffs "almost kill[ed] my fish" (which was later changed to say "potentially harm[ed] my fish"). This statement was re-published on numerous online and television media outlets, and even re-posted word-for-word by Mrs. Duchouquette on birdeye.com (another review

site). Likewise, Mr. Duchouquette alleged on national television that their fish was “overfed.” The statements are defamation per se because each (a) was reasonably calculated to injure Plaintiffs’ reputation and thus exposed them to public hatred, contempt, ridicule, or financial injury,<sup>1</sup> (b) injured Plaintiffs in their business/occupation regarding the alleged lack of a peculiar or unique skill (pet care) necessary for the proper conduct of the business/occupation, and (c) falsely charged Plaintiffs with the commission of an act that is a crime (violation of TEX. PENAL CODE § 42.092, “Cruelty to Nonlivestock Animals”). The statements have been continuously published and re-published both by the Duchouquettes and by third parties. Mr. Duchouquette admitted to a role in publishing the statements and that he adopted the statements.

21. Further, the Duchouquettes’ Yelp! review and subsequent oral interview and written statements about Plaintiffs falsely convey by implication that Plaintiffs agreed to care for the Duchouquettes’ fish and failed to do so. Such statements were false given that the Duchouquettes knew they had not agreed with Plaintiffs (either orally or in writing) that Plaintiffs would be responsible for the care of their fish.

22. The Duchouquettes published the statements negligently or intentionally and without justification or excuse. Additionally, a reasonable person would recognize that the Duchouquettes’ statements created an unreasonable risk that the defamatory statements would be communicated to other parties by, *inter alia*, online dissemination, broadcast, and print. With regard to the truth of the statements the Duchouquettes are liable without regard to fault (strict liability). Plaintiffs’ injuries are presumed; however, Plaintiffs did suffer pecuniary injury that include direct damages, consequential damages (including loss of earning capacity, loss of business interest value, injury to reputation, mental anguish, and loss of past and future income).

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<sup>1</sup> TEX. CIV. PRAC. REM. CODE § 73.001.

23. The Duchouquettes are liable for exemplary damages: (a) they acted with actual malice by publishing the statements above with knowledge that they statements were false or with reckless disregard for whether the statements were false; and (b) they had specific intent to substantially injury or harm Plaintiffs through defamation of each. Plaintiffs seek pre-judgment interest, post-judgment interest, and court costs.<sup>2</sup>

**C. Business Disparagement**

24. Plaintiffs incorporate all preceding paragraphs by reference.

25. The Duchouquettes published disparaging words about Prestigious Pets' economic interests that were false, including but not limited to those statements enumerated above. The statements were published by the Duchouquettes with malice and without privilege. Defendants' publication of the statements caused special damages including loss of sales, loss of enterprise value, loss of business, lost profits, and loss of asset value. Prestigious Pets seeks those special damages, its expenses of counteracting the publications, exemplary damages, pre-judgment interest, post-judgment interest, and court costs.

**V.  
CONCLUSION AND PRAYER**

26. Wherefore, premises considered, Plaintiffs respectfully request that this Court, upon final disposition of this matter, enter judgment against each Defendant based on the claims enumerated herein, grant to Plaintiffs their damages (actual, consequential, special, etc.), grant to Plaintiffs exemplary damages, grant to Plaintiff Prestigious Pets its reasonable and necessary attorneys' fees and costs under Chapter 38 of the Texas Civil Practice and Remedies Code and by contract, grant to Plaintiffs the maximum amount of pre-judgment and post-judgment interest

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<sup>2</sup> In the alternative the Duchouquettes were negligent or acted with actual malice regarding the truth of the statements.

available under law, and grant to Plaintiffs all other relief at law and equity to which Plaintiffs have shown themselves entitled.

Dated: March 27, 2016

Respectfully submitted,



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