

**CIVIL COURT: STATE OF NEW YORK
COUNTY OF NEW YORK**

**ELENA ZAKHAROVA for herself and as
representative of her dog, Umka,**

Index No. 2011/067721

Plaintiff,

-against-

**RAISING ROVER LTD., JEFFREY
SILVERSTEIN, FRANKIE FORONJY,
and JOHN DOEs 1-3, being the Puppy Mill
and/or breeder of Umka,,**

**NOTICE OF MOTION
TO COMPEL A SETTLEMENT
& COMPEL COMPLIANCE PER GBL §35
ORAL ARGUMENT REQUESTED**

Defendants.

Upon the affirmation of Susan Chana Lask, Esq., dated August 13, 2012, and upon all other pleadings and papers had herein, Plaintiff will move this court at *Part 30*, in Room 325, at the Courthouse at 111 Centre Street, New York, New York, on August 22, 2012 at 9:30 a.m. for an order granting this motion to (a) enforce a settlement, (b) compel compliance per GBL §35, (c) impose sanctions pursuant to 22 NYCRR §1301.1 against Defendants and counsel (d) for attorney fees and costs and punitive damages, (e) and for such other and further relief as the court deems proper, including motion costs.

The above-entitled action is for breach of contract and other causes of action related to Defendants' refusal to follow multiple consumer laws, including general business Laws and Agriculture Laws related to the sale of a female puppy, now named Umka, who was sold in a defective condition.

Pursuant to *CPLR 2214*, answering affidavits, if any, are to be served upon the undersigned via e-mail as stipulated at least two days before the return date of this motion.

Dated: August 13, 2012
New York, New York

Yours, etc.,
LAW OFFICES OF SUSAN CHANA LASK

By: Susan Chana Lask, Esq.
Attorney for Plaintiffs
244 Fifth Avenue, Suite 2369
New York, NY 10001
(917) 300-1958

To: Guido Gabriele, Esq., Geisler . Gabriele . Marano LLP,
100 Quentin Roosevelt Blvd, PO Box 8022,
Garden City, NY 11530; 516.542.1000

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**RAISING ROVER LTD., JEFFREY
SILVERSTEIN, FRANKIE FORONJY,
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**AFFIRMATION of SUSAN CHANA LASK
SUPPORTING MOTION
TO COMPEL A SETTLEMENT**

Defendants.

STATE OF NEW YORK : ss
COUNTY OF NEW YORK :

I, SUSAN CHANA LASK, ESQ., an attorney duly admitted to practice law in the State of New York and in good standing affirm under penalty of perjury the following:

1. I am the attorney for Plaintiff Elena Zakharova. I am fully familiar with the facts and circumstances involved.
2. This matter involves causes of action against Defendants, a pet store, by Plaintiff, a consumer, regarding Defendants' sale of a Brussels Griffon female puppy to Plaintiff with congenital defects discovered after the sale; unfortunately, the puppy is defective.
3. The purchase was made on the date of the Contract of Sale, dated February 4, 2011, for \$1,650.00 and (**Exhibit "A"**, the "Contract"). The puppy's name is Umka. Subsequently, Plaintiff paid thousands of dollars in surgery and fees Umka requires to correct her condition.

I. FACTS

4. On February 9, 2012 Defendants were served with the First Amended Complaint filed with this Court¹. The Complaint alleges various causes of actions against Defendants, including (a) Breach of Contract, (b) UCC Violations, including §§2-314,2-616(2) and §2-714 and 715 regarding implied warranty of merchantability, (c) Violations of General Business Law §§753, 754, 349, (d) fraud and (e) punitive damages².
5. On or about February 22, 2012 Defendants' filed an Answer to the Complaint.

¹ Judicial Notice of all pleadings filed should be taken and all such pleadings are incorporated herein as if set forth fully rather than attached as Exhibits.

6. From February, 2012 through May, 2012, I made multiple requests to Defendant's counsel, Mona Engle, to provide me with Umka's documents as mandated by General Business Law 35(d), §753-d, part 2 to state the breeder's name and address if known or the source of the dog (meaning if they purchased from an intermediary or broker) and Article 26-A of the Agriculture and Markets Law regulating the pet dealer program that pet stores must provide to the consumer the source of the dog.
7. Moreover, the Contract mandates said documents were to be provided at the time of the sale. It is now a year and a half later and said documents have not been released by Defendants and they in fact refuse what they are mandated to release by law.
8. Since April, 2012, Defendant's counsel Ms. Engle several times confirmed to me by phone and e-mails that she had the documents Defendants are mandated by law to provide and that she would deliver them to me.
9. On or about April 13, 2012 Ms. Engle confirmed to me that she spoke to the breeder listed on the Contract and she stated it was a reputable breeder not a puppy mill. When I told her that was impossible because there was no breeder listed on the Contract (see Exhibit A), then Ms. Engle refused to provide the name of the breeder she allegedly spoke to. Subsequently, Ms. Engle admitted by phone that she spoke to the wrong breeder. Then her April 26, 2012 e-mail to me confirms again that she will send me the documents showing Umka's actual source:

"I spoke to my client about the contract and now know why I saw a breeder and you did not. He reminded me that the file for Umka was left in Raising Rover and they cannot find it. What he showed me was a prototype contract from another client. I have told him to attempt again to find Umka's file and also obtain the name of the breeder."

10. Ms. Engle continued confirming Defendants would provide Umka's documents as mandated by law, to wit:

From: Mona C. Engel
Sent: Wednesday, June 06, 2012 3:23 PM
To: 'Susan Chana Lask Esq'
Subject: RE: 6-6-12 Umka Stl

It is simple but comprehensive. **My client has the papers with all the information that is contained in a dog's papers. I do not have the papers yet. You will have the official papers, which I believe will contain the breeder's name and address.** I have no idea if a phone number is on a dog's papers. (emphasis added)

11. While waiting for the papers mandated by law, on June 14, 2012, a settlement was agreed to wherein Defendants offered a principal sum of \$8,750 in exchange for reciprocal general releases and Plaintiff agreed to withdraw the action. On June 14, 2012, Plaintiff accepted the settlement offer.

12. Immediately upon acceptance, Defendant's counsel Ms. Engle then refused to provide Umka's documents mandated to be released by law, then conditioned their release upon Plaintiff first signing the settlement.

13. On June 14, 2012 I confirmed the settlement agreement and explained that Umka's paperwork is mandated by law to be released, and cannot be conditioned on a settlement:

On Jun 14, 2012, at 10:20 AM, "Susan Chana Lask Esq" wrote:

Mona, My client has a right by law and by the contract to have Umka's papers now, not dependent on a settlement nor what your client should provide by law and contract. I told you I can get a settlement but your tactic of withholding what my client is due by law and the contract is unlawful.

If you want this reported to the licensing authorities to get the paperwork you admit you have then we will do so today and your client will have a complaint registered against him, which is what we are trying to avoid by an amicable settlement but you're withholding what is due by law and public policy is interfering with BOTH clients' rights.

Send Umka's breeder information and pedigree today that you admit your client has. Otherwise, in addition to my client's rights to that paperwork which a complaint to the licensing authorities will get us, I will also file a motion to enforce the settlement as the terms are agreed to monetarily. You will lose on both ends and it will only bring negative attention to your client, which I am trying to make this a positive experience and everyone can walk away.

Please share this with your client so I have the papers today. Otherwise, by 3 today my client's complaint is being faxed to the licensing agency and by Monday I'm filing a motion to enforce the settlement.

14. On June 27, 2012 the New York State Department of Agriculture directed that Ms. Engle and Defendants release Umka's paperwork to Plaintiff or they would consider legal action against Defendants (**Exhibit "B"**).

15. To date, Defendants have refused to comply with the settlement, the law and the Contract, apparently terminated Ms. Engle and obtained new counsel, Guido Gabriele, who also refuses to comply with the law and the settlement.

II. ARGUMENT AND THE LAW

A. A Settlement was Reached as to all Essential Terms and Must be Enforced.

16. New York holds that Defendant's offer was accepted to create a binding agreement between the parties, and in fact the consideration for a bilateral contract in which promises are exchanged consists of the acts mutually promised. *Moers v. Moers*, 229 N.Y. 294, 301, 128 N.E. 202 (1920), citing 1 *Williston on Contracts*, § 103f). Thus, Plaintiff's agreement to withdraw the complaint and release Defendants and Defendant's agreement to pay money constituted fair consideration. What was left was a formality to sign the settlement agreement to these simple terms.

17. The parties' intent to execute an agreement in the future does not prevent contract formation before execution. *Winston v. Mediafare Entm't Corp.*, 777 F.2d 78, 80 (2d Cir. 1985). "The only

essential prerequisite for a valid settlement agreement is that the parties assent to the terms and conditions of the settlement, and, where there is an oral settlement agreement, that the parties intend to be bound by it.” Id.

18. The parties' conduct here establishes without question that both sides understood and intended that the dispute was settled. All essential terms were agreed to, which were payment and reciprocal releases. It was but for Defendants attempt to condition what they were obligated to do by law that the settlement agreement was not executed. Defendants cannot claim that there is no settlement because they condition the settlement on what they are legally obligated to do by statute. A settlement exists and must be enforced independent of Defendants’ statutory legal obligations under General Business Law, Agriculture Law and certainly the Contract they executed mandates they provide Umka’s documents.

19. This Court merely needs to direct Defendants to release the settlement amount and the parties can execute the releases.

B. Defendants Cannot Disregard Their Obligations Under the Law and the Contract in Exchange for a Release, Nor Force Plaintiff to Give up Her Rights Existing by Law

20. Law exists independent of the settlement mandating Defendants release Umka’s paperwork showing her breeder information. Defendants’ and their counsels’ insisting on terms that by law they are to do unconditionally is unlawful, underhanded and against public policy. Arguably Defendants’ and their counsel’s insistence on avoiding their legal obligations as a licensed pet dealer breaches their state license as a pet dealer and possibly violates Ms. Engle’s and Mr. Gabriele’s obligations as licensed attorneys who should enforce the law, not assist clients to obstruct it as it appears here by Ms. Engle’s authoring e-mails to me stating she will not release the documents that her client is obligated by law to release then Mr. Gabriele refuses to send the papers his client admitted he has through his first attorney, Ms. Engle.

21. Despite Defendants’ and their counsels’ misconduct, Plaintiff refuses to give up her rights under the Contract of Sale, General Business Law 35(d), §753-d, part 2 and Article 26-A of the Agriculture and Markets Law. If Plaintiff gives up her rights then it would encourage Defendants and their counsel to similarly harm other consumers by holding hostage documents the law mandates they provide at the time of sale in exchange for a subsequent release. Possibly the documents are fraudulent or they show Defendants obtained Umka from a puppy mill or other disreputable source as we cannot surmise a reason why Defendants with counsel refuse to provide documents that the law mandates they provide.

C. Sanctions, Punitive Relief and Costs Should be Granted as defendants and Their Counsel Are Deliberately Violating the Law

22. Sanctions and punitive relief are appropriate considering the fact that Defendants, a state licensed pet dealer obligated under the law to protect and respect consumer rights, disappeared for a year and a half without providing Plaintiff documents they are mandated by law to provide. Defendants' disappearing act of ignoring their legal obligation to provide plaintiff with the proper paperwork on Umka after she paid thousands of dollars for the dog has forced Plaintiff to go through the time and expense of filing a lawsuit to enforce her rights. Then Defendants' with TWO different counsel still refuse to give Plaintiff documents they admit they possess - documents by law and by the Contract they should have provided a year and a half ago.
23. Worse, Defendants' counsel are involved in these shenanigans which any attorney can understand the laws mandate Defendants release Umka's documents, not hold them hostage for a release of Defendants' misconduct. In fact, the Department of Agriculture's legal counsel's June 27, 2012 letter confirms any attorney understands this simple concept, as it explains the obvious meaning of the law Defendants and their counsel are violating (see Exhibit B). Is Defendants counsel prepared to argue to this Court that they read the laws different than any reasonable attorney? They would be hard pressed because to date I as an attorney and counsel for the Department of Agriculture both understand the law contrary to what Defendants' attorneys are directing.
24. In fact, on July 3, 2012 I spoke with Department of Agriculture supervisor of counsel Rick Arnold who stated that the General Business law is very clear that Defendants must provide the documents and not hold them hostage for a settlement.
25. This Court in *Smith v. A World of Pups, Inc.*, 2010 WL 2473151 (N.Y. City Civ.Ct.) imposed punitive damages and consequential damages upon a pet store for its misconduct in refusing to provide a consumer with documentation, forcing the consumer to file a lawsuit to enforce her rights to obtain a refund rather than return her beloved companion animal. Plaintiff here deserves the same punitive damages and sanctions for being compelled to file this motion as a result of Defendants' and their counsel's obstructionist tactics despite clear law to the contrary.
26. As for sanctions, 22 NYCRR §130-1.1(a) gives the Court discretion to award costs "in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees" and/or the imposition of financial sanctions upon a party or attorney who engages in "frivolous conduct." Enforcement of the sanctions rule is essential to deter conduct that wastes judicial resources and inhibits the proper administration of the court system. *Gordon v. Marrone* 202

- A.D.2d 104, 616 N.Y.S.2d 98 (2 Dept.,1994). The Court in *Kernisan, M.D. v. Taylor*, 171 A.D.2d 869 (2d Dept 1991), noted that the intent of the Part 130 Rules “is to prevent the waste of judicial resources and to deter vexatious litigation and dilatory or malicious litigation tactics
27. Sanctions are imposed upon frivolous conduct of a party and/or their counsel, defined as conduct “undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another.” 22 NYCRR §130-1.1(c)(2).
28. I cannot think of conduct more deserving of sanctions than Defendant with two different counsel ignoring clear law to harass Plaintiff into complying with Defendant’s misconduct to violate the law to consequently violate Plaintiff’s rights that even the Department of Agriculture’s counsel state they are violating.
29. Forcing Plaintiff to expend counsel fees and other costs to file this motion to protect her rights which protects the rights of all consumers from this Defendants who are arrogant and high handed to the law and consumer rights, and Defendants are doing this with counsel, is sanctionable. As for attorney fees, because this motion is proceeding and there is more work with respect to Defendants’ opposition and our reply and attendance at oral argument, I will provide this court with a breakdown of fees and costs and my supporting affirmation upon receipt of Defendants’ opposition.

III. Conclusion

30. There is a settlement on essential terms and independent law exists mandating the paperwork be released **now**, not held hostage, conditioned on a settlement. The settlement must be enforced, and/or order directing Defendants release immediately the paperwork before any release is signed and Defendants and their counsel should be sanctioned and pay costs and punitive damages for obstructing Plaintiff’s rights under the law.

WHEREFORE, it is respectfully requested that this motion be granted in all respects, with fees, costs and punitive relief, together with such other relief as the court deems just and proper.

Dated: August 13, 2012

Yours, etc

LAW OFFICES OF SUSAN CHANA LASK

BY: Susan Chana Lask, Esq.
Attorney for Plaintiff
244 Fifth Avenue, Suite 2369
New York, NY 10001
(917) 300-1958

RAISING ROVER LTD.

1428 Lexington Avenue • New York, NY 10128

(212) 987-ROVER (7683)

Customer E-Mail Name MAC.COM

NYS License #00583

Pet Purchase Contract

Pet ID# PR2011-3024Microchip ID# 0A01424532

BREED BUSSELS GRIFTON SOURCE: NEWSPAPER, REFERRAL, COUPON, FRIEND, CUSTOMER, INTERNET

MALE/FEMALE COLOR BELDGE DATE OF BIRTH 12/5/10 DATE SOLD \$

PURCHASER Elena ZaKharova RETAIL PRICE \$2800 SELLING PRICE 650

ADDRESS 1061 Laurel Hill Lane PAYMENT METHOD

CITY Meadowbrook STATE PA ZIP 19046 CHECK: AMEX: VISA: MC: CASH: DISCOVER

TEL. # 912-675-0733 DOG TRAINER: [Signature] CHIP: LICENSE:

(A) Please Do Not expose pet to any other animals. The pet must have peace and quiet (NO STRESS)

(B) Call the veterinarian for your pet's exam within 7 days after purchase.

1. RAISING ROVER LTD. guarantees the health of the purchased pet pursuant to Article 35-D of the General Business Law.
2. RAISING ROVER LTD. guarantees your pet for 1 year from the date of **whelping** for congenital defects (which would adversely affect the life or health of the pet) diagnosed by a licensed veterinarian, in writing, on the veterinarian's stationery with x-rays, original only. This guarantee does not cover parasites, internal or external, entropion of the eyes, cherry eye, hernias, removal of dew claws, ear cropping or docking. This guarantee is for **replacement only** and seller reserves the right to request a second opinion from an impartial veterinarian. Please refer to your warranty certificate.
3. RAISING ROVER LTD. is not responsible for the show or breeding quality of the animal or guarantees the size, weight or other breed characteristics of the adult dog.
4. Purchaser agrees that the animal may not be returned for reasons of landlord disapproval, family disagreement, allergies or other pet problems. **NO REFUNDS.**
5. The seller acknowledges that it has not made any oral representations contrary to the terms of the Sales Contract.
6. These protections are non-transferable and may be enforced only by the purchaser named herein.
7. Any other decisions about your pet purchase will be made by the Manager at the Manager's convenience, if a refund is granted due to Provision 4, it will never exceed more than 25% of the puppies purchase price.
8. I understand that under NO circumstances will the purchaser ever receive a **REFUND.**
9. I understand that I am purchasing a pet. The RAISING ROVER LTD. does not guarantee your puppy to be breeding or show quality pets.
10. Pet supplies and boutique accessory items are non-refundable. Holiday merchandise is non-refundable and non-exchangeable.
11. Adoption Dogs and fees are final sale. No refunds, credits or exchanges. Adoption Dogs are sold as is AND ARE NOT COVERED under any warranty and/or N.Y.S. General Business Law, Article 35-D.
12. Undescended testicles, Umbilical or Inguinal Hernias and Prolapse of the 3rd eyelid (cherry eye). If reported within 14 days of ownership. RAISING ROVER LTD. will reimburse the client \$50.00 after the correction procedure has been performed. No warranty is allowed after 14 days. Grade I and II Heart Murmurs are considered normal and within acceptable limits in young and toy dogs and will usually resolve. Sarcopic mange and localized demodicosis must be diagnosed and reported to RAISING ROVER LTD. within 4 days of ownership. Generalized demodicosis will be covered under warranty within 14 days of purchase. English bulldogs are not warranted against cherry eye, any skin disorder/condition or hip and elbow dysplasia.
13. I will fulfill all financial obligations to RAISING ROVER, LTD., and my credit card provider
14. Will not be responsible for any veterinarian bills incurred in the State of New Jersey and Connecticut

DISCLOSURE OF ANIMAL PEDIGREE REGISTRATION

Description of animal: See Above
The animal you are purchasing is registered/registerable (circle one) with the:

(ENTER THE NAME OF RECOGNIZED BREED REGISTRY)

Registration means that _____ maintains information regarding the parentage and identity of this animal. Persons buying animals represented by a pet dealer as being registerable are entitled to the papers necessary to effect such registration within 120 days of purchase. Failure to provide such papers entitles the purchaser to remedies under the law. However, if purchaser notifies the pet dealer within the 120 day period that he or she has not received such papers, the pet dealer shall have an additional 60 days commencing at the end of the 120 day period in which to provide the documents. I acknowledge receipt of a copy of the above statement.

Date _____ Purchaser's Signature X
Signed copy retained by pet dealer

Check one:
 The dog or cat has no known congenital condition that adversely affects the health of the dog or cat at the time of sale, or
 Set forth any known congenital or hereditary condition, disease or illness that adversely affects the health of the dog or cat at the time of sale and attach a statement signed by a licensed veterinarian that authorizes the sale of the dog or cat, recommends necessary treatment, if any, and verifies that the condition, disease or illness does not require hospitalization or non-elective surgical procedures and is not likely to require hospitalization or non-elective surgical procedures in the future. A veterinarian statement is not required for internal or external parasites unless their presence makes the dog or cat clinically ill or is likely to do so. The statement shall be valid for fourteen business days following examination of the dog or cat by the veterinarian.

PET DEALER CERTIFICATION

I, RAISING ROVER, LTD 212-987-7683
PRINT NAME OF PET DEALER TELEPHONE NUMBER

1428 LEXINGTON AVENUE
STREET ADDRESS

NEW YORK, NEW YORK 10128
CITY, TOWN OR VILLAGE STATE ZIP CODE

HEREBY CERTIFY THE ACCURACY OF THE ABOVE STATEMENT

NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS DIVISION OF ANIMAL INDUSTRY 1 WINNERS CIRCLE, ALBANY NY 11235

80.5 Information statement Pursuant to General Business Law section 753-B, every pet dealer shall deliver to the purchaser of a dog or cat, at the time of sale, a written statement in the following form:

INFORMATION STATEMENT FOR THE PURCHASER OF DOG OR CAT PURSUANT TO GENERAL BUSINESS LAW SECTION 753-B

(a) TYPE OF ANIMAL: DOG CAT
(b) Breeder's name and address, if known. If not known, set forth the name and address of the source of the animal. If the person from whom the dog or cat was obtained is a dealer licensed by the United States Department of Agriculture, set forth the person's name, address and federal identification number.

(c) The date of the dog or cat's birth, if unknown, because of the source of the animal, in which case set forth the date the pet dealer received the animal and the location where the animal was received.
See Above

(d) For dogs only:
(i) The breed, sex, color and identifying marks at the time of sale.
See Above

(ii) If the dog is from a United States Department of Agriculture licensed source, set forth the identifying tag, tattoo or collar number for that animal.
See Above

(iii) If the breed is unknown or mixed, indicate that fact.
See Above

(iv) If the breed is being sold as being capable of registration, set forth the name and registration numbers of the sire and dam and the litter number, if known.

presence makes the dog or cat clinically ill or likely to do so. The statement shall be valid for fourteen business days following examination of the dog or cat by the veterinarian.

PET DEALER CERTIFICATION

I, RAISING ROVER, LTD

212-987-7683

PRINT NAME OF PET DEALER

TELEPHONE NUMBER

1428 LEXINGTON AVENUE

STREET ADDRESS

NEW YORK, NEW YORK 10128

CITY, TOWN OR VILLAGE

STATE

ZIP CODE

HEREBY CERTIFY THE ACCURACY OF THE ABOVE STATEMENT.

X
SIGNATURE OF PET DEALER

DATE

PURCHASER CERTIFICATION

PRINT NAME OF PURCHASER

TELEPHONE NUMBER

STREET ADDRESS

CITY, TOWN OR VILLAGE

STATE

ZIP CODE

HEREBY ACKNOWLEDGE RECEIPT OF THE ENTIRE PUPPY PURCHASE CONTRACT

X
SIGNATURE OF PURCHASER

DATE

See Above

(ii) If the dog is from a United States Department of Agriculture licensed source, set forth the identifying tag, tattoo or collar number for that animal

See Above

(iii) If the breed is unknown or mixed, indicate that fact

See Above

(iv) If the breed is being sold as being capable of registration, set forth the name and registration numbers of the sire and dam and the litter number, if known.

Pet Only

(e) The record of immunizations and worming treatments administered, if any, to the dog or cat as of the time of sale, while the animal was in possession of the pet dealer, including the dates of administration and the type of vaccines or worming treatments administered:

HEALTH RECORD ENCLOSED

(f) For cats only: Set forth any known diseases, sickness or congenital condition that adversely affects the health of the cat at the time of sale:

(g) Set forth any veterinary treatment or medication received by the dog or cat while in the possession of the pet dealer (other than those set forth in paragraph (e) above):

EXHIBIT A

Hybrid puppies are not registrable.
FOR THE HEALTH OF THE PUPPY, IT MUST BE SPAYED/NEUTERED AT 6 MONTHS

FOR SALE OF DOGS AND CATS NOTICE

Article 35-D of the General Business Law hereinafter referred to as "the law" sets forth certain rights which arise when a consumer purchases a dog or a cat from a pet dealer. Pursuant to the Law the Commissioner of Agriculture and Markets has promulgated regulations which require a pet dealer to provide certain information to a consumer in writing upon the sale of an animal. Such information shall include a description, including the breed of the animal, the date of purchase, the name, address and telephone number of the consumer and the pet dealer and the amount of the purchase. The pet dealer shall certify such information by signing and dating the document in which it is contained. Additionally, every pet dealer who sells an animal required to be vaccinated against rabies, to a consumer shall provide the consumer at point of sale a written notice summarizing rabies immunization requirements.

The law further provides that if, within fourteen days following the sale of a dog or a cat, a veterinarian of the consumer's choosing, licensed by a state certifies such animal to be unfit for purchase due to illness, a congenital malformation which adversely affects the health of the animal, or the presence of symptoms of a contagious or infectious disease, the pet dealer shall afford the consumer the right to choose one of the following options:

- The right to return the animal and receive a refund of the purchase price including sales tax and reasonable veterinary costs directly related to the veterinarian's certification that the animal is unfit for purchase;
- The right to return the animal and to receive an exchange animal of the consumers choice of equivalent value and the reasonable veterinary costs directly related to the veterinarians certification that the animal is unfit for purchase; or
- The right to retain the animal and to receive reimbursement from a pet dealer for veterinary services from a licensed veterinarian of the consumers choosing for the purpose of curing or attempting to cure the animal. The reasonable value of such services rendered to cure or attempting to cure the animal shall not exceed the purchase price of the animal. The value of such services is reasonable if comparable to the value of similar services rendered by other licensed veterinarians in proximity to treating veterinarians. Such reimbursement shall not include the costs of initial veterinary examination, fees and diagnostic fees not directly related to the veterinarian's certification that the animal is unfit for purchase.

The law requires that any refund and/or reimbursement required shall be made by a pet dealer not later than ten business days following receipt of a signed veterinary certificate as herein required. Such certification shall be presented to the pet dealer not later than three business days following receipt thereof by the consumer.

The Commissioner of Agriculture and Markets has prescribed a form of the certification that an animal is unfit for purchase which shall be provided to a consumer by an examining veterinarian upon the examination of a dog or cat subject to the Law. That form includes information which identifies the type of animal, the owner, the date and diagnosis of the animal, the treatment recommended, if any, and an estimate of the actual cost of such treatment. Such form also includes this notice.

The Law provides that a veterinary finding of intestinal parasites shall not be grounds for declaring the dog or cat unfit for sale unless the animal is clinically ill due to such condition. An animal may not be found unfit for sale on account of an injury sustained or illness contracted subsequent to the consumer taking possession thereof.

The Law provides that if a pet dealer wishes to contest a demand for a refund, exchange or reimbursement made by a consumer such pet dealer shall have the right to require the consumer to produce the animal for examination by a licensed veterinarian designated by such dealer. Upon examination if the consumer and the pet dealer are unable to reach an agreement which constitutes one of the options set forth in the Law within ten business days following receipt of the animal for such examination, the consumer may initiate an action in a court of competent jurisdiction to recover or obtain such refund, exchange and/or reimbursement. Nothing in section 753 of the general business law, however, in any way limits the rights or remedies, which are otherwise available to consumers under any other law.

For the purposes of the Law, "consumer" means an individual purchasing a dog or cat from a pet dealer. A pet dealer shall not be considered a consumer. "Pet Dealer" means any person, firm, partnership, corporation or other association which in the ordinary course of business engages in the sale of more than nine dogs or cats per year for profit to the public. Such definition includes breeders of animals who sell directly to a consumer but does not include duly incorporated humane societies dedicated to the care of unwanted animals which make such animals available for adoption whether or not a fee for such adoption is charged.

What Pet Owners Need to Know About Rabies Vaccination in New York State

(Effective November 20, 2002, this information sheet must be provided by pet dealers to consumers upon point of sale of cats, dogs and ferrets.)

State Law require rabies vaccinations (shots) for all cats, dogs and domesticated ferrets!

Where can I get my pet vaccinated? All counties are required to provide a free vaccination clinic every four months. Contact your local health department for the schedule in your area. Rabies vaccination are also available from your veterinarian. If you have questions about new vaccines developed specifically for cats and for pets at younger ages, contact your county health department or veterinarian.

When should my pet receive its first rabies vaccination? The law requires that your pet's first rabies vaccination be given no later than four months after its date of birth. Many rabies vaccines are licensed for the use at three months, although some may be give at younger ages.

When should my pet receive its second rabies vaccination? Your pet should receive its second rabies vaccination within one year after the first vaccination. The 2nd rabies shot and all shots thereafter are sometimes called booster shots.

After my pet gets its second rabies shot, when is the next booster shot due? After the 2nd rabies shot, you only need to get additional booster shots ever three years, if the vaccination clinic or your veterinarian is using a rabies vaccine licensed for three years.

What proof will I have that my pet received its rabies shot? The veterinarian, or a person under the veterinarian's supervision, will provide you with a certificate as proof that your pet has been vaccinated. The veterinarian's office will also keep a copy of your pet's vaccination certificate. The law requires the veterinarian to provide the vaccination certificate to any public health official for any case involving your dog, cat or ferret that may have been exposed to rabies, or in any case of possible exposure or a person or another animal to rabies.

What if my pet needs to be taken to the veterinarian? Whenever you bring your pet to a veterinarian, s/he will verify if the animal is up-to-date on its rabies shots. If the animal is not up-to-date on its rabies shots or exempt as stated below, or if the veterinarian cannot find proof of the animal's rabies vaccination history, you may request your pet be vaccinated at that time.

If my pet bites a person, does it have to be euthanized (put to sleep)? If your pet bites a person and you wish to avoid euthanizing and testing it for rabies, it

When should my pet receive its first rabies vaccination? The law requires that your pet's first rabies vaccination be given no later than four months after its date of birth. Many rabies vaccines are licensed for the use at three months, although some may be give at younger ages.

When should my pet receive its second rabies vaccination? Your pet should receive its second rabies vaccination within one year after the first vaccination. The 2nd rabies shot and all shots thereafter are sometimes called booster shots.

After my pet gets its second rabies shot, when is the next booster shot due? After the 2nd rabies shot, you only need to get additional booster shots ever three years, if the vaccination clinic or your veterinarian is using a rabies vaccine licensed for three years.

What proof will I have that my pet received its rabies shot? The veterinarian, or a person under the veterinarian's supervision, will provide you with a certificate as proof that your pet has been vaccinated. The veterinarian's office will also keep a copy of your pet's vaccination certificate. The law requires the veterinarian to provide the vaccination certificate to any public health official for any case involving your dog, cat or ferret that may have been exposed to rabies, or in any case of possible exposure of a person or another animal to rabies.

What if my pet needs to be taken to the veterinarian? Whenever you bring your pet to a veterinarian, s/he will verify if the animal is up-to-date on its rabies shots. If the animal is not up-to-date on its rabies shots or exempt as stated below, or if the veterinarian cannot find proof of the animal's rabies vaccination history, you may request your pet be vaccinated at that time.

If my pet bites a person, does it have to be euthanized (put to sleep)? If your pet bites a person and you wish to avoid euthanizing and testing it for rabies, it must be confined and observed for ten days. If your pet is not up-to-date on its rabies shots, the ten-day confinement/observation period must take place at the owner's expense, at an appropriate facility such as an animal shelter, veterinarian's office, or kennel. If your pet is up-to-date on its rabies shots, the county health department may allow the ten-day period to take place in your home. During the ten-day confinement period, the county or a designated party must verify that your pet is under confinement and observation, has remained healthy during and at the end of the ten-day period.

Fines: If your dog, cat or domesticated ferret is not vaccinated, is not up-to-date on its vaccinations, or is not properly confined after biting someone, as the owner you shall be subject to a fine not to exceed \$200.00 for each offense.

Exemptions: The vaccination requirements shall not apply to any dog, cat, domesticated ferret if the animal is transported through New York State and remains in the State 15 days or less; the animal is confined to the premises of an incorporated society devoted to the care of lost, stray or homeless animals; a licensed veterinarian has determined that the vaccination will adversely affect the animal's health; the animal is confined to the premises of a college or other education or research institution for research purposes; or if the animal is unowned (feral, wild, not socialized).

EXHIBIT A



STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
10B Airline Drive, Albany, New York 12235
1-800-554-4501
www.agmkt.state.ny.us

Office of the Counsel
Tel. #(518)457-1059
FAX (518)457-8842
TDD (518)485-7784

June 27, 2012

Via Facsimile Only

TO: Mona Engle, Esq

SUBJECT: Umka / Dog Purchased by Ms. Elena Zakharova

Dear Ms. Engel,

I am an attorney with the New York State Department of Agriculture and Markets (Department), which regulates pet dealers pursuant to Article 26-A of the Agriculture and Markets Law. This is in reference to Ms. Elena Zakharova, who on or about February 4, 2012, purchased a Brussels Griffon (Umka) from your client, Jeffrey Silverstein.

I've been advised by Ms. Zakharova's attorney, Susan Lask, Esq., that at the time of purchase, your client did not provide Ms. Zakharova with requisite papers on the dog, specifically, an information statement on the dog; notice regarding the sale of a dog; and a rabies information sheet. Your client also failed to provide registration documents and disclosure of animal pedigree registration.

Pursuant to Article 35-D of the General Business Law, these documents are to be provided to the purchaser of a dog at the time of purchase. Since Article 35-D affords dog purchasers certain rights regarding the purchase of dogs, the provisions of this law cannot be waived by a purchaser as a condition to receiving the aforementioned papers.

With this letter, I am requesting that your client provide the required documentation to Ms. Zakharova; otherwise, the Department may have no choice but to consider commencement of legal action to compel compliance.

Your anticipated cooperation is greatly appreciated.

Very truly yours,

/s Frederick Brian Arnold
Frederick Brian Arnold, Esq.

Cc: Susan Lask, Esq.

Index No. 067721

Year 2011

**CIVIL COURT:CITY OF NEW YORK
COUNTY OF NEW YORK**

**ELENA ZAKHAROVA for herself and as
representative of her dog, Umka,**

Plaintiff,

-against-

**RAISING ROVER LTD., JEFFREY
SILVERSTEIN, FRANKIE FORONJY,
and JOHN DOES 1-3, being the Puppy Mill
and/or breeder of Umka,**

Defendants.

***MOTION TO COMPEL SETTLEMENT
& COMPLIANCE PER GBL §35***

**LAW OFFICES OF
SUSAN CHANA LASK**
Attorney for Plaintiff
**244 Fifth Avenue, Suite 2369
New York, New York 10001
(917) 300-1958**

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney duly admitted to practice law in the courts of New York, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: August 13, 2012

Signature _____

Susan Chana Lask, Esq.

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, the undersigned, an attorney admitted to practice in the courts of New York State, pursuant to CPLR 2106, affirm the following under penalties of perjury: I am not a party to the action, am over 18 years of age and have offices in New York. On August 13, 2012, pursuant to CPLR 2103(b)(7) and by stipulation, I served the within Motion to Compel Settlement by sending to the e-mail address of the undersigned email set forth after each name and via federal express to: guido.gabriele.esq@gmail.com, guidogabriele@ggmlaw.com, CNadelman@ggmlaw.com at Guido Gabriele, Esq., Geisler . Gabriele . Marano LLP, 100 Quentin Roosevelt Blvd, PO Box 8022, Garden City, NY 11530;516.542.1000

SUSAN CHANA LASK, ESQ.