

NOV 28 2012

John A. Clarke, Executive Officer/Clerk

By C. Carr Johnston, Deputy

**CASE ASSIGNED FOR
ALL PURPOSES TO**

Judge DUDLEY W. GRAY II
Dept. Div.

1 Matthew Strugar (State Bar No. 232951)
2 PETA Foundation
3 2154 W. Sunset Blvd.
4 Los Angeles, CA 90026
5 Tel: 323-210-2263
6 Fax: 202-540-2207
7 Email: Matthew-s@petaf.org
8
9 Attorney for Plaintiff
10 People for the Ethical Treatment of Animals, Inc.

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 People for the Ethical Treatment of
14 Animals, Inc.,
15 Plaintiff,
16 v.
17 Hot's Restaurant Group, Inc.,
18 Defendant.

19 Case No.: **YC068202**
20 **Complaint for Injunctive Relief for**
21 **Violation of Section 17200 of the California**
22 **Business and Professions Code**

23 Plaintiff People for the Ethical Treatment of Animals, Inc. ("PETA" or "Plaintiff"), by
24 and though its undersigned counsel, is informed and believes and thereupon alleges as follows:

25 **Introduction**

26 1. California Health & Safety Code §§ 25980-25984 prohibits the force feeding of
27 birds for the purpose of enlarging the bird's liver beyond normal size and prohibits the sale of
28 products produced in this manner. In essence, the law prohibits the production and sale of the
food product known as foie gras—the enlarged liver that results from a bird having a long tube
forced down his or her throat and pumping an unnatural quantity of food directly into the bird's
stomach.

2. Defendant's restaurant, Hot's Kitchen, is selling foie gras in violation of the law.

1 **Parties**

2 3. Plaintiff PETA is a Virginia non-stock corporation and animal protection charity
3 pursuant to Section 501(c)(3) of the Internal Revenue Code, with an office located at 2154 W.
4 Sunset Boulevard, Los Angeles, California 90026. PETA is dedicated to preventing cruelty to
5 and inhumane treatment of animals and disseminates information to the public regarding animal
6 protection issues, including the production and sale of foie gras.

7 4. As a direct result of Defendant’s violation of the law, PETA has been required to
8 expend resources to investigate Defendant’s unlawful business practice and to seek law
9 enforcement action against Defendant for its unlawful acts. Since PETA’s resources would
10 otherwise be spent on efforts to improving the treatment of birds and other animals, Defendant’s
11 unlawful conduct directly impedes PETA’s activities and diverts its resources and time.

12 5. If it prevails in this action, PETA will no longer have to expend resources
13 investigating and seeking law enforcement against Defendant for its unlawful business practice,
14 allow those resources to be direct to other PETA projects in furtherance of its overall mission.

15 6. Defendant Hot’s Restaurant Group, Inc., is a California corporation that owns and
16 operates Hot’s Kitchen restaurant in Hermosa Beach, California.

17 **Jurisdiction and Venue**

18 7. This Court has jurisdiction over this matter pursuant to the California Code of
19 Civil Procedure (“CCP”) § 410.10 because Defendant transacted business and committed the
20 violation of law complained of herein in Los Angeles County, California.

21 8. Venue is proper in Los Angeles County, California, pursuant to CCP § 395 and
22 because the acts complained about occurred in Los Angeles County.

23 **Statutory Framework**

24 9. California Health & Safety Code §§ 25980-25984 was enacted on September 29,
25 2004 to prohibit the force feeding of birds for the purpose of enlarging the bird’s liver beyond
26 normal size (or hiring another person to do so) and prohibiting the sale of products produced in
27 this manner. Cal. Health & Safety Code §§ 25980 *et seq.*

28 10. The law defines “force feeding” as:

1 a process that causes the bird to consume more food than a typical bird of the same
2 species would consume voluntarily. Force feeding methods include, but are not limited
3 to, delivering feed through a tube or other device inserted into the bird's esophagus.

4 Cal. Health & Safety Code § 25980(b).

5 11. The clear purpose of Cal. Health & Safety Code §§ 25980 *et. seq.* is to prevent the
6 cruelty associated with foie gras production. Former Governor Schwarzenegger's signing
7 message for the law states:

8 The bill's intent is to ban the current foie gras production practice of forcing a tube down
9 a bird's throat to greatly increase the consumption of grain by the bird. It does not ban the
10 food product, foie gras. This bill provides 7 and one half years for agricultural husbandry
11 practices to evolve and perfect a humane way for ducks to consume grain to increase the
12 size of its liver through natural processes. If agricultural producers are successful in this
13 endeavor, the ban on foie gras sales and production in California will not occur.

14 12. Despite the seven and a half year period provided to develop a humane production
15 method of foie gras, there is no current alternative to force feeding that produces an equivalent
16 product to foie gras. *See, e.g.,* American Veterinary Medical Association, Welfare Implication of
17 Foie Gras Production, *available at*
18 [https://www.avma.org/KB/Resources/Backgrounders/Pages/Foie-Gras-Production-](https://www.avma.org/KB/Resources/Backgrounders/Pages/Foie-Gras-Production-Backgrounder.aspx)
19 [Backgrounder.aspx](https://www.avma.org/KB/Resources/Backgrounders/Pages/Foie-Gras-Production-Backgrounder.aspx).

20 13. The law became effective, after the seven and a half year delay, on July 1, 2012.
21 Cal. Health & Safety Code § 25984.

22 **Facts Giving Rise to Plaintiff's Claim**

23 14. Defendant's restaurant, Hot's Kitchen, has continued to sell foie gras to customers
24 since the law came to effect on July 1, 2012.

25 15. Since July 1, 2012, Defendant's restaurant Hot's Kitchen has advertised and
26 continues to advertise and has sold and continues to sell foie gras.

27 16. Hot's Kitchen currently sells an item listed on their menu as "'THE' Burger."
28 "'THE' Burger" is described as including "foie gras, balsamic thyme onion, [and] whole grain

1 mustard” and designated with an asterisk. The asterisk on the menu designates that the item is
2 supposedly “* SERVED WITH A COMPLIMENTARY SIDE OF FOIE GRAS.” A previous
3 version of Hot’s Kitchen’s menu in use after July 1, 2012 stated that the burger was “SERVED
4 WITH A COMPLEMENTARY [sic] SIDE OF FOIE GRAS.”

5 17. “‘THE’ Burger” is served with foie gras on top of the hamburger patty as part of
6 the item itself and not as a separate side.

7 18. Since July 1, 2012, Hot’s Kitchen has sold “‘THE’ Burger” for between \$8 and
8 \$13, more than next-most expensive hamburgers on its menu (fluctuating between \$6 and \$6.50).

9 19. Defendant charges a higher price for “‘THE’ Burger” as compared to other
10 burgers that are not served with foie gras. As such, any suggestion that Defendant served or
11 serves foie gras without a charge is a transparent and intentional attempt to circumvent the law
12 prohibiting the sale of foie gras.

13 20. Defendant’s restaurant Hot’s Kitchen does not serve or provide customers with
14 foie gras without a purchase.

15 21. Plaintiff was initially made aware that Hot’s Kitchen was violating Cal. Health &
16 Safety Code § 25982 from a post on the internet identifying Hot’s Kitchen as a location where
17 foie gras was available for purchase post-July 1, 2012. In an attempt to seek enforcement of Cal.
18 Health & Safety Code §§ 25980 *et seq.*, PETA diverted resources to purchase undercover video
19 cameras to investigate Hot’s Kitchen’s sale of foie gras.

20 22. At PETA’s request and on its behalf, PETA members conducted an investigation
21 of Defendant’s restaurant on August 6, 2012, equipped with undercover cameras. The
22 investigators confirmed with Hot’s Kitchen staff that “‘THE’ Burger” came with foie gras. The
23 investigators ordered, paid for, and were provided with “‘THE’ Burger,” including the foie gras.
24 PETA reimbursed the investigators for their expenses and compensated them for their time.

25 23. PETA then sought enforcement of Cal. Health & Safety Code §§ 25980 *et seq.*
26 against Defendant by local law enforcement. PETA expended resources attempting to persuade
27 law enforcement to enforce Cal. Health & Safety Code §§ 25980 *et seq.* against Defendant.
28

1 24. Defendant has unsuccessfully attempted to enjoin the enforcement of Cal. Health
2 & Safety Code § 25982—the provision prohibiting the sale of foie gras in California. On July 2,
3 2012, Defendant, together with both foreign and domestic foie gras producers, brought suit in the
4 U.S. District Court for the Central District of California against Governor Jerry Brown and
5 Attorney General Kamala Harris seeking to enjoin the enforcement of Cal. Health & Safety Code
6 § 25982 on the theory that it violated their due process rights and the commerce clause of the
7 U.S. Constitution. *See* Complaint [Docket #1] in *Association Des Éleveurs de Canards et D'Oies*
8 *du Québec, et al., v. Harris, et al.*, Case No. 12-cv-5735-SVW (RZx) (C.D. Cal. July 2, 2012).

9 25. In connection with that case, Sean Cheney, the co-owner of the Defendant in this
10 action and Executive Chef at Hot's Kitchen, executed a sworn declaration falsely claiming his
11 business, the Defendant in this action, no longer sold foie gras. *See* Declaration of Sean Cheney
12 in Support of Plaintiffs' Motion for Preliminary Injunction [Docket #51-4] in *Association Des*
13 *Éleveurs de Canards et D'Oies du Québec, et al., v. Harris, et al.* Case No. 12-cv-5735-SVW
14 (RZx) (C.D. Cal. August 21, 2012) at ¶10 (“since section 25982 took effect on July 1, 2012,
15 Hot's has stopped selling foie gras”) (attached hereto as Exhibit A).

16 26. Despite Cheney's sworn statement to the contrary, Defendant and Defendant's
17 restaurant Hot's Kitchen has continued to advertise and sell foie gras since July 1, 2012.

18 27. The U.S. District Court for the Central District of California denied the request
19 for both a temporary restraining order and a preliminary injunction in the *Association Des*
20 *Éleveurs de Canards et D'Oies du Québec* case. *See* Minutes of Ex Parte Application for
21 Temporary Restraining Order [Docket #35] and Order Denying Plaintiffs' Motion for
22 Preliminary Injunction To Enjoin Defendant from Enforcing Section 25982 of the California
23 Health & Safety Code against Plaintiffs or the Sale of Products from Moulard Duck [Docket
24 #51]. In its order denying the motion for a preliminary injunction, the Central District court ruled
25 that Cal. Health & Safety Code § 25982 was not void for vagueness, did not violate due process
26 rights, and did not violate the commerce clause.

27 28. Despite the court's ruling upholding Cal. Health & Safety Code § 25982,
28 Defendant continues to sell foie gras in violation of the law.

1 29. Defendant’s continued sale of foie gras frustrates Plaintiff’s mission of preventing
2 cruelty to and inhumane treatment of animals.

3 **First Cause of Action**

4 Violations of Business and Professions Code Section 17200 *et seq.*

5 (Unlawful Business Practice)

6 30. Plaintiff realleges and incorporates by reference the allegations in each of the
7 preceding paragraphs of this Complaint.

8 31. Defendant has engaged in, and continues to engage in, acts or practices that
9 constitute unfair competition, as that term is defined in section 17200 *et seq.* of the California
10 Business and Professions Code.

11 32. Defendant has violated, and continues to violate, Business and Professions Code
12 §§ 17200 *et seq.* through its unlawful business acts and/or practices. To wit, beginning on or
13 about July 1, 2012 and proceeding through to the present date, Defendant has sold foie gras—the
14 enlarged liver that results from a bird having a long tube forced down his or her throat and
15 pumping an unnatural quantity of food directly into the bird’s stomach—in violation of Cal.
16 Health & Safety Code § 25982.

17 33. As a direct and proximate result of Defendant’s unlawful business practice,
18 Plaintiff has suffered an economic injury of loss and diversion of financial resources in
19 connection with investigating Defendant’s unlawful business practice.

20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //

1 **Prayer for Relief**

2 WHEREFORE, Plaintiff prays for judgment:

3 a. Pursuant to Business and Professions Code section 17203, that Defendant, its
4 employees, agents, representatives, successors, assigns, and all persons who act in concert with it
5 be permanently enjoined from committing any acts of unfair competition, including the serving
6 and/or sale of foie gras—the enlarged liver that results from a bird having a long tube forced
7 down his or her throat and pumping an unnatural quantity of food directly into the bird’s
8 stomach;

9 b. For reasonable attorneys’ fees pursuant to Code of Civil Procedure section
10 1021.5, or other applicable law; and

11 c. For such other equitable relief as is just and proper.
12

13 Date: November 28, 2012

Respectfully submitted,

14 
15 Matthew Strugar (State Bar No. 232951)
16 PETA Foundation
17 2154 W. Sunset Blvd.
18 Los Angeles, CA 90026
19 Tel: 323-210-2263
20 Fax: 202-540-2207
21 Email: Matthew-s@petaf.org

22 Attorney for Plaintiff
23
24
25
26
27
28

Exhibit A

1 Michael Tenenbaum, Esq. (No. 186850)
2 *mt@post.harvard.edu*
3 THE TENENBAUM LAW FIRM
4 1431 Ocean Ave., Ste. 400
5 Santa Monica, CA 90401
6 Tel (310) 919-3194
7 Fax (310) 919-3727

8 *Counsel for Plaintiffs*

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 ASSOCIATION DES ÉLEVEURS DE
13 CANARDS ET D'OIES DU QUÉBEC, a
14 Canadian nonprofit corporation; HVFG
15 LLC, a New York limited liability
16 company; HOT'S RESTAURANT
17 GROUP, INC., a California corporation;
18 and GAUGE OUTFITTERS, INC., dba
19 ELEVATION SPORTS;

20 Plaintiffs,

21 – against –

22 KAMALA D. HARRIS, in her official
23 capacity as Attorney General of
24 California; EDMUND G. BROWN, in
25 his official capacity as Governor of
26 California; and the STATE OF
27 CALIFORNIA;

28 Defendants.

Case No. CV-12-5735-SVW (RZx)

**DECLARATION OF SEAN
CHANNEY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: September 17, 2012
Time: 1:30 p.m.
Courtroom: 6

Hon. Stephen V. Wilson

1 I, Sean Chaney, declare as follows:

2 1. I am a co-owner of Plaintiff Hot's Restaurant Group, Inc. ("Hot's"), and I
3 am the Executive Chef for Hot's Cantina in Northridge and Hot's Kitchen in Hermosa
4 Beach, California. I oversee every aspect of Hot's operations, and I have done so for
5 nearly ten years. I have personal knowledge of the facts set forth in this Declaration
6 and could competently testify to such facts if called upon to do so.

7 2. Until June 30, 2012, Hot's sold a variety of duck offerings to its customers.
8 These included dishes containing foie gras as well as dishes made from other parts of
9 the duck, such as duck confit tacos (made from duck legs), poutine with duck confit,
10 and French fries cooked in duck fat. Hot's sales of all these products in June 2012 were
11 approximately \$13,758.

12 3. In order to make these dishes, I used to buy foie gras in various forms,
13 including several sizes of frozen slices. I bought these from Gourmet Imports, and the
14 foie gras was the Rougié brand, which I understand comes from Palmex in Canada.

15 4. I also bought duck leg quarters to make duck confit. I bought these from a
16 distributor called Sysco, but I do not know where the ducks they came from were
17 raised.

18 5. I also bought tubs of duck fat to cook the duck legs in and to make duck
19 French fries. I used to buy these products from Sysco as well, but I switched about four
20 months ago to buying duck fat from Gourmet Imports.

21 6. I am aware that section 25982 of the California Health & Safety Code
22 provides that a product "may not be sold in California if it is the result of force feeding
23 a bird for the purpose of enlarging the bird's liver beyond normal size." I understand
24 that "force feeding" is defined as causing a duck to "consume more food than a typical
25 bird of the same species would consume voluntarily."

26 7. I have no idea — and no reasonable way of knowing — how much food
27 any of the ducks these products come from consumed throughout their lifetimes, let
28 alone whether any of the ducks was made to consume more than a typical duck of the

1 same species would consume voluntarily. (The only duck livers I have ever seen are
2 those known as foie gras.)

3 8. I also have no idea — and no reasonable way of knowing — for what
4 purpose the farmers raised the ducks from which these products were derived or what
5 process they might have used to do so.

6 9. I am aware that section 25983(b) of the California Health and Safety Code
7 provides that a citation issued for a violation of section 25982 requires the payment of
8 a penalty of up to \$1,000 for each violation and up to \$1,000 for each day the violation
9 continues.

10 10. Given the public attention focused on foie gras and the risk that —
11 whether correctly or not — a peace officer or prosecutor might believe that the foie gras
12 I used to sell is “the result of force feeding a bird for the purpose of enlarging the bird’s
13 liver beyond normal size,” since section 25982 took effect on July 1, 2012, Hot’s has
14 stopped selling foie gras.

15 11. Hot’s continues to sell duck confit tacos and French fries made with duck
16 fat. In July 2012, Hot’s sales of these products were approximately \$7,200 — i.e., over
17 \$6,000 less than our June sales, when we sold foie gras dishes as well.

18 12. In other words, as a result of section 25982 and my concern about its
19 enforcement, I estimate that Hot’s is losing out on about \$6,000 per month in sales of
20 dishes made with foie gras. If Hot’s were to stop selling any duck product because of
21 section 25982, then based on June’s sales, the restaurant would be losing a total of over
22 \$13,000 per month as long as the law remains in effect.

23 //

24 //

25 //

26 //

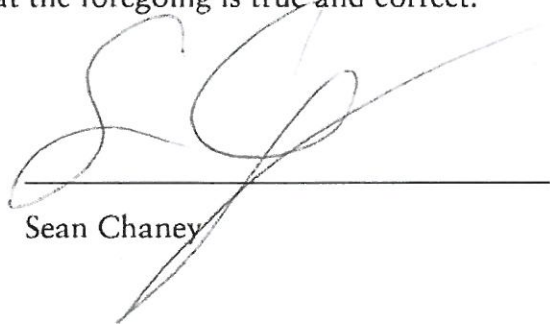
27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 14, 2012



A handwritten signature in black ink, appearing to read 'Sean Chaney', is written over a horizontal line. The signature is stylized and cursive.

Sean Chaney