

THE COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS

NORFOLK COUNTY SUPERIOR COURT  
TRIAL DIVISION  
DOCKET NO. \_\_\_\_\_

|                 |   |
|-----------------|---|
| Laurie Ryan     | ) |
|                 | ) |
| PLAINTIFF       | ) |
|                 | ) |
| v.              | ) |
|                 | ) |
| Sharon McCusker | ) |
|                 | ) |
| and             | ) |
|                 | ) |
| Kaiyun Lang     | ) |
|                 | ) |
| DEFENDANTS      | ) |

**COMPLAINT AND DEMAND FOR TRIAL BY JURY**

This is a civil action for damages sustained by the Plaintiff, Laurie Ryan, challenging the actions of Sharon McCusker and Kaiyun Lang, Defendants.

**INTRODUCTION**

This matter concerns the sale of a horse, Manchet Montana, by owner Defendant Kaiyun Land and her agent and horse trainer, Defendant Sharon McCusker to the Plaintiff, Laurie Ryan. Upon receiving Manchet, Plaintiff notified the Defendants that Manchet was a nonconforming good, because he did not possess the abilities and characteristics the Defendants represented he possessed to my client, which were the basis of the bargain. Plaintiff rejected acceptance of Manchet, in the alternative revoked her acceptance, in a timely manner to Defendants, who in

turn, offered adequate assurances Manchet would get better with time. Manchet failed to “get better” both in his physical abilities and characteristics. Upon Plaintiff’s demand the Defendants accept the return of Manchet and refund her purchase price, Defendants refused and Plaintiff is filing this action.

**PARTIES**

1. The Plaintiff, Laurie Ryan (hereinafter “Plaintiff” or “Laurie Ryan”), is an individual with her residence at \_\_\_\_\_ in Willard, Missouri.
2. Defendant Sharon McCusker (“Defendant McCusker”) is an individual with her residence in the Town of Ashby Massachusetts, County of Middlesex. Defendant McCusker owns and operates Souhegan Farm, a classical dressage training business that also conducts horse sales.
3. Defendant Kaiyun Lang (“Defendant Lang”) is an individual with her residence in the Town of Wellesley Massachusetts, County of Norfolk.

**JURISDICTION AND VENUE**

4. Jurisdiction is properly conferred by GL c. 212 §4 and c223A §2 and 3
5. Venue is proper under GL 223 §1.

**STATEMENT OF FACTS**

6. On or about November 9, 2012, Laurie Ryan bought Manchet Montana, a Bay Trakehner gelding, foaled in 1998 (“Manchet”) for twenty-five thousand dollars (\$25,000.00) from Defendant Lang, Manchet’s owner.

7. Defendant McCusker was Defendant Lang's agent for Manchet's sale: Manchet was boarded (kept) at her facility in Ashby; she marketed Manchet, showed and presented Manchet to Laurie Ryan.
8. Defendant McCusker is a "USEF long listed FEI Grand Prix rider and trainer with 30 years experience training and competing, and 20 years riding at the FEI level. Sharon has trained many top FEI competition horses and takes special pride in developing and training her own FEI horses. Sharon also has had years of experience carefully selecting top quality dressage horses in Europe for the US market, as well as taking in quality horses for training and resale for private owners." (copied from Defendant's website [www.souheganfarm.com](http://www.souheganfarm.com) ).
9. Manchet was advertised as having a "wonderful temperament and work ethic"; "quite to hack and easy to work round"; "a confidence builder"; Manchet is sound and healthy and ready to teach a new rider." **Exhibit A:** Manchet Montana internet advertisement.
10. Prior to purchasing Manchet, Laurie Ryan visited Souhegan Farm, and explained to Defendant McCusker in detail the specific characteristics she sought in a horse: she wanted a trained horse with experience in dressage and who was suitable for an Adult Amateur that rides and shows alone with access to instruction 1- 2 times per month, a horse that is solid at Second Level Dressage schooling and higher, and a horse that is a good hauler and traveler. Based upon Defendant McCusker's representations of Manchet, and his advertisement detailing his history in show and performance, Plaintiff decided to purchase Manchet.
11. Manchet's sale was a verbal agreement between the Defendants and Laurie Ryan.

12. Manchet was transported from Ashby Massachusetts to Plaintiff's home in Missouri; he arrived in Missouri on or about November 25, 2012.
13. On or about November 27, in response to Plaintiff's email, Defendant McClusker emailed Plaintiff an unsigned bill of sale for Manchet. Plaintiff had never seen, nor was she aware, of any bill of sale for Manchet.
14. Later that day, November 27, 2012, Plaintiff voiced her concern about Manchet to Defendant McCusker, stating Manchet was unmanageable: he would not tie, he was difficult to lead, touch and tack up. Defendant McCusker told Plaintiff that Manchet just needed time to settle in.
15. On or about November 28, 2012, Laurie Ryan again notified Defendant McCusker of her concerns regarding Manchet, reiterating the same concerns she expressed just the day before. Laurie Ryan rode Manchet the day before and Manchet was almost unmanageable to handle and tack up, he was anxious, "hot", and nonresponse to the aids. In her email, Laurie Ryan demanded the return of the \$25,000.00 for Manchet.
16. Defendant McCusker again told Laurie Ryan to give Manchet time to settle in to his new environment. She reassured Laurie Ryan that she would "find him to be a fun ride".
17. On or about December 1, 2012, Laurie Ryan had another discussion with Defendant McCusker about Manchet over the telephone. Again, she voiced her concerns with Manchet's behavior and issues under saddle after hauling him to another facility and riding him there. Defendant McCusker advised her again to give him time to settle in, to do more groundwork with him, to use a stud chain, and to "suck it up and get over it" because Manchet is a "great horse".

18. On or about December 10, 2012, Laurie Ryan and Defendant McCusker spoke via the telephone after Manchet was seen by Laurie Ryan's veterinarian at Spragg Veterinary Clinic. She informed Defendant McCusker that Manchet did not pass the flexion tests and that the veterinarian told her to return Manchet, he was not going to be physically able to perform as she had been promised.
19. In addition, Plaintiff's veterinarian declared Manchet unsound in his left hindleg and "down" in both rear pasterns due to old desmitis of the suspensory apparatus.
20. Laurie Ryan rejected Manchet, and notified Defendant McCusker as to such rejection, in a timely fashion.
21. In the alternative, Laurie Ryan revoked acceptance of Manchet, and notified Defendant McCusker as to said revocation in a timely fashion.
22. As of the date of this filing, Defendants refuse to refund Laurie Ryan's purchase monies or to take possession of Manchet. Manchet is incurring daily boarding fees at my client's facility of twenty dollars and no cents (\$20.00) per day. In order to mitigate her damages, Laurie Ryan has posted Manchet for sale (and notice was provided to Defendants of her intent to do so) and continued to exercise him to maintain his health.
23. Plaintiff is incurring \$20.00 (twenty dollars and no cents) in daily boarding costs for Manchet; additional expenses include but are not limited to veterinary care and farrier. These costs will continue as this litigation progresses and the Plaintiff seeks reimbursement of these costs in damages sought from Defendants.

**STATEMENT OF CLAIMS**

**COUNT I – BREACH OF CONTRACT**

24. The Plaintiff restates re-alleges and incorporates by reference paragraphs 1-22 of the Complaint as set forth above.
25. In response to Defendants advertisement for Manchet, Plaintiff offered, and Defendants accepted, \$25,000.00 for Manchet.
26. Plaintiff and Defendants entered into a verbal valid contract that required Defendants to provide Plaintiff with a horse that was sound, well-trained, of good temperament, safe, reliable and suitable for riding, handling and showing.
27. Plaintiff performed all acts required of her under the contract, including payment of the full purchase price to the Defendants.
28. Defendant failed to do what the contract required of them: Manchet was unsound, of bad temperament, dangerous at times to handle, and unquestionably unfit to be handled or shown as stated he was.
29. Upon learning of this, Plaintiff rejected Manchet, or in the alternative, revoked her acceptance of Manchet, timely notifying Defendants of said revocation. MGLA 106 §2-606 and 607.
30. The Defendants are liable to Plaintiff for damages she incurred as a result of said breach in an amount within the jurisdiction of this court.

**COUNT II – BREACH OF EXPRESS WARRANTY**

31. The Plaintiff restates re-alleges and incorporates by reference paragraphs 1-27 of the Complaint as set forth above.

32. An express warranty is created by a seller when “any affirmation of fact or promise made by the seller to the buyer which related to the goods and becomes part of the basis of the bargain creates an express warranty that the good shall conform to the affirmation or promise. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description”. MGLA 106 § 2-313 (year). Finally, the word “warrant” or “guarantee” does not have to be used in order to create an express warranty. *Id.*
33. Evidenced herein, Defendants made several express warranties, in writing and verbally, to the Plaintiff concerning Manchet’s abilities, temperament, and work ethic.
34. These express warranties became the basis of the bargain and the Defendants did not disclaim them. MGLA 106 §2-316.
35. As a result of Defendants breach of express warranties, they are liable to the Plaintiff for damages in an amount within the jurisdiction of this court.

### **COUNT III – BREACH OF IMPLIED WARRANTIES**

36. The Plaintiff restates re-alleges and incorporates by reference paragraphs 1-32 of the Complaint as set forth above.
37. In the sale of goods, unless satisfactorily disclaimed, “a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind”. MGLA 106 §2-314(1).
38. Plaintiff intended to use Manchet as a show/dressage horse, which is an ordinary use for a horse under the implied warranty of merchantability. Defendants knew Plaintiff’s intended use for Manchet.

39. Whereas the Defendants did not disclaim the implied warranty of merchantability, said warranty applied to the sale of Manchet.
40. Similarly, in a sale of goods, where the merchant “has reason to know any particular purpose for which goods are required and the buyer is relying on the seller’s skill or judgment to select..suitable goods, there is unless excluded or modified... an implied warranty that the goods shall be fit for such purpose”. MGLA 106 §2-315.
41. Whereas, Plaintiff informed Defendant McCusker of the specific characteristics and uses she sought in a horse and Plaintiff relied upon Defendant McCusker to choose a suitable horse, the implied warranty of fitness for a particular purpose was created.
42. Defendants did not disclaim the implied warranty of fitness for a particular purpose, therefore said warranty applied to the sale of Manchet.
43. To modify or exclude an implied warranty, certain language, such as “as is” or “with all faults” must be used. MLGA 106 §2-316. Here, Defendants did not disclaim any implied warranties, thus both warranties attached to Manchet’s sale.
44. As a result of Defendants breach of the implied warranties, they are liable to the Plaintiff for damages in an amount within the jurisdiction of this court.

#### **COUNT IV – FRAUD**

45. The Plaintiff restates re-alleges and incorporates by reference paragraphs 1-42 of the Complaint as set forth above.
46. Defendants told Plaintiff Manchet had an excellent temperament and was healthy. To the contrary, Manchet was not healthy nor did have an excellent temperament. Plaintiffs intentionally misrepresented Manchet as “sound” to Plaintiff and in their advertisements for Manchet’s sale. *Exhibit A*.



47. Defendant McCusker, a professional trainer, knew Manchet was not suitable for the purposes Plaintiff intended to use Manchet. She knew Manchet was not suitable for a novice owner or a “new rider”, however marketed him as such, inducing Plaintiff to purchase Manchet.
48. The Defendants intentionally misrepresented Manchet’s abilities and experiences to Plaintiff. Defendant knew the Plaintiff would not have purchased Manchet if she had known the truth about Manchet’s condition, temperament, training, abilities and unsoundness.
49. The Plaintiff justifiably relied upon Defendants’ fraudulent statements and deceptive marketing tactics in her decision to purchase Manchet. Plaintiff relied upon the written and oral representations and warranties from Defendants regarding Manchet’s condition, suitability, temperament, training, soundness and qualities.
50. Defendants were fully aware of Plaintiff’s reliance upon their representations and aware of the falsity of their representations as applied to Manchet.
51. Plaintiff was unable to show Manchet in any events since purchasing him.
52. Manchet has no value whatsoever as a show horse for Plaintiff and limited value far below the sale price that Plaintiff paid to the Defendants.
53. As a result of Defendant’ fraudulent words, they are liable to the Plaintiff for damages in an amount within the jurisdiction of this court.

**COUNT V – NEGLIGENT MISREPRESENTATION**

54. The Plaintiff restates re-alleges and incorporates by reference paragraphs 1-41 of the Complaint as set forth above.

55. In the alternative, the representations and warranties of Defendants with response to Manchet's condition, suitability, temperament, training, soundness and abilities were made without malice but nevertheless were false, misleading or omitted material facts and had the effect of deceiving the Plaintiff.
56. In the course of selling horses, specifically in the sale of Manchet to Plaintiff, Defendants supplied false information concerning Manchet's disposition and abilities to Plaintiff, prior and during the sale, that resulted in Plaintiff suffering significant monetary damages. Plaintiff relied upon Defendants misrepresentations concerning Manchet's abilities and temperament.
57. Plaintiff relied on the oral and written representations of Defendants in making her decision to purchase Manchet and, in the exercise of due care and diligence on her part, could not have known of the false, misleading or omitted material facts.
58. Defendants failed to act with reasonable care or competence in communicating Manchet's true physical limitations, abilities and temperament. But for Defendants' representations, Plaintiff would not have purchased Manchet.
59. As a result of Defendants' negligent misrepresentations, they are liable to the Plaintiff for damages in an amount within the jurisdiction of this court.

**COUNT VI- RESCISSION: MUTUAL MISTAKE/FAILURE OF  
CONSIDERATION**

60. The Plaintiff restates re-alleges and incorporates by reference paragraphs 1-57 of the Complaint as set forth above.
61. In the alternative, all parties labored under the false impression that Manchet was a show horse that was capable of being handled, ridden and shown competitively and

immediately by the Plaintiff, and that only in that condition was Manchet worth the sales price the Plaintiff paid the Defendants.

62. Plaintiff would not have agreed to purchase Manchet at the agreed-upon purchase price or at any price if Defendants had not made the misrepresentations.

63. Therefore, there has been a mutual mistake of fact and a total failure of consideration.

64. As a direct and proximate results of the Defendants' misrepresentations, upon which that include the cost of Manchet as well as substantial ongoing expenses in maintaining Manchet that include, but are not limited to, medications, training, supplements, food and hay, veterinary expenses, and farrier expenses.

#### **REQUESTS FOR RELIEF**

65. Plaintiff is entitled to the damages in the amount of \$25,000.00, Montana's purchase price, plus interest.

66. Plaintiff is entitled to damages for the cost, care and control expenses she has incurred while Manchet is in her possession. This includes but is not limited to: the cost of Manchet's transportation to Missouri from Massachusetts (\$900.00), veterinarian, farrier and trainer costs (in excess of \$3200.00), major medical/mortality insurance (\$900.00) and boarding (at \$20.00 per day).

67. Plaintiff claims damages in an amount to be determined for Defendants' negligent misrepresentation and fraud.

68. Plaintiff seeks other relief as the Court deems just.

#### **JURY DEMAND**

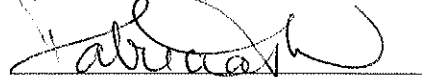
69. The Plaintiff demands a trial by jury on all issues so triable.

**WHEREFORE**, the Plaintiff prays that, after trial, that a judgment be entered in her favor against the Defendants ordering:

- A. Plaintiff will be awarded money damages which will compensate her for her costs and expenses relating to Manchet Montana's purchase;
- B. Rescind the sale of Manchet;
- C.. Plaintiff will be awarded reasonable attorneys' fees and costs;
- D. Defendants pay the Plaintiff interest on any judgment entered in her favor for the date that this civil action was filed; and
- E. Such further relief as this Honorable Court deems just and proper and/or which will make the Plaintiff whole.

Respectfully Submitted,

Laurie Ryan  
By her Attorney,



Patricia A Morris  
BBO # 667210  
Law Offices of Patricia Morris  
PO Box 32  
Center Barnstead, N.H. 03225  
603-344-8878

Dated: May 30, 2013



## Manchet Montana



([http://www.dressagedaily.com/sites/default/files/menuecache/horse\\_entry\\_full/horse-entry/manchetbawkingook\\_0.jpg](http://www.dressagedaily.com/sites/default/files/menuecache/horse_entry_full/horse-entry/manchetbawkingook_0.jpg))

|                    |                             |
|--------------------|-----------------------------|
| <b>Price:</b>      | \$38,000                    |
| <b>Gender:</b>     | Gelding                     |
| <b>Birth Year:</b> | 1998                        |
| <b>Breed:</b>      | Danish Warmblood, Trakehner |
| <b>Size:</b>       | 16.1                        |
| <b>Color:</b>      | Bay                         |
| <b>Sire:</b>       | Schwadroneur                |
| <b>Dam:</b>        | Maligo (Mago x Donauwind)   |
| <b>Dam Sire:</b>   | Mago X                      |

Manchet Montana was imported in Spring 2010 from Denmark and has been a great teacher and competitor for two riders. He has a wonderful temperament and work ethic. He is very forward thinking and always focused on his work. He has three very nice gaits and goes in the snaffle and double bridle. He is VERY smooth to sit in both trot and canter and has very good lateral work. He is quiet to hack and easy to work around in the stable and at shows. He has helped his novice owner develop a very good seat and has been a confidence builder while she has learned about transitions, lateral work and the half halt.

The second rider earned their Bronze medal and started their Silver this season with Manchet. They earned top placings and scores up to 73% at Second level and 65% at Third and Fourth level. He also has a good show record from Denmark with his former young rider with scores to 68% at 4th level. Manchet is sound and healthy and ready to teach a new rider. He has been a pleasure to have in the stable and is for sale as his owner is starting College.