



CLERK OF THE COURT

1 **ACOM**
2 REBECCA TEALE BALINT, ESQ.
3 Nevada State Bar No. 9505
4 TEALE ADVOCATE
5 1600 E. Desert Inn Rd.
6 Suite 282
7 Las Vegas, NV 89169
8 Telephone: (702) 369-0039
9 Facsimile: (702) 369-0049
10 rbalint@tealeadvocate.com

11 *Attorney for Plaintiffs*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 RUHANIEH BADI'I, a Texas resident and
15 FARIS BADI'I, a Texas resident,

16 Plaintiff,

17 vs.

18 NIKKI FOOTE aka KRISTY
19 CUNNINGHAM aka NIKKI809, a Nevada
20 resident; KRISTY CUNNINGHAM aka
21 NIKKI FOOTE aka NIKKI809, a Nevada
22 resident; DOES 1-5; and ROE ENTITIES A-
23 E,

24 Defendants.

Case No.: A-09-593187

Dept. : III

THIRD AMENDED COMPLAINT

Exempt from Arbitration
Declaratory Relief Requested
Equitable Relief Requested

25 COMES NOW Plaintiffs RUHANIEH BADI'I ("Ms. Badi'i") and FARIS BADI'I ("Mr. Badi'i")
26 by and through their attorney of record, Rebecca Teale Balint, Esq. of the law firm Teale Advocate, and
27 hereby complain, aver and allege as follows:

28 **I.**

PARTIES

1. Plaintiff Ms. Badi'i is a resident of the State of Texas.
2. Plaintiff Mr. Badi'i is a resident of the State of Texas.
3. Based on information and belief, at all times relevant herein, Defendant Nikki Foote aka Kristy Cunningham aka nikki809 ("Ms. Foote") was an individual residing in Clark County, Nevada.

1 4. Based on information and belief, at all times relevant herein, Defendant Kristy
2 Cunningham aka Nikki Foote aka nikki809 (“Ms. Cunningham”) was an individual residing in Clark
3 County, Nevada.

4 5. Based on information and belief, at all relevant times, Ms. Foote and Ms. Cunningham
5 were the partners, joint venturers, agents, co-conspirators, servants, and/or employees of each of the
6 other Defendants herein, and were acting at all relevant times within the scope, purpose and authority of
7 said partnership, joint venture, agency, service, employment, and conspiracy, and with the knowledge,
8 consent, permission, acquiescence, and ratification of their co-defendants.

9 6. The identity of Defendants designated as Does 1 through 5 and Roe Entities A through E
10 are unknown at the present time. However, it is alleged and believed that these Defendants were
11 involved in the initiation, approval, support, or execution of the wrongful acts upon which this litigation
12 is premised, or of similar actions directed against Plaintiffs about which they are presently unaware. As
13 the specific identities of these parties are revealed through the course of discovery, the Doe and Roe
14 Entities A through E designations will be replaced to identify the parties by their true names and
15 capacities.

16 II.

17 GENERAL FACTUAL ALLEGATIONS

18 7. On or about May 28, 2009, Plaintiffs listed a Gucci handbag for sale on E-Bay (the
19 “Handbag”).

20 8. On information and belief, the E-Bay user ID “nikki809” is used by both Defendants Ms.
21 Foote and Ms. Cunningham.

22 9. On or about May 31, 2009, Defendants Ms. Foote and/or Ms. Cunningham emailed
23 Plaintiffs through E-Bay using user ID “nikki809” and offered to purchase the Handbag for \$500.00.

24 10. Shortly thereafter, Plaintiffs responded to nikki809’s email, stating that nikki809 could
25 bid \$500, and Plaintiffs would stop the auction and sell the Handbag to her at that price.

26 11. On or about June 2, 2009, Defendants Ms. Foote and/or Ms. Cunningham bid \$500 on the
27 Handbag, but the highest bid was only \$490, so the E-Bay automatically made an incremental bid of \$5
28 more than the highest bid, making Defendants’ actual bid \$495.

1 12. On or about June 2, 2009, Plaintiffs stopped the public auction and sold the Handbag to
2 nikki809 for \$495 plus \$11.99 shipping and handling.

3 13. On or about June 2, 2009, Defendants Ms. Foote and/or Ms. Cunningham paid for the
4 Handbag through Paypal, completing E-Bay transaction number 320375751330.

5 14. On information and belief, Defendants Ms. Foote and/or Ms. Cunningham used a Paypal
6 account registered under the name Kristy Cunningham to pay for the Handbag.

7 15. On or about June 3, 2009, Plaintiffs shipped the Handbag to nikki809 via USPS Priority
8 Mail.

9 16. According to the tracking information supplied by USPS, the Handbag was delivered to
10 nikki809's address on June 5, 2009 at approximately 1:09 pm.

11 17. On or about June 5, 2009 at approximately 3:46 pm, Defendants Ms. Foote and/or Ms.
12 Cunningham sent Plaintiffs an email through E-Bay using user ID nikki809 falsely accusing Plaintiffs of
13 selling them a fake Gucci handbag.

14 18. On or about June 5, 2009, there were a series of emails back and forth between Plaintiffs
15 and nikki809, in which Plaintiffs objected to Defendants' statements, asserted that the Handbag was in
16 fact genuine, and offered to provide Plaintiffs' purchase receipt from Gucci as evidence of the
17 Handbag's authenticity.

18 19. On or about June 7, 2009, Plaintiffs, as a courtesy and an accommodation only, offered to
19 accept the return of the Handbag from nikki809 pursuant to the return policy and provided information
20 on how to return the Handbag.

21 20. Shortly thereafter, Defendants Ms. Foote and/or Ms. Cunningham using user ID nikki809
22 informed Plaintiffs that she would be returning the Handbag to Plaintiffs.

23 21. Contrary to their statement, Defendants Ms. Foote and/or Ms. Cunningham did not return
24 the Handbag, but instead held onto the Handbag until being sued in the instant action.

25 22. On or about June 10, 2009, Defendant Ms. Foote and/or Ms. Cunningham using user ID
26 nikki809 posted false and disparaging comments about Plaintiffs on E-Bay's public feedback system,
27 including, but not limited to, stating that Plaintiffs sent nikki809 a fake Gucci bag and insinuating that
28 Plaintiffs had not dealt with nikki809 in good faith.

1 23. On or about June 10, 2009, Defendants Ms. Foote and/or Ms. Cunningham using user ID
2 nikki809 also sent Plaintiffs an email through E-Bay indicating that she had changed her mind and had
3 decided to keep the bag and give it to her niece.

4 24. Plaintiffs responded to Defendants' emails and feedback postings, objecting to her false
5 and disparaging claims and asking her to remove the comments.

6 25. Thereafter, Defendants Ms. Foote and/or Ms. Cunningham using user ID nikki809 began
7 sending Plaintiffs abusive and profane emails and flatly refusing to remove the false and disparaging
8 comments made on E-Bay's public feedback system.

9 26. On information and belief, E-Bay will not remove Defendants' false and disparaging
10 comments from its feedback system without a court order or Defendants' consent.

11 27. On information and belief, on or about June 26, 2009, Defendants Ms. Foote and/or Ms.
12 Cunningham created a claim with Paypal falsely claiming that the Handbag was an imitation.

13 28. As a result of Defendants' false claims, Paypal confiscated Plaintiffs' funds in the amount
14 of \$506.95 and provided this amount to Defendants Ms. Foote and/or Ms. Cunningham.

15 29. On information and belief, Defendants Ms. Foote and/or Ms. Cunningham knew their
16 comments were false.

17 30. On information and belief, Defendants Ms. Foote and/or Ms. Cunningham never intended
18 to pay Plaintiffs for the Handbag, and instead engaged in this ruse to obtain a luxury handbag from
19 Plaintiffs for free.

20 31. On information and belief, Defendants Ms. Foote and/or Ms. Cunningham only returned
21 the Handbag after many weeks of use and after being sued in the instant action.

22 32. As a result of Defendants' conduct, Plaintiffs have incurred significant damages, much in
23 excess of the purchase price and value of the Handbag, including but not limited to damage to Plaintiffs'
24 reputation and business.

25 33. As a further result of Defendants' conduct, Plaintiffs have been forced to bring the instant
26 action to recover their damages and obtain a court order to have Defendants' false and disparaging
27 comments removed from E-Bay's public feedback system.

28 /

1
2 **FIRST CAUSE OF ACTION**

3 (Breach of Contract vs. All Defendants)

4 34. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 33, as
5 though fully set forth herein.

6 35. Plaintiffs and Defendants Nikki Foote and Kristy Cunningham entered into a valid and
7 binding contract for the purchase and sale of the Handbag.

8 36. Plaintiffs performed or were excused from performance.

9 37. Defendants Nikki Foote and Kristy Cunningham breached the contract by attempting to
10 unilaterally rescind the transaction, making false and disparaging public comments about Plaintiffs,
11 creating a false claim with Paypal in order to obtain a refund of the purchase price and shipping and
12 handling, retaining and using the Handbag, and then returning the Handbag weeks and weeks later.
13

14 38. As a result of Defendants' conduct, Plaintiffs suffered damages in excess of \$10,000.00.

15 39. Plaintiff is further entitled to its attorney's fees and costs for prosecution of this cause of
16 action.
17

18 **SECOND CAUSE OF ACTION**

19 (Declaratory Relief vs. All Defendants)

20 40. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 39, as
21 though fully set forth herein.

22 41. The purchase and sale agreement entered into between the parties sets forth the respective
23 rights and obligations of the various parties.

24 42. Plaintiffs are entitled to a declaration from this Court that Defendants Nikki Foote and
25 Kristy Cunningham failed to honor their obligations under the purchase and sale agreement.
26

27 43. Plaintiffs have been compelled to engage the services of an attorney to prosecute this
28 action and, as special damages, are entitled to an award of attorney's fees and costs incurred herein.

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

THIRD CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing vs. All Defendants)

44. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 43, as though fully set forth herein.

45. Plaintiffs and Defendants were party to a valid and binding agreement.

46. Defendants owed a duty of good faith to Plaintiffs.

47. Defendants breached that duty by performing in a manner that was unfaithful to the purpose of the contract.

48. Plaintiffs' justified expectations were thus denied.

49. As a result of Defendants' conduct, Plaintiffs suffered damages in excess of \$10,000.00.

50. Plaintiffs are further entitled to their attorney's fees and costs for prosecution of this cause of action.

51. Defendants' conduct, as described herein, was malicious and/or oppressive under NRS 42.005, entitling Plaintiffs to an award of punitive damages.

FOURTH CAUSE OF ACTION

(Injunctive Relief vs. All Defendants)

52. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 51, as though fully set forth herein.

53. As alleged herein, Defendants have posted false and disparaging comments about Plaintiffs on E-Bay's public feedback system.

54. Defendants have refused to remove these false and disparaging comments about Plaintiffs from E-Bay's public feedback system.

55. E-Bay will not remove these comments

56. Plaintiffs have suffered an irreparable injury as the result of Defendants' conduct, which cannot be adequately compensated by money damages.

1 57. If Defendants are allowed to keep these false and disparaging comments about Plaintiffs
2 posted on E-Bay's public feedback system, it will result in further irreparable injury to Plaintiffs.

3 58. Plaintiffs are entitled to a permanent mandatory injunction requiring Defendants to
4 remove the false and disparaging comments about Plaintiffs from E-Bay's public feedback system.

5 59. As a further, direct, and proximate result of Defendants' conduct, Plaintiff has been
6 compelled to retain attorneys to prosecute this action. Therefore, Plaintiff is entitled to an award of
7 attorney fees.

8
9 **FIFTH CAUSE OF ACTION**

10 (Defamation vs. All Defendants)

11 60. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 59, as
12 though fully set forth herein.

13 61. Defendants made false and defamatory statements concerning Plaintiffs;

14 62. An unprivileged publication of these statements were made by Defendants and/or a third
15 person;

16 63. Defendants made the statements intentionally, recklessly or were at least negligent in
17 making the statements;

18 64. Plaintiffs sustained actual or presumed damages, in excess of \$10,000, as a result of the
19 statements.
20

21 65. Plaintiffs are further entitled to their attorney's fees and costs for prosecution of this
22 cause of action.

23 66. Defendants' conduct, as described herein, was malicious and/or oppressive under NRS
24 42.005, entitling Plaintiffs to an award of punitive damages.
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

SIXTH CAUSE OF ACTION

(False Light vs. All Defendants)

67. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 67, as though fully set forth herein.

68. Defendants gave publicity to a matter concerning Plaintiffs that placed Plaintiffs before the public in a false light.

69. The false light under which Plaintiffs were placed would be highly offensive to a reasonable person.

70. Defendants had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which Plaintiffs were placed.

71. As a result of Defendants' conduct, Plaintiffs suffered damages in excess of \$10,000.00.

72. Plaintiffs are further entitled to their attorney's fees and costs for prosecution of this cause of action.

73. Defendants' conduct, as described herein, was malicious and/or oppressive under NRS 42.005, entitling Plaintiffs to an award of punitive damages.

WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and/or severally, where applicable as follows:

- a. For compensatory damages in a sum according to proof at trial;
- b. For special damages in a sum according to proof at trial;
- c. For interest and pre-judgment interest at the statutory rate until the amount of judgment is paid in full;
- d. For a declaration from this Court that Defendants failed to honor their obligations under the purchase and sale agreement;
- e. For punitive damages;
- f. For an injunction requiring Defendants to remove the false and disparaging comments about Plaintiffs from E-Bay's public feedback system;

- 1 g. For attorney's fees and costs of suit incurred; and
- 2 h. For such other and further relief as the Court may deem appropriate.

3

4 DATED this 14th day of December, 2009.

5

6

7

8 By /S/ Rebecca Teale Balint _____

9 Rebecca Teale Balint, Esq.

10 Nevada Bar No. 9505

 Teale Advocate

Attorney for Plaintiffs

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28