

NO. C-8275-14-G

STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	
	§	HIDALGO COUNTY, TEXAS
JESSICA BENAVIDEZ AND	§	
JAIME DE LOS REYES, BOTH	§	
INDIVIDUALLY AND DBA	§	
VALLEY PUPPIES,	§	
Defendants	§	<u>370th</u> JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY AND PERMANENT INJUNCTIONS
REQUEST FOR DISCLOSURE

TO THE HONORABLE COURT:

THE STATE OF TEXAS (“the State”), acting by and through its Attorney General, GREG ABBOTT files this Original Petition for Civil Penalties and Application for Temporary and Permanent Injunction, complaining of JESSICA BENAVIDEZ and JAIME DE LOS REYES, BOTH INDIVIDUALLY AND DBA VALLEY PUPPIES (hereinafter “Defendants”), and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.2(b)(3).
2. This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because the relief sought by the State includes monetary and injunctive relief.

NATURE OF SUIT

3. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection Division against

C-8275-14-G

Defendants for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (“DTPA”). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. BUS. & COM. CODE ANN. §17.47.

DEFENDANTS

4. Defendant, Jessica Benavidez (hereinafter “Benavidez”), is an individual residing and conducting business in Hidalgo County, Texas. She may be served with process at 1609 Tamarack, McAllen, TX 78501 or wherever she may be found.
5. Defendant, Jaime De Los Reyes (hereinafter “De Los Reyes”), is an individual residing and conducting business in Hidalgo County, Texas. He may be served with process at 1609 Tamarack, McAllen, TX 78501 or wherever he may be found.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to Section 17.47(b) of the DTPA.

VENUE

7. Venue of this suit is proper Hidalgo County under § 15.002(a)(1) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

PURPOSE OF SUIT

8. The State is seeking civil penalties, attorney’s fees, and injunctive relief from the Defendants for misrepresenting the services being offered in violation of the Deceptive Trade Practice Act.

PUBLIC INTEREST

9. The State has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that Defendants have, by

C-8275-14-G

means of these unlawful acts and practices, caused damage to or acquired money or property from persons, and that Defendants are adversely affecting the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas has determined that these proceedings are in the public interest.

TRADE AND COMMERCE

10. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined by section 17.45(6) of the DTPA.

ACTS OF AGENTS

11. Whenever in this petition it is alleged that Defendants did any act, it is meant that Defendants performed or participated in the act, or that the officers, agents or employees of Defendants performed or participated in the act on behalf of and under the authority of Defendants.

CONDITIONS PRECEDENT

12. All conditions precedent to Plaintiff’s claim for relief have been performed or have occurred.

FACTUAL ALLEGATIONS

13. Defendants operate an online business named Valley Puppies.
14. Valley Puppies offers to sell to consumers pure breed puppies with a registered pedigree and ship the puppy to the buyer’s location.
15. Consumers began filing complaints with the Texas Department of Licensing and Regulations when Defendants were not able to produce a pedigree to consumers.

C-8275-14-G

16. Instead, Consumers received their puppy, a vaccination record and a promise that the pedigree would arrive, within a few weeks, from the Ukrainian Kennel Union (“UKU”).
17. When Consumers called the UKU they were informed that the UKU had no relationship with the Defendants.
18. Consumers then began to call Defendants regarding their puppy’s pedigree but Defendants would not answer or return their phone calls.
19. Some of the puppies, purchased by consumers, were sick with parasites or parvovirus and died soon after.
20. Despite breeding and offering puppies for sale, Defendants are not licensed breeders with the State of Texas.

DTPA VIOLATIONS

21. Defendants, as alleged above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA as follows:
 - a. By using deceptive and misleading representations to induce consumers into entering into a contract for the purchase of puppies consumers believed had a registered pedigree, in violation of section 17.46(a);
 - b. By causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of § 17.46(b)(2);
 - c. By causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by another, in violation of § 17.46(b)(3);
 - d. By representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has

C-8275-14-G

- a sponsorship, approval, status, affiliation, or connection which he does not, in violation of section 17.46(b)(5);
- e. By representing that its services are of a particular standard, quality, or grade when they are of another, in violation of section 17.46(b)(7);
- f. By advertising goods or services with intent not to sell them as advertised in violation of section 17.46(b)(9); and
- g. By failing to disclose information concerning the puppies health or pedigree, when such failure to disclose was intended to induce the consumers into entering the agreement, a transaction into which the consumers would not have entered had the information been disclosed, in violation of section 17.46(b)(24).

INJURY TO CONSUMERS

22. Defendants have, by means of the unlawful act(s) or practice(s) alleged, caused actual damages to identifiable persons who should be compensated for such damages, or in the alternative, acquired money or property from persons to whom such money or property should be restored.
23. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the law as alleged in this petition, or will continue to violate the law, and should be restrained by this Honorable Court.

REQUEST FOR DISCLOSURE

24. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

C-8275-14-G

PRAYER

25. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with defendants from engaging, directly or indirectly, in the following acts or practices:

- a. Selling, or offering to sell, any puppy without first having registered the puppy with a recognized kennel association and obtaining a certification of the puppy's pedigree;
- b. Advertising any puppy for sale for which Defendants do not have any pedigree paperwork from a recognized kennel association ;
- c. Advertising, informing, suggesting or allowing customers to infer that Defendants are certified dog or cat breeders in the State of Texas, if they are not;
- d. Accepting any form of compensation from consumers for any puppy without simultaneously providing, to the consumer, a pedigree for the puppy purchased or vaccination records;
- e. Advertising that Defendants are member of a kennel association or certified by a kennel association when in fact they are not;
- f. Using deceptive and misleading representations to induce consumers into entering into a contract for the purchase of puppies consumers believe have a registered pedigree or are healthy when they are not;
- g. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification that the puppies have or don't have;
- h. Causing confusion or misunderstanding as to the affiliation, connection, or association with a particular kennel association when the Defendants don't have one;

C-8275-14-G

- i. Representing that puppies have the sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that Defendants have a sponsorship, approval, status, affiliation, or connection which they do not have;
- j. Representing that Defendant services are of a particular standard, quality, or grade when they are of another;
- k. Advertising puppies with a particular registration or pedigree or allowing consumers to believe they are of a particular registration or pedigree when they are of another;
- l. Advertising that the puppies are healthy or allowing consumers to believe they are healthy when they are not;
- m. Advertising the sale of puppies with intent not to sell them as advertised; and
- n. Failing to disclose information concerning the puppies' health or pedigree, when such failure to disclose was intended to induce the consumers into entering the agreement, a transaction into which the consumers would not have entered had the information been disclosed.

26. In addition, Plaintiff, STATE OF TEXAS, respectfully prays that this Court:

- a. Adjudge against Defendants civil penalties in favor of Plaintiff, STATE OF TEXAS, in the amount not to exceed more than \$20,000.00 per violation;
- b. Order Defendants to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages i.e. the difference in value of a dog with a registered full breed pedigree as to one without;
- c. Adjudge against Defendants reasonable attorney's fees and court costs pursuant to Texas Government Code section 402.006;
- d. Adjudge against Defendants pre-judgment and post-judgment interest at the highest lawful rate;
- e. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. section 523(a)(7).

C-8275-14-G

27. Further, Plaintiff STATE OF TEXAS respectfully prays for all other relief to which Plaintiff STATE OF TEXAS may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN SCOTT
Deputy Attorney General for
Civil Litigation

TOMMY PRUD'HOMME
Chief, Consumer Protection Division



JOE D. GARCIA
State Bar No. 00785896
MICHAEL AGUIRRE
State Bar No. 24038593
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
3201 N. McColl, Suite B
McAllen, Texas 78501
(956) 682-4547; Fax (956) 283-1802
Joe.garcia@texasattorneygeneral.gov

C-8275-14-G

VERIFICATION

STATE OF TEXAS §

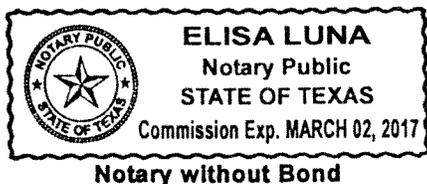
COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the "Factual Allegations" in the foregoing STATE'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION AND REQUEST FOR DISCLOSURE, and has reason to believe that the facts stated in paragraphs 13 through 20 in said "Factual Allegations" are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.



ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 10th day of November, 2014.





NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS