

MAR 26 2019

At 2:15 P M.  
Velva L. Price, District Clerk

No. D-1-GN-19-001618

STATE OF TEXAS,  
Plaintiff,

v.

GUIDED TOURIST, LLC,  
Defendant.

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IN THE DISTRICT COURT

98<sup>th</sup> JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

On this 26<sup>th</sup> day of March, 2019, came on to be heard the above-entitled and numbered cause wherein the STATE OF TEXAS (State) is Plaintiff and Guided Tourist, LLC (Guided Tourist) is Defendant. In this action, the State alleges that Guided Tourist engaged in false, misleading, and deceptive acts and practices in violation of § 17.46 of the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code (DTPA). Defendant denies that at any time it engaged in any false, misleading, or deceptive acts. The Plaintiff and Defendant, by and through their attorneys of record, have made the following stipulations and agree to the entry of this Agreed Final Judgment and Permanent Injunction (AFJPI) as a compromise and settlement of disputed claims.

**I. STIPULATIONS**

1. The State and Guided Tourist agree to and do not contest the entry of this AFJPI and agree that, subject to the terms hereof, the Court has continuing jurisdiction to enforce this AFJPI to the extent authorized by Texas law.
2. Guided Tourist is aware of the duties placed upon it by the AFJPI and is desirous and capable of carrying out those duties in full.

I, VELVA L. PRICE, District Clerk,  
Travis County, Texas, do hereby certify that this is  
a true and correct copy as same appears of  
record in my office. Witness my hand and seal of  
office on 3/26/2019



VELVA L. PRICE  
DISTRICT CLERK  
By Deputy:

*Billy Price*



3. Guided Tourist acknowledges receipt of copies of this AFJPI and has full and actual notice of its terms.

4. The parties have compromised and settled all claims alleged by the State in this cause without the necessity of a trial.

5. The parties agree to waive the thirty (30) day period in which to file a Motion for New Trial and waive any and all rights to appeal this AFJPI.

## II. FINDINGS

6. Having reviewed the pleadings in this case and the stipulations of the parties, the Court hereby finds as follows:

- a. The Court has jurisdiction over the parties;
- b. The Court has jurisdiction over the subject matter of this action;
- c. Venue is proper in TRAVIS County, Texas;
- d. The consumer protection division is authorized to bring this action under DTPA § 17.47.
- e. The issuance and service of a writ of injunction are waived.

## III. DEFINITIONS

7. **IT IS ORDERED** that, as used in this AFJPI, the following terms are defined as follows:

- a. “Advertising” or “Advertisement(s)” means any message created, published and/or distributed under the direction or control of Guided Tourist to the general public or any segment thereof including, but not limited to, communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), and communications made in print,



which includes but is not limited to letters, pamphlets, flyers, newspapers, magazines, periodicals, and books.

- b. “Clear and Conspicuous” or “Clearly and Conspicuously” when referring to a statement or disclosure, shall mean that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by consumers, including the following considerations:
- i. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented;
  - ii. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must be presented in a manner in which it is easily noticed, read, and understood;
  - iii. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable;
  - iv. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears;
  - v. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices; and
  - vi. The disclosure must not be contradicted by, or be inconsistent with, anything else in the communication.



- c. “Direct Proximity” means that a term is disclosed immediately beneath, beside, or adjacent to an offer or triggering representation.
- d. “Effective Date” shall mean the date of entry of this AFJPI.
- e. “Guided Tourist” means Guided Tourist, LLC and includes its parents, subsidiaries, officers, agents, servants, employees, successors and assigns as well as any other persons acting on its behalf who receive actual notice of this AFJPI. Notwithstanding the foregoing, this AFJPI binds only Guided Tourist and persons acting on its behalf; it does not affect and cannot be directly enforced against any individual participating in a venture other than Guided Tourist, LLC.
- f. “Mandatory Fees” include unavoidable fees such as booking charges or service fees, but exclude taxes.
- g. “Website” means statueoflibertytickets.com, alcatrazislandtickets.com, or any other Uniform Resource Locator site operated by Guided Tourist, LLC accessible to the general public on the Internet that advertises and/or sells tickets for access to U.S. national monuments or parks.

#### IV. PERMANENT INJUNCTION

8. **IT IS FURTHER ORDERED** that Guided Tourist **SHALL BE AND IS HEREBY PERMANENTLY ENJOINED** from engaging in the following acts or practices:
- a. Failing to Clearly and Conspicuously disclose on the landing pages (*i.e.*, website pages arrived at through pay per click ads and general search results) of its Websites that such sites are not affiliated with any government agency or any official third-party ticket vendor the U.S. National Park Service (NPS) designates as an “official



e-ticket” agent. The foregoing shall not apply if Guided Tourist becomes an official NPS ticket agent or becomes affiliated with an official NPS ticket agent.

- b. Misrepresenting in any Advertisement that Guided Tourist is the official NPS ticket vendor or a direct source for such tickets when it is not the official NPS ticket vendor or the direct source for such tickets.
- c. Advertising any ticket prices other than a total ticket price (inclusive of all Mandatory Fees), and failing to Clearly and Conspicuously disclose, in Direct Proximity to the total ticket price on any ticket checkout web pages, all Mandatory Fees that consumers can expect to pay to purchase tickets, separate from ticket prices.
- d. Failing to disclose on Guided Tourist’s Websites the name of the business, its hours of operations, office location, and all other relevant contact information, including email address, for the business.
- e. Failing to Clearly and Conspicuously disclose on Guided Tourist’s Websites, prior to a consumer making a ticket purchase, Guided Tourist’s refund policy. Such disclosures include, but are not limited to, “all sales final” policies.

#### **V. MONETARY JUDGMENT**

IT IS FURTHER ORDERED that:

9. Guided Tourist shall by 90 days after the Effective Date provide direct notice (the format and text of which has been agreed to by the parties prior to entry of this AFJPI), by email, to all consumers with a Texas billing address at the time of purchase who purchased tickets on Guided Tourist’s Websites from January 1, 2015 through July 31, 2017 (“eligible consumers”). The direct notice shall offer the eligible consumers a simple method to submit a request to obtain a full refund



of any Mandatory Fees imposed by Guided Tourist that the eligible consumer states he or she was unaware of, provided that the consumer submits a refund request no later than 60 days after Guided Tourist sends the notification. Such requests shall be granted and refunds shall be provided by Guided Tourist absent specific evidence provided by Guided Tourist that a consumer acknowledged in writing, aside from confirming the terms and conditions, that they were aware of such fee. In addition, for any complaints received prior to the entry of this AFJPI either directly or from any third party, including but not limited to, the Attorney General, the Better Business Bureau, or the Federal Trade Commission, and which allege that the consumer was unaware of the Mandatory Fee, Guided Tourist shall provide a full, no questions asked refund of Mandatory Fees to such consumer within fourteen (14) days of the date of entry of this AFJPI. If an eligible consumer has previously received a refund from Guided Tourist, that consumer's refund under this AFJPI shall be reduced by the amount of previous refund. In no event shall this refund program entitle an eligible consumer to more than a complete refund of the amounts such consumer paid for Guided Tourist's services. Guided Tourist shall bear the cost of administering each refund offered under this provision. Upon request, Guided Tourist will send to the State a sworn statement listing all eligible consumers who have requested refunds, the consumers' contact information, and the amount refunded to the consumers.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

10. The State of Texas shall have judgment against Guided Tourist in the amount of \$132,000. \$25,000 of this sum shall be allocated for reimbursement of attorneys' fees to the Texas Attorney General, which fees were incurred on behalf of the State and do not constitute an antecedent debt with respect to this litigation. \$107,000 of this sum shall be allocated for civil penalties pursuant to



the DTPA § 17.47 et seq. Payment is to be made by certified check or wire transfer payable to the “STATE OF TEXAS,” bearing the reference AG# CX1758785353, and if not by wire transfer, delivered/mailed to the Office of the Attorney General, ATTN: Accounting Division, 300 W. 15th Street, MC-003, Austin, Texas 78701.

#### **VI. MISCELLANEOUS PROVISIONS**

11. **IT IS FURTHER ORDERED** that Guided Tourist, by its signature below, hereby acknowledges notice of this AFJPI and acceptance of the same. The State may enforce the AFJPI through any procedure or process available under the laws of the State of Texas.

12. **IT IS FURTHER ORDERED** that Guided Tourist shall not represent to the public that this AFJPI constitutes approval by the State or this Court of any of Guided Tourist’s alleged actions or business practices.

13. **IT IS FURTHER ORDERED** that this AFJPI is final as to all parties and disposes of all claims asserted by the parties in this instant case. All relief asserted or which could have been asserted among the parties to this AFJPI hereto based on the legal and factual allegations in this underlying cause for alleged violations of the DTPA not expressly granted herein is denied. The State hereby fully releases, waives, and discharges Guided Tourist and its agents, representatives, and employees from any claims arising out of or related to facts alleged in this underlying cause for alleged violations of the DTPA prior to the date this AFJPI is entered by the Court. This AFJPI does not, however, affect the rights of or remedies available to any third party that is not subject to this order.



SIGNED this 26 day of March 2019.

  
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JUDGE PRESIDING

*Catherine A. Maury*

**AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:**

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

DARREN L. MCCARTY  
Deputy Attorney General for Civil Litigation

PAUL SINGER  
Chief, Consumer Protection Division



\_\_\_\_\_  
**ELIZABETH CHUN**  
SBN 24082700  
**VALERIA SARTORIO**  
SBN 24073758  
Assistant Attorneys General  
Consumer Protection Division  
Office of the Texas Attorney General  
P. O. Box 12548  
Austin, Texas 78711  
Telephone (512) 463-2185  
Facsimile (512) 463-1267  
beth.chun@oag.texas.gov  
valeria.sartorio@oag.texas.gov

**ATTORNEYS FOR PLAINTIFF, THE STATE OF TEXAS**





Carlota Houseal

Carlota Houseal, Authorized Business Signatory  
**GUIDED TOURIST, LLC**  
700 Lavaca Street, Suite 1400-2353  
Austin, Texas 78701

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**BRIAN O'TOOLE**

SBN 15340510  
O'Toole Atwell, P.C.  
504 Lavaca, Suite 1010  
Austin, TX 78701  
Telephone (512) 476-4740  
Facsimile (512) 476-1228  
botoole@otoole-atwell.com

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**SCOTT BRISTER**

SBN \_\_\_\_\_  
Hunton Andrews Kurth LLP  
111 Congress Avenue, Suite 510  
Austin, TX 78701  
Telephone (512) 320-9220  
Facsimile (512) 542-5049  
scottbrister@HuntonAK.com

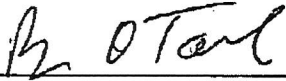
**ATTORNEYS FOR GUIDED TOURIST, LLC**

*State v. Guided Tourist, LLC*  
Agreed Final Judgment and Permanent Injunction

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Carlota Houseal, Authorized Business Signatory  
**GUIDED TOURIST, LLC**  
700 Lavaca Street, Suite 1400-2353  
Austin, Texas 78701



\_\_\_\_\_  
**BRIAN O'TOOLE**  
SBN 15340510  
O'Toole Atwell, P.C.  
504 Lavaca, Suite 1010  
Austin, TX 78701  
Telephone (512) 476-4740  
Facsimile (512) 476-1228  
[botoole@otoole-atwell.com](mailto:botoole@otoole-atwell.com)

\_\_\_\_\_  
**SCOTT BRISTER**  
SBN \_\_\_\_\_  
Hunton Andrews Kurth LLP  
111 Congress Avenue, Suite 510  
Austin, TX 78701  
Telephone (512) 320-9220  
Facsimile (512) 542-5049  
[scottbrister@HuntonAK.com](mailto:scottbrister@HuntonAK.com)

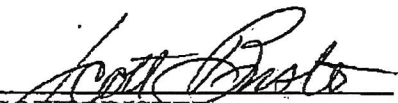
**ATTORNEYS FOR GUIDED TOURIST, LLC**



Carlota Houseal, Authorized Business Signatory  
**GUIDED TOURIST, LLC**  
700 Lavaca Street, Suite 1400-2353  
Austin, Texas 78701

---

**BRIAN O'TOOLE**  
SBN 15340510  
O'Toole Atwell, P.C.  
504 Lavaca, Suite 1010  
Austin, TX 78701  
Telephone (512) 476-4740  
Facsimile (512) 476-1228  
botoole@otoole-atwell.com

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**SCOTT BRISTER**  
SBN 00000024  
Hunton Andrews Kurth LLP  
111 Congress Avenue, Suite 510  
Austin, TX 78701  
Telephone (512) 320-9220  
Facsimile (512) 542-5049  
[scottbrister@HuntonAK.com](mailto:scottbrister@HuntonAK.com)

**ATTORNEYS FOR GUIDED TOURIST, LLC**

