

NO C-1308-06-D

THE STATE OF TEXAS,
Plaintiff

IN THE DISTRICT COURT

v.

HIDALGO COUNTY, TEXAS

JESUS VAZQUEZ,
d/b/a JESSE'S PET SHOP,
Defendant

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206 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY AND PERMANENT INJUNCTION**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of JESUS VAZQUEZ, doing business as Jesse's Pet Shop, hereinafter referred to as defendant, 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).

NATURE OF THIS SUIT

2. 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 defendant for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM.

CODE ANN. § 17.41, *et seq.* (hereinafter “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.

DEFENDANT

3. Defendant JESUS VAZQUEZ is an individual who regularly conducts business in Hidalgo County, Texas, and may be served with process by serving him at his place of business at 920 West Houston Avenue, McAllen, Hidalgo County, Texas.

JURISDICTION

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

VENUE

5. Venue of this suit lies in Hidalgo County, Texas, for the following reasons:

a. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and

b. Under DTPA § 17.47(b), venue is proper because defendant has done business in the county of suit.

PUBLIC INTEREST

6. Plaintiff, STATE OF TEXAS, has reason to believe that defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that defendant has, by means of these unlawful acts and practices, caused damage to and acquired money or

property from persons, and that defendant adversely affects 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 believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

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

NOTICE BEFORE SUIT GIVEN

9. The Consumer Protection Division contacted defendant in writing to inform him in general of the alleged unlawful conduct at least seven days before this suit was filed, as may be required by § 17.47(a) of the DTPA.

NATURE OF DEFENDANTS’ OPERATIONS

10. Defendant Jesus Vazquez owns and operates a pet shop in McAllen, Hidalgo County, Texas.

FACTUAL ALLEGATIONS

Misrepresentation Made to Annette Escamilla

11. On or about March 10, 2006, Annette Escamilla purchased a puppy from defendant after being told by defendant that the puppy was healthy. Shortly after the purchase, Ms. Escamilla

discovered that the puppy was diseased, and the puppy died approximately 7 days after the purchase.

Misrepresentation Made to John Arriola

12. On or about January 13, 2006, John Arriola purchased a puppy from defendant after being told by defendant that the puppy was healthy. Shortly after the purchase, Mr. Arriola discovered that the puppy was diseased and had the puppy euthanized because the puppy was suffering from the illness.

Failure to Disclose Information to Cristina Ramirez

13. On or about September 16, 2005, Cristina Ramirez purchased two puppies from defendant. At the time of the transaction, defendant knew that puppies for sale at his pet store had a life-threatening disease or were likely to contract one at his pet store. Defendant failed to disclose such information intending to induce Ms. Ramirez into purchasing the puppies, a transaction into which Ms. Ramirez would not have entered had the information been disclosed.

Repeated Misrepresentation Made to Other Consumers

14. Based on information provided by consumers, the Consumer Protection Division, Office of the Texas Attorney General, has reason to believe that, beginning 2004 until the filing of this lawsuit, defendant engaged in unlawful deceptive trade practices in selling animals as pets to consumers by representing that the animals were healthy when they were not.

15. Defendant committed separate deceptive trade practices in violation of the DTPA, as alleged in the preceding paragraph, with respect to each of the following consumers: Jose A. Lopez; Maria J. Espinoza; and Laura Lisa Aguilera.

Repeated Failure to Disclose Information to Other Consumers

16. Based on information provided by consumers, the Consumer Protection Division, Office of the Texas Attorney General, has reason to believe that, beginning 2004 until the filing of this lawsuit, defendant engaged in unlawful deceptive trade practices in selling animals as pets to consumers by failing to disclose that puppies for sale at his pet store had a life-threatening disease or were likely to contract one at his pet store. Defendant failed to disclose such information intending to induce consumers into purchasing the puppies, a transaction into which consumers would not have entered had the information been disclosed.

17. Defendant committed separate deceptive trade practices in violation of the DTPA, as alleged in the preceding paragraph, with respect to each of the following consumers: Dora Casas; Monica R. Elizondo; Maria J. Espinoza; Daisy D. Flores; Romeo G. Garcia; Yadira Garcia; Christie Gomez; Teretha Jones; Charla Layne; Jose A. Lopez; Ismael Mendiola; Mindy Palacios; Jose and Sara Plata; Rachel Rodriguez; John H. Sanders; Diego and Abby Sepulveda; and Laura Lisa Aguilera.

DTPA VIOLATIONS

18. Defendant, as alleged above, has 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 advertising, offering for sale, and selling diseased puppies, defendant is engaging in or has engaged in an act or practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA;
- b. By representing that puppies for sale are healthy, defendant is representing that goods

are of a particular standard, quality, or grade, when they are of another, in violation of §17.46(b)(7) of the DTPA;

c. By failing to disclose that puppies for sale at his pet store had a life-threatening disease or were likely to contract one at his pet store, which was known at the time of the sale transaction, defendant intended to induce consumers into purchasing the puppies, a transaction into which consumers would not have entered had the information been disclosed, in violation of §17.46(b)(24) of the DTPA

EQUITABLE RESCISSION

19. All agreements between defendant and his clients should be subject to the equitable remedy of rescission.

INJURY TO CONSUMERS

20. Defendant has, by means of these unlawful acts and practices, obtained money or property from consumers who are entitled to restitution, or in the alternative, has caused actual damages to identifiable persons who are entitled to compensation.

21. Because defendant has engaged in the unlawful acts and practices described above, defendant has violated the law as alleged in this petition. Unless restrained by this Honorable Court, defendant will continue to violate the laws of the State of Texas and cause injury to the general public.

PRAYER

22. WHEREFORE, plaintiff prays that defendant be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon trial of this cause a PERMANENT INJUNCTION be issued, restraining and enjoining defendant, his

officers, agents, servants, employees and attorneys and any other person in active concert or participation with defendant from:

a. Engaging in the business of selling animals at retail until such time that defendant makes payment of restitution and/or damages ordered by the Court; and

b. Engaging in the business of selling dogs at retail unless defendant makes refund for the purchase price of the dog, plus sales tax, and reimbursement for reasonable veterinary fees in an amount not to exceed the purchase price of the dog, in the event that the dog dies of disease or illness within 15 days of delivery to the purchaser; or makes refund for the purchase price of the dog, plus sales tax, and reimbursement for reasonable veterinary fees in an amount not to exceed the purchase price of the dog, in the event that a licensed veterinarian states in writing that the dog became ill due to any illness that existed in the dog on or before delivery of the dog to the purchaser.

c. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of defendant currently or hereafter in defendant's possession, custody or control except in response to further orders or subpoenas in this cause; and

d. Representing, directly or by implication, that this Court or the Office of the Attorney General has approved any good or service sold or offered for sale by defendant, or approved of any of defendant's business practices.

23. Plaintiff, STATE OF TEXAS, further prays that this Court order defendant to provide, at the

time of the sales transaction, notice of the court-ordered refund policy to consumers who purchase a dog, which notice shall be conspicuous, in bold-faced type of a minimum size of 12 points and shall state:

REFUND POLICY

JESUS VAZQUEZ WILL MAKE REFUND FOR THE PURCHASE PRICE OF THE DOG, PLUS SALES TAX, AND REIMBURSEMENT FOR REASONABLE VETERINARY FEES IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE DOG, IN THE EVENT THAT THE DOG DIES OF DISEASE OR ILLNESS WITHIN 15 DAYS OF DELIVERY TO THE PURCHASER; OR

JESUS VAZQUEZ WILL MAKE REFUND FOR THE PURCHASE PRICE OF THE DOG, PLUS SALES TAX, AND REIMBURSEMENT FOR REASONABLE VETERINARY FEES IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE DOG, IN THE EVENT THAT A LICENSED VETERINARIAN STATES IN WRITING THAT THE DOG BECAME ILL DUE TO ANY ILLNESS THAT EXISTED IN THE DOG ON OR BEFORE DELIVERY OF THE DOG TO THE PURCHASER.

PLEASE REPORT FAILURE TO HONOR THIS REFUND POLICY TO THE CONSUMER PROTECTION DIVISION AT 956-682-4547, EXT. 114.

24. Plaintiff, STATE OF TEXAS, further prays that this Court order defendant to conduct and transact business under the assumed name of "JESSE'S PET SHOP" and to file an assumed name certificate for "JESSE'S PET SHOP" with the clerk of any county where defendant is engaged in the business of selling animals at retail.

25. Plaintiff, STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of defendant and witnesses prior to any scheduled Temporary Injunction hearing and prior to defendant's answer date, with reasonable shortened notice to defendant and his attorney, if known.

26. In addition, plaintiff, STATE OF TEXAS, respectfully prays that this Court will:
- a. Adjudge against defendant civil penalties in favor of plaintiff, STATE OF TEXAS, in the amount of \$20,000 per violation of the DTPA;
 - b. Order defendant to restore all money or property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;
 - c. Adjudge against defendant reasonable attorney's fees and court costs pursuant to ~~TEXAS~~ GOV'T. CODE ANN. § 402.006;
 - d. Adjudge against defendant prejudgment and postjudgment interest at the highest lawful rate;
 - e. Rescind all agreements entered into by and between defendant and consumers;
 - f. Appoint a receiver or sequester defendant's assets if defendant has been ordered by this Court to make restitution and defendant has failed to do so within three months after the order to make restitution has become final and nonappealable;
 - g. 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. §523(a)(7).

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

BARRY McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
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VERIFICATION

STATE OF TEXAS §

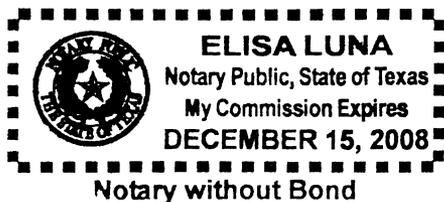
COUNTY OF HIDALGO §

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 PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION, and has reason to believe that each and all 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 5th day of June, 2006.





NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS