

CAUSE NO. _____

STEPHANIE GONZALEZ,

Plaintiff,

vs.

POOCHES OF WEBSTER, INC. d/b/a
PETLAND WEBSTER

Defendant.

§ IN THE DISTRICT COURT
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§ HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Stephanie Gonzalez files this Plaintiff's Original Petition naming Pooches of Webster, Inc. d/b/a Petland Webster as Defendant, and for her causes of action, would show the Court as follows:

I. DISCOVERY TRACK

1.1 In compliance with Rule 190 of the Texas Rules of Civil Procedure, Plaintiff avers that discovery be conducted pursuant to Level 3, and affirmatively pleads that this suit is not governed by the expedited-actions process of Rule 169 of the Texas Rules of Civil Procedure.

II. PLAINTIFF

2.1 Plaintiff Stephanie Gonzalez is a citizen of the State of Texas, and is a resident of Houston, Harris County, Texas. Plaintiff Stephanie Gonzalez brings suit individually for her damages sustained as a result of Defendant Petland Webster's violations of the Texas Deceptive Trade Practices Act.

III. DEFENDANT

3.1 Defendant Pooches of Webster, d/b/a Petland Webster, Inc. (hereinafter referred to as "Petland Webster") is a Texas corporation organized and existing under the laws

of the State of Texas. Petland Webster was authorized to do business in Texas at all times relevant to this suit. Petland Webster may be served by serving its registered agent for service of process, InCorp. Services, Inc. at 815 Brazos Street, Suite 500, Austin, Texas 78701. Plaintiff requests that the Court issue citation for service of process.

3.2 In the event any parties are misnamed or not included herein, it is Plaintiff's contention that such a "misnomer" and/or such parties are/were "alter egos" of parties named herein. In the event that the true parties are misidentified, Plaintiff hereby asserts reliance upon the doctrine of misidentification.

IV. JURISDICTION AND VENUE

4.1 The Court has subject matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

4.2 Venue is proper in Harris County because the events and omissions giving rise to the claims occurred in Harris County, Texas. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

4.3 Plaintiff seeks no legal or equitable relief afforded under the United States constitution, any federal law or any federal regulation, and specifically pleads no causes of action or forms of relief afforded by the United States constitution, any federal law or any federal regulation. To the contrary, Plaintiff seeks a monetary judgment based only on claims, causes of action, and pleas afforded under Texas law and seeks relief – monetary damages – afforded only by Texas law.

4.4 Plaintiff's claims under Texas law raise no stated federal issue that is actually disputed and substantial. Because the duties giving rise to Plaintiff's claims arise solely under Texas law and are not based – directly or indirectly – on any federal issue, there is no federal issue that must be resolved in order to adjudicate Plaintiff's claims herein.

4.5 Federal courts also lack federal diversity jurisdiction of this case because Plaintiff and Defendant are both citizens and residents of Texas. Plaintiff makes no claim of admiralty or maritime law and sues no foreign state or agency.

4.6 As such, removal to federal court would be improper in this case.

V. FACTS

5.1 On or about November 7, 2020, Stephanie Gonzalez went to the Petland Webster store with her seven-year-old son to look for a puppy. Petland Webster is a retail store that sells puppies to the public. It is located at 19722 Gulf Freeway in Webster, Texas. Luis Marquez is the owner of Petland Webster.

5.2 A Petland employee and pet counselor believed to be named Taylor Adams, assisted Plaintiff Gonzalez. Plaintiff Gonzalez and her son became interested in a male Boston Terrier puppy, whom they later named Tyler. Petland employee Adams advised Plaintiff Gonzalez that the cost of the puppy (which was \$5,000) included veterinary care, and that all veterinary bills, including emergency care, would be paid for under the Petland warranty. Mr. Adams also told Mrs. Gonzalez that Tyler was “perfectly healthy,” that the puppies are regularly seen by a veterinarian in the store, and that Tyler had been seen by the veterinarian in the past week.

5.3 However, the puppy was not healthy. Almost immediately after Plaintiff Stephanie Gonzales purchased Tyler, Tyler began exhibiting symptoms of illness, which turned out to be giardia, a parasitic disease that is highly transmissible between dogs, and even between dogs and humans. When Plaintiff Gonzalez took Tyler to the veterinary clinic affiliated with Petland, she learned that not only did Tyler currently have giardia, but that Tyler was being treated for giardia at Petland prior to being purchased by Plaintiff Gonzalez. Despite this, the Petland pet counselor expressly represented to Plaintiff Gonzalez that Tyler was “perfectly healthy” to induce

her into purchasing Tyler. Tyler had to be treated for giardia multiple times over several months before he was finally giardia free. During that time, Plaintiff Gonzalez and her family spent countless hours caring for and cleaning up after Tyler. Plaintiff Gonzalez also incurred out of pockets costs for veterinary treatment (for which Petland had represented to her would be included with the cost of purchase), as well as cleaning supplies and puppy pads, due to the fact that Tyler had to be isolated until he fully and finally recovered from the contagious giardia disease several months later.

5.4 The Petland sales representative also made misrepresentations to Plaintiff Stephanie Gonzalez about the breeders Petland uses. Specifically, Mr. Adams told Plaintiff Gonzalez that Petland worked closely with its breeders to ensure quality, and that Tyler came from the “top 2%” of breeders in the country. However, this statement was false. Plaintiff Gonzalez learned later that Petland acquired Tyler from Blue Ribbon Puppies, a large commercial distributor in Indiana that the Centers for Disease Control has linked to disease outbreaks among people who handled sick puppies from Petland stores and Blue Ribbon.

5.5 Plaintiff Gonzalez decided to purchase Tyler based on Petland’s representations about Tyler’s health and breeding, as well as representations about Petland’s warranty and coverage. Plaintiff Gonzalez paid for Tyler in part with her debit card, and financed the remaining balance through financing Petland offered. Despite Plaintiff Gonzalez’s selection of one lender, Petland opened a second line of credit in Mrs. Gonzalez’s name with an additional lender without her knowledge or consent.

5.6 Plaintiff Gonzalez would not have purchased Tyler for \$5,000 on November 7, 2020, but for Defendant Petland’s express representations regarding Tyler’s health and the quality of his breeder, as well as the express representations regarding the warranty coverage.

VI. RESPONDEAT SUPERIOR

6.1 At all times relevant hereto, the employees of Defendant Petland Webster (including but not limited to Taylor Adams) were acting in the course and scope of their employment with Defendant Petland Webster. As such, pursuant to the doctrine of *respondeat superior*, Petland Webster is vicariously liable for the conduct of each and every employee (including but not limited to Taylor Adams), agent, representative, and sub-contractor, as it relates to the events giving rise to the instant suit.

VII. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

7.1 Plaintiff Stephanie Gonzalez brings claims against Defendant Petland for their violations of the Texas Deceptive Trade Practices Act, under § 17.50 and § 17.46 of the Texas Business and Commerce Code. Plaintiff expressly incorporates all preceding paragraphs by reference to support said claims. Under Texas law, Defendant had a legal duty, which they breached when they 1) failed to provide “goods” and “services” in the condition advertised and promised, 2) made express misrepresentations to Plaintiff Stephanie Gonzalez concerning the nature, source, and condition of said “goods” and “services” 3) committed said false, misleading, and deceptive acts and practices for the express purpose of inducing Plaintiff Gonzalez into purchasing the subject puppy, and 4) in so doing, proximately caused compensatory and mental anguish damages to Plaintiff Gonzalez.

7.2 In accordance with § 17.505 of the Texas Business and Commerce Code, Plaintiff sent Defendant a Notice and Demand Letter outlining Plaintiff’s claims, on September 2, 2022. Plaintiffs further provided Defendants with sufficient time (over 60 days) in which to respond to Plaintiff’s notice and demand letter. As such, Plaintiff Gonzalez has met all conditions necessary to assert DTPA claims against Defendant, as outlined herein.

7.3 The Deceptive Trade Practices Act (“DTPA”) is a consumer protection statute designed to protect against deceptive and misleading business practices and provides a statutory basis for a plaintiff to bring an action against any “person” who uses or employs “false, misleading, or deceptive acts or practices,” under the Texas Business and Commerce Code. At all times relevant to the events giving rise to this lawsuit, Plaintiff was a “consumer” as defined under the § 17.45(4) of the Texas Business and Commerce Code because she acquired goods and services from the Defendant Petland Webster. At all times relevant to this lawsuit, Defendant Petland Webster was a corporation, and thus considered a “person” under the DTPA, as a “person” is defined as an “individual, partnership, corporation, association, or other group, however organized.” Tex. Bus. & Com. Code § 17.45(3).

7.4 Defendant Petland Webster committed multiple violations of this consumer protection act, including, but not limited to the following:

- Defendant Petland represented that goods and services were of a particular standard, quality, or grade, and/or that goods and services were of a particular style or mode, when they were of another (§ 17.46(b)(7));
- Defendant Petland failed to disclose information concerning goods and services which was known to Petland at the time of the transaction, and the failure to disclose such information was intended by Defendant to induce the Plaintiff Gonzalez, the consumer, into a transaction into which the consumer would not have entered had the information been disclosed (§ 17.46(b)(24));
- Defendant Petland caused confusion and/or misunderstanding as to the source, sponsorship, approval, or certification of goods and/or services (§ 17.46(b)(2));
- Defendant Petland caused confusion and/or misunderstanding as to the affiliation, connection, or association with, or certification by, another (§ 17.46(b)(3));
- Defendant Petland represented that goods and/or services had sponsorship, approval, characteristics, uses, benefits, and/or or quantities which they did not have and that Defendant Petland had a sponsorship, approval, status, affiliation, or connection which they did not have (§ 17.46(b)(5));

- Defendant Petland represented that an agreement conferred or involved rights, remedies and/or or obligations which it did not have or involve (§ 17.46(b)(12)); and
- Defendant Petland represented that a guaranty or warranty conferred and/or involved rights and/or remedies which it did not have and/or involve (§ 17.46(b)(20)).

7.5 Specifically, Defendant Petland employed false, misleading and deceptive acts and practices (as outlined above) with regards to the sale of the subject puppy, Tyler, and Plaintiff Gonzalez relied on the same to her detriment. Defendant Petland Webster's deceptive conduct was the direct and proximate cause of Plaintiff's economic and mental anguish damages. Further, Defendant Petland Webster committed the aforementioned acts and omissions to intentionally and fraudulently induce Plaintiff Gonzalez to purchase the subject puppy, Tyler.

7.6 Further, through the aforementioned conduct, Defendant Petland's deception rises to the level of an unconscionable conduct, in violation of § 17.50(3) of the Texas Business and Commerce Code. In particular, Petland Webster's conduct rises to the level of an unconscionable act or practice because Petland Webster took advantage of Plaintiff's lack of knowledge, ability, experience, and capacity to a grossly unfair degree. Tex. Bus. & Com. Code § 17.45(5).

VIII. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

8.1 Additionally, § 17.50(2) of the Texas Business and Commerce Code provides that a consumer may maintain a cause of action under the DTPA for any breach of an express or implied warranty. As set forth above, Petland Webster breached the implied warranty of merchantability in its sale of a sick puppy, who had intestinal parasites that are transmissible to humans and other animals. Thus Plaintiff, as a consumer, is entitled to recover under the DTPA for Petland Webster's breach of this implied warranty of merchantability.

8.2 Petland was at all times relevant hereto a merchant with respect to goods such as those that are the subject of this suit.

8.3 Because Petland Webster was a merchant with respect to goods such as those which are the subject of this suit, the Texas Uniform Commercial Code implied in the contract for their sale a warranty that the goods would be merchantable. Petland Webster breached the warranty of merchantability in that, among other things, at the time of sale, the puppy was sick and thus would not pass without objection in the trade, and did not conform to the promises and affirmations of fact made by Petland Webster staff.

8.4 Plaintiff expressly incorporates all preceding and following paragraphs in by reference to support all claims.

IX. NEGLIGENT MISREPRESENTATION

9.1 Defendant, through its agents, employees, representatives, subcontractors, and assignees, including but not limited to Petland pet counselors Taylor Adams, supplied false information in the course of business, and in transactions in which it had a pecuniary interest, for the guidance of Plaintiff. The information concerned the state of the puppy's health, and the quality of his breeder.

9.2 Defendant Petland Webster, through its agents, employees, representatives, subcontractors, and assigns, did not exercise reasonable care or competence in obtaining, communicating, and advertising the false information at issue in this suit. Plaintiff reasonably and justifiably relied on the representations made by Defendant via its representatives. Plaintiff suffered pecuniary loss as a direct and proximate result of her reliance on these representations because she purchased for several thousand dollars a sick puppy who came

from a distributor with a reputation for inhumane and unsanitary conditions that encourage the dissemination of contagious disease, like giardia.

9.3 Plaintiff expressly incorporates all preceding and following paragraphs by reference to support all claims.

X. FRAUD

10.1 Plaintiff alleges that Defendant's acts as outlined herein, constitute fraud, including but not limited to fraudulent inducement, fraudulent misrepresentation, and fraudulent concealment.

10.2 Specifically, Defendant Petland Webster made material and false representations that it either knew or should have known were false (i.e., made with reckless disregard of the truth), with the intention that Plaintiff Gonzalez rely upon the misrepresentations. Plaintiff Gonzalez did rely on the multiple misrepresentations made by Defendant Petland Webster (as outlined in this petition), and suffered damages as a result therefrom.

XI. DAMAGES

11.1 As a producing, direct and proximate result of the damages for which the Defendant Petland Webster is liable, Plaintiff seeks and is entitled to general, special, economic and noneconomic, damages as applicable to Plaintiff, in an amount in excess of the minimum jurisdictional limits of the Court, as determined to be just and fair by the jury. The damages sought are in excess of the minimum jurisdictional limits of this Court.

11.2 Plaintiff Gonzalez has sustained economic damages as a direct and proximate result of Defendant Petland's violations of the Texas DTPA. Plaintiff Gonzalez is entitled to trebled economic damages, under the Texas DTPA.

11.3 Plaintiff Gonzalez has also suffered mental anguish damages, as a direct and proximate result of Defendant Petland's violations of the Texas DTPA, for which she is entitled to recover. Further, Plaintiff is entitled to trebled mental anguish damages as Defendant Petland knowingly and intentionally committed the aforementioned violations of the Texas DTPA. Tex. Bus. & Com. Code § 17.50(b)(1).

11.4 Finally, Plaintiff is entitled to, and seeks to recover of Defendant Petland, reasonable and necessary attorney fees incurred in prosecuting her claim against Defendant under § 17.50(d). Tex. Bus. & Com. Code § 17.50(d).

XII. EXEMPLARY DAMAGES

12.1 As a direct and proximate result of the fraudulent misrepresentations of Defendant Petland Webster, Defendant should have exemplary damages assessed against them in such an amount as the jury may find appropriate.

12.2 Such misrepresentations made with fraudulent intent were a proximate cause of the Plaintiff's damages.

12.3 Plaintiff seeks an award of exemplary damages at the time of the trial, in an amount determined to be just by the jury.

XIII. MANDATORY INITIAL DISCLOSURES

13.1 Defendants are requested to disclose the information and materials as required by Texas Rule of Civil Procedure 194.

XIV. STATEMENT ON MONETARY RELIEF

14.1 In accordance with Texas Rule of Civil Procedure 47(c), Plaintiffs are seeking monetary relief of \$250,000 or less, excluding interest, statutory or punitive damages and

penalties, and attorney's fees and costs. Plaintiff demands a judgment for all other relief to which she shows herself to be entitled to receive.

XV. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

15.1 Plaintiff seeks pre-judgment and post-judgment interest as allowed by law.

XVI. JURY DEMAND

16.1 Plaintiff timely requests a trial by jury and has tendered the appropriate fee.

XVII. CONDITIONS PRECEDENT

17.1 All conditions precedent have been met, or are waived or excused.

PRAYER

WHEREFORE, Plaintiff prays that this cause be set for trial before a jury, and that Plaintiff recover judgment of and from the Defendant economic and mental anguish damages in such amount as the evidence may show, and the jury may determine to be proper, together with attorney fees, pre-judgment interest, post-judgment interest, costs of court, and such other and further relief to which she may show herself to be justly entitled.

Respectfully Submitted,

By: Miranda J. Cook
State Bar No. 24103740
SICO HOELSCHER HARRIS LLP
802 N. Carancahua, Suite #900
Corpus Christi, Texas 78401
Telephone: (361) 653-3300

DESIGNATED E-SERVICE EMAIL ADDRESS
pursuant to Tex. R. Civ. P. 21(f)(2) & 21a:
hoelscherservice@shhlaw.com

Note: This is the undersigned's only e-Service email address, and service through any other email address will be considered invalid.