

Cause No. 21-1810-C368

Alejandro Atilano; Ana Atilano;	§	In the District Court of
Cassandra Jordan; Arthur Jordan;	§	
Stephen Affolter; Debbie Affolter;	§	
Samantha O'Connor; Debra Shay;	§	
Andrew Childress; Wendy Childress;	§	
Deborah Treadway; Don Huckins;	§	
William Treadway; Leikyn Huckins;	§	
Donald Richards; Jean Spangenberg;	§	
William Spangenberg; Chris Hardt;	§	
Korin Hardt; Emily Jaeger;	§	
Nicholas Lyon; Robin Williams;	§	
Larry Williams; and Georgia Quiroz	§	
Plaintiffs,	§	
vs.	§	___ Judicial District
	§	
Buen Perro Holdings, LLC; Ponderosa	§	Williamson County - 368th Judicial District Court
Pet Resort, LLC; and Phillip Paris;	§	
Defendants.	§	
	§	Williamson County, Texas

Plaintiffs' Original Petition and
Application for Temporary Restraining Order (TRO)

Plaintiffs Alejandro Atilano, Ana Atilano, Cassandra Jordan, Arthur Jordan, Stephen Affolter, Debbie Affolter, Samantha O'Connor, Debra Shay, Andrew Childress, Wendy Childress, Deborah Treadway, Don Huckins, William Treadway, Leikyn Huckins, Donald Richards, Jean Spangenberg, William Spangenberg, Chris Hardt, Korin Hardt, Emily Jaeger, Nicholas Lyon, Robin Williams, Larry Williams, and Georgia Quiroz ("Plaintiffs") respectfully submit their Original Petition and Application for a Temporary Restraining Order and show the Court the following:

1. Plaintiffs are pet owners who lost their beloved dogs at Defendants Buen Perro Holdings, LLC, Ponderosa Pet Resort, LLC, and Phillip Paris' (collectively "Ponderosa" or "Ponderosa Pet

Resort”) kennel otherwise known as the Ponderosa Pet Resort located at 2815 N. Austin Ave, Georgetown, Texas 78626. On the night of September 18, 2021, all 75 animals boarded at Defendants’ overcrowded and unlicensed kennel perished due to an uncontrolled fire.

2. The fire started with sparks coming from an electrical device or outlet located at the north side of the building. The fire had been burning uncontrolled for over fifteen minutes before the Georgetown Fire Department was called to the scene. Most of the animals died of asphyxiation and some were burned alive.

3. Before the fire, Defendants’ kennel was wildly economically successful because they continuously put profits ahead of the safety and welfare of its employees, customers, and their dogs. Even as they enjoyed continued business success, Defendants took no precautions to protect the animals that were boarded inside.

4. It was only in the aftermath of the fire that Defendants’ serious lapses in fire safety measures became apparent to Plaintiffs and the public. Prior to the fire, Defendants had made several material misrepresentations about the safety and quality of care at the Ponderosa Pet Resort. Defendants made promises about 24-hour surveillance and security systems that would keep the animals safe at night; these promises turned out to be false. As a result of Defendants’ misconduct, over 59 families in Williamson County lost their beloved best friends.

5. Plaintiffs seek an award of actual damages as a result of Defendants numerous violations of Texas tort law and consumer protection statutes. Plaintiffs are also entitled to exemplary damages and reasonable attorney’s fees incurred in connection with this matter. Additionally, to effectively secure the premises of the fire, Plaintiffs ask the Court to grant injunctive relief and preserve the premises of the Ponderosa Pet Resort until the time of trial or otherwise such time as all parties have had a fair opportunity to hire competent experts and inspect the premises.

I. Jurisdiction & Venue

6. Jurisdiction and venue are proper in Williamson County because the events giving rise to Plaintiffs' claims occurred in Williamson County and Defendants are residents of Williamson County.

II. Discovery Control Plan

7. Plaintiffs affirmatively plead damages in excess of \$1,000,000.00 excluding interest, statutory or punitive damages, attorney's fees, and costs. This case will be governed under a Level III Discovery Control Plan.

III. Parties

8. Plaintiffs Alejandro Atilano (DL#*****124; SSN:*****760), Ana Atilano (DL#*****567; SSN:*****836) , Cassandra Jordan (DL#*****), Arthur Jordan (DL#*****), Stephen Affolter (DL#*****836; SSN:*****573), Debbie Affolter (DL#*****332; SSN:*****122), Samantha O'Connor (DL#*****227; SSN: *****590) , Debra Shay(DL#*****820; SSN:*****099), Andrew Childress(DL#*****070; SSN:*****996), Wendy Childress (DL#*****930; SSN:*****206), Deborah Treadway (DL#*****105; SSN:*****862), Don Huckins (DL#*****791; SSN:*****668), William Treadway (DL#*****033; SSN*****709), Leikyn Huckins (DL#*****348; SSN:*****583) , Donald Richards (DL#*****), Jean Spangenberg (DL#*****948; SSN*****414) , William Spangenberg (DL#*****063; SSN*****777) , Chris Hardt (DL#*****393; SSN:*****545), Korin Hardt (DL#*****117; SSN:*****953) , Emily Jaeger (DL#*****035; SSN:*****820), Nicholas Lyon (DL#*****672; SSN:*****580) , Robin Williams (DL#*****939; SSN: *****959), Larry Williams (DL#*****593; SSN: *****349) , and Georgia Quiroz (DL#*****053; SSN:*****775) are natural persons residents of Williamson County, Texas.

9. Defendant Phillip Paris, a natural person resident of Williamson County, may be served with process at his residence: 29002 Oakland Hills Dr., Georgetown, Texas 78628 or wherever he may be found.

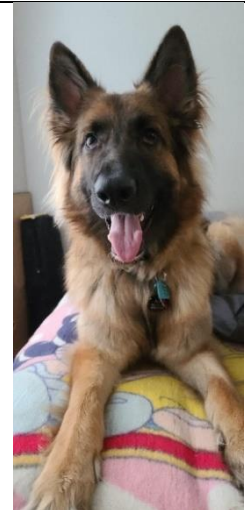
10. Defendant Ponderosa Pet Resort LLC, a limited liability company with its principal place of business located at 2815 N. Austin Ave., Georgetown, Texas 78626, may be served through its designated agent for service of process: Phillip Paris, 29002 Oakland Hills Dr., Georgetown, Texas 78628 or wherever he may be found.




11. Defendant Buen Perro Holdings, LLC, a limited liability company with its principal place of business located at 2815 N. Austin Ave., Georgetown, Texas 78626, may be served through its designated agent for service of process: United States Corporation Agents, Inc., 9900 Spectrum Drive, Austin, Texas 78717.

IV. Facts

The Dogs Killed in the Fire at Defendants' Kennel

12. All 75 of the animals that were boarded at Defendants' facility died on the night of the fire. The following is a list of Plaintiffs' dogs that lost their lives in the kennel as a result of Defendants' conduct:

		Ace	Ace was a 3 year-old German shepherd dog owned by Plaintiff Ana Atilano. He was part of the same litter as Mozart (below).
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	<p>Mozart</p>	<p>Mozart was a 3-year old German shepherd dog owned by Alejandro Atilano. He was art of the same litter as Ace (above).</p>
	<p>Dana</p>	<p>Dana was a 7-month old great Dane puppy owned by Plaintiffs Cassandra and Arthur Jordan.</p>
	<p>Kona</p>	<p>Kona was a 19 month old Australian shepherd puppy owned by Plaintiffs Stephen and Debbie Affolter. Kona likely died of asphyxiation. Kona is the second dog that the Affolters lost at the hands of Defendants over the last few years.</p>



Canelo

Canelo was a 10-year old pit bull mix owned by Plaintiff Samantha O'Connor.




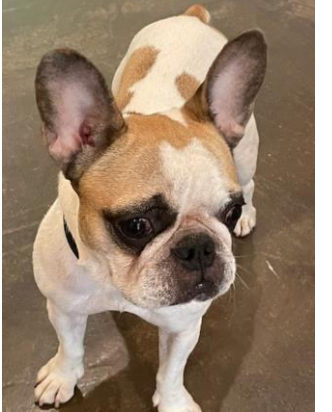


Scout



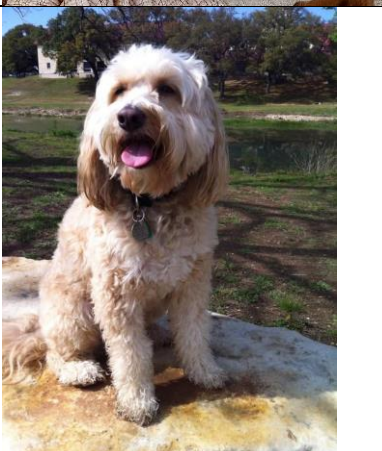

Scout was a 9-month old German shepherd dog puppy owned by Plaintiff Debra Shay.






Rocco

Rocco was an 8-month old Australian shepherd puppy owned by Plaintiffs Andrew and Wendy Childress.

	<p>Graycie</p>	<p>Graycie was a 19 month-old Weimaraner puppy owned by Plaintiffs Deborah and William Treadway.</p>
	<p>Gizmo</p>	<p>Gizmo was a 3-year old miniature French bulldog owned by Plaintiff Leikyn Huckins.</p>
	<p>Drexel</p>	<p>Drexel was a 4-year old miniature English bulldog owned by Don Huckins.</p>
	<p>Bunnie</p>	<p>Bunnie was a 4-month old Shetland Sheepdog puppy owned by Plaintiff Donald Richards. Bunnie was from the same litter as Clyde (below).</p>

	<p>Clyde</p>	<p>Clyde was a 4-month old Shetland Sheepdog puppy owned by Plaintiff Donald Richards. Clyde was from the same litter as Bunnie (above).</p>
	<p>Tobey</p>	<p>Tobey was a 6.5 year old English bulldog owned by Plaintiffs Jean and Bill Spangenberg. Tobey likely died of asphyxiation.</p>
	<p>Sammy</p>	<p>Sammy was a 12-year old cocker-poodle mix owned by Plaintiffs Chris and Korin Hardt. Sammy likely died due to asphyxiation.</p>
	<p>Shoes</p>	<p>Shoes was a 2-year old Weimaraner mix puppy owned by Plaintiffs Emily Jaeger and Nicholas Lyon. Shoes likely died as a result of being burned alive.</p>

	<p>Coaster</p>	<p>Coaster was a 2-year old Weimaraner mix puppy owned by Plaintiffs Emily Jaeger and Nicholas Lyon. Coaster likely died as a result of being burned alive.</p>
	<p>Walker</p>	<p>Walker was a 13-month old golden retriever puppy owned by Robin & Larry Williams.</p>
	<p>Goose</p>	<p>Goose was an 8-month old Australian shepherd puppy owned by Plaintiff Georgia Quiroz.</p>

The Fire at Defendants' Unlicensed Kennel

13. The Ponderosa Pet Resort was an unlicensed kennel in the vicinity of the city of Georgetown in Williamson County, Texas. The kennel was housed in an aging metal hangar structure dating from the 1980s. The kennel was owned and operated by Phillip Paris, a for-profit kennel management consultant and former Georgetown police officer.

14. Just prior to 10:40 pm on September 18, 2021, a fire started at the Ponderosa Pet Resort. On that night, there were 75 dogs locked inside the kennel facility for overnight boarding. There were no employees present at the unlicensed kennel at the time. The fire was initially ignited by an electrical source in the kennel area on the north side of the building which burned flammable building materials causing an accumulation of flames and deadly smoke. Smoke and heat gradually spread through to the south side of the structure until large bursts of flames exploded through two large vents in the roof.

15. It was not until 10:55:47 pm that an initial 911 call was received by the Georgetown Fire Department. The first fire truck arrived at the scene at 11:01:35 pm; a response time of less than six minutes. It took several minutes for first responders to enter the building. By that time, nearly 25 minutes after the fire started, all of the pets under the care of Ponderosa Pet Resort had either been burned alive or asphyxiated.

16. There were no overnight employees or staff at the unlicensed kennel to call emergency services at the time of the fire. There were no smoke alarms, heat detectors, or any other fire detection devices installed or operating at the unlicensed kennel at the time of the fire.

17. There were also no sprinklers, or any other fire-suppressing equipment installed at the unlicensed kennel at the time of the fire. The Ponderosa Pet Resort had not been inspected for fire safety since 2016. There was a motion-activated video surveillance system installed, but no person to monitor the live feed who could have detected the fire earlier.

18. The motion-activated video feed from the surveillance camera captured the start of the fire, and any person monitoring the feed could have alerted the fire department in real time. The Georgetown Fire Department concluded that had any of these previous measures been taken, a majority, if not all, of the dogs under the care of the Ponderosa Pet Resort would have been saved from the flames and smoke.

Mr. Paris and the Ponderosa Pet Resort

19. While the tragedy at the Ponderosa Pet Resort shocked the community; from the point of view of Mr. Paris, a kennel management consultant, it was an entirely foreseeable event. Kennel fires are unfortunately a common occurrence throughout the United States. Furthermore, electrical sparks and small fires were commonplace at the Ponderosa Pet Resort due to the facility's aging electrical system.

20. Despite Mr. Paris's assurances to the contrary, there were virtually no precautions taken by Defendants to prevent or effectively respond to a fire. This is especially alarming since Mr. Paris is a former police officer and has had experience responding to fires and other emergencies. In fact, Defendants Buen Perro Holdings, LLC, Ponderosa Pet Resort, LLC, and Phillip Paris knowingly made false statements and misrepresentations with regard to the quality of care and safety precautions at his unlicensed kennel. Defendants knew or had reason to believe that the Ponderosa Pet Resort was at elevated risk of an electrical malfunction like the one that caused the fire.

21. At boarding rates ranging from \$45-\$70 per pet and per night, the "resort" promised premium services that went above and beyond the standards of a typical pet boarding facility. Although the Ponderosa Pet Resort marketed itself as a safe option for pet owners looking for training and boarding services, this was far from true.

22. In reality, the unlicensed kennel was mostly staffed by untrained employees and equipped with little to no safety equipment. The unlicensed kennel was housed in an aging metal structure with significant safety problems.

23. It was equipped with a faulty, overburdened electrical system prone to causing overheating, sparks, smoke, and fires that were kept secret by Mr. Paris. The kennel's operators used a significant amount of electricity by constantly running several air conditioning units, insect

zappers, insect sensors, blowers, fans, air purifiers, refrigerators, LED lighting, cameras, and other large electrical appliances. The over-burdened and aging electrical system created an environment where sparks and flames were commonplace.

24. Most importantly, families entrusted their beloved pets to Ponderosa Pet Resort because they were told that there was 24-hour surveillance at the facility. This is an excerpt from the company's website:

Q. Do you have staff 24-hours?

A. We do not have Staff on-site 24/hours a day. We believe that pets sleep better at night when everything is dark, peaceful and quiet. We do however, have security systems and closed circuit video monitoring systems in place as added security.

25. Mr. Paris stated that there was either a staff member present at the kennel after hours or that the 24-hour surveillance system's live feed was monitored by a person. He also specifically referred to other "security systems" that were used as "added security."

26. After the fact, Mr. Paris contradicted his prior reassurances and stated that they were "in between systems" and that there were no such security systems in place at the time of the fire. Upon information, Mr. Paris has stated that the fire was "just one of those things" that could not have been prevented.

27. Mr. Paris and Ponderosa Pet Resort's oral and written misrepresentations were the determining factor in the pet owners' decision to entrust Ponderosa Pet Resort with their dogs. Some Plaintiffs named in this petition visited multiple kennels before agreeing to board their dogs at Ponderosa Pet Resort. Plaintiffs were all misled by Defendant Phillip Paris into entrusting their dogs to the Ponderosa Pet Resort. As a result of Defendants' knowing misrepresentations and warranties, Plaintiffs entrusted their most beloved and loyal friends to Ponderosa Pet Resort.

V. Causes of Action

a. *Count I: Negligence - Ordinary Negligence*

28. Defendants owed Plaintiffs and their pets a duty of ordinary care reasonably expected of a kennel or other for-profit pet resort intended to house animals, namely to take necessary precautions aimed at preventing, alerting to, or otherwise mitigating the destructive effects of a fire. Kennel fires are foreseeable and common and the preventative steps that could prevent or mitigate the effects of a fire ignition are relatively inexpensive and easy to undertake for a reasonably prudent kennel operator. Defendants breached the foregoing duties by failing to address the underlying causes of the fire, causing the initial spark which started the fire, failing to maintain 24-hour surveillance of the facility, failing to have a disaster preparedness and response plan, failing to timely alert the fire department of the presence of the fire, failing to install a fire detection device or fire suppression system, in all the other manners described above in this pleading, and by otherwise failing to adhere to the standard of care applicable to a kennel operator. Defendants' various breaches proximately caused Plaintiffs' dogs to be killed both as a result of being burned or asphyxiated by smoke.

b. *Count II Negligence - Negligence Per Se*

29. Defendants violated state and local statutes intended to protect Plaintiffs and others similarly situated, namely Georgetown Code of Ordinances Sec. 7.02.020 regarding the permitting of kennels. In relevant part, the statute reads:

A. A person owning, harboring, or keeping more than five cats or dogs or any combination of five cats or dogs for boarding, training or breeding purposes shall obtain a kennel permit. [...]

B. [...] the kennel permit shall be issued if the following conditions are met:

1. The facility must be adequate for the number and type of animals to be kept;

[...]

6. Each animal must be maintained in a manner that does not pose a danger to the health of the animal or to adjacent animals;

30. Defendants also violated Georgetown Code of Ordinances Sec. 7.03.020 regarding the minimum requirements when providing care to animals. In relevant part, the statute reads:

No person shall fail to provide proper care to any animals in their custody. Proper care shall include but not be limited to providing:

A. Humane care and treatment;

[...]

G. Adequate shelter from all weather conditions consisting of a structure with walls, a roof, and a floor; [...]

H. Outdoor kennel runs or other enclosures with at least 150 square feet of space per animal;

31. Plaintiffs belong to a class of persons designed to be protected by the foregoing statute(s), namely consumers of kennel services, and their injuries are of the type that the statute was designed to protect, namely injuries to their pets. Violation of the foregoing statute(s) can result in tort liability and no provision of Texas law bars recovery under this statute. Defendants violated the statute(s) without excuse and Defendants' acts or omissions proximately caused Plaintiffs' injuries.

c. Count III: Gross Negligence

32. Defendants knew that kennel fires were a common occurrence and that thousands of pets are lost each year due to fires. Defendants knew that the facility at the Ponderosa Pet Resort was at a high risk of fire. Defendants knew that overloading their electrical system with high-amperage and high-voltage equipment would likely result in an elevated risk of fires. Defendants knew that the building's electrical system and appliances were prone to producing sparks, smoke, and occasionally flames. Defendants knew that the loss of animal life caused by fire could be prevented or mitigated if they were to invest in inexpensive fire safety equipment or 24-hour surveillance or staffing. Defendants were actually aware of the specific risks presented by an electrical fire and otherwise acted in conscious indifference to the welfare of the animals under

their care. Despite Defendants' knowledge of the extreme risk of fire at the Ponderosa Pet Resort, Defendants took no affirmative steps to help prevent the fire which caused the death of Plaintiffs' dogs.

33. Defendants' conduct, acts, or omissions, as outlined in this petition, when viewed objectively from the standpoint of Defendants at the time involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of the risks but proceeded with conscious indifference to the rights, safety, or welfare of others. Defendants' conduct amounts to more than momentary thoughtlessness, inadvertence, or error of judgment.

d. Count IV: Deceptive Trades and Practices Act (DTPA)- Deceptive Acts, Breach of Warranty, and Unconscionable Conduct

34. Plaintiffs are consumers under the Deceptive Trades and Practices Act (DTPA). Defendants received notice of Plaintiffs' claims prior to suit. Defendants can be sued under the DTPA. Defendants engaged in various violations of the DTPA in knowingly making false, misleading, or deceptive acts or practices specifically enumerated in Tex. Bus. & Com. Code §17.46(b), breaches of express and implied warranties, and engaging in unconscionable acts or actions.

35. Defendants knowingly violated Tex. Bus. & Com. Code §17.46(b)(2) by causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

36. Defendants knowingly violated Tex. Bus. & Com. Code §17.46(b)(3) by causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.

37. Defendants knowingly violated Tex. Bus. & Com. Code §17.46(b)(7) by representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

38. Defendants knowingly violated Tex. Bus. & Com. Code §17.46(b) (9) by advertising goods or services with intent not to sell them as advertised.

39. Defendants knowingly violated Tex. Bus. & Com. Code §17.46(b)(24) by failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

40. Defendants' knowing conduct and omissions amount to breaches of express and implied warranties under Texas law, namely the warranty that the kennel was under 24-hour surveillance and that the pets would be safe under the kennel's care.

41. Defendants knowingly engaged in unconscionable acts that, to the pet owners' detriment, took advantage of the pet owners' lack of knowledge, ability, experience, or capacity to a grossly unfair degree.

42. Defendants' actions were a producing cause of Plaintiffs' damages. As a result of Defendants' breaches as enumerated above, Plaintiffs are entitled to recover mental anguish damages plus three times the amount of economic damages as additional damages.

VI. Damages

43. Plaintiffs suffered the following actual economic damages:

- a. compensatory damages for loss of property;
- b. replacement value damages for loss of property;
- c. out of pocket damages for pre-paid services or fees paid to Defendants;
- d. compensatory damages for dog behavior training expenses incurred in the past and to be incurred in the future;
- e. compensatory damages for veterinary expenses incurred in the past and to be incurred in the future;

- f. compensatory damages for adoption-related expenses or other miscellaneous expenses related to adopting or purchasing pets;
- g. medical expenses related to psychiatric or psychological treatment incurred in the past and to be incurred in the future;
- h. compensatory damages for expenses related to specialized pet training or certifications, including for service animal training or certifications;
- i. loss of services, including household services;
- j. expenses related to pet cremations, burials and other funerary arrangements;
- k. lost profits; and
- l. loss of time.

44. Plaintiffs suffered the following actual non-economic damages:

- m. pain & suffering in the past and future;
- n. mental anguish in the past and future; and
- o. loss of companionship in the past and future.

45. Plaintiffs are entitled to recover pre-judgment and post-interest judgment to the maximum extent allowed under Texas law.

VII. Exemplary & Additional Damages

46. Due to Defendants' gross negligence, Plaintiffs seek exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code §41.003.

47. Additionally, because Defendants' conduct was in knowing violation of the DTPA, Plaintiffs are entitled to recover additional damages in the amount of the measure of mental anguish damages plus three times the amount of the economic damages.

VIII. Application for Temporary Restraining Order & Temporary Injunction

48. Above-captioned Plaintiffs (“Applicants”) seek a Temporary Restraining Order (TRO) against Respondents, above-captioned Defendants Buen Perro Holdings, LLC, Ponderosa Pet Resort, LLC, and Phillip Paris (“Respondents”). Since the date of the fire, access to the premises of the resort has been restricted only to parties specifically invited by Respondents’ insurance company. On October 19, 2021, Respondents’ counsel scheduled an inspection of the premises of the pet resort. At that inspection, Respondents’ counsel conditioned the parties’ entrance to the premises on an unconditional release of his clients. Applicants should be allowed access to the kennel where their dogs died without having to sign away their rights.

49. Applicants ask the Court to preserve the status quo and prevent any further tampering or destruction of the scene of the fire until such time as Applicants’ counsel and all of their retained experts are allowed to inspect the premises without having to agree to Respondents’ unreasonable conditions and demands. Applicants ask that the Court order the subject premises known as the Ponderosa Pet Resort to be preserved in its current state through the duration of fact discovery in this matter or until such time as the Court deems fit.

Exhibits

- *Exhibit A: Correspondence with Hanover Casualty from September 30-October 15, 2021 regarding inspection of premises and protocol.*
- *Exhibit B: Correspondence with Respondents’ attorney Mr. Don Ferrill*
- *Exhibit C: Proposed Release of Liability, Indemnity and Agreement Not to Disclose*

50. Plaintiffs sent Defendants a preservation letter on September 24, 2021. In response, on September 30, 2021, Respondents’ insurer, The Hanover Casualty Company, notified and invited Applicants to a two-day site inspection of the Ponderosa Pet Resort scheduled for October 18 and 19, 2021 and. *See Ex. A, attached.* Counsel for the insurer stated that a protocol would be drafted

and circulated among the parties. *See* Ex. A. On October 12, 2021, counsel for Respondents' insurance company unilaterally changed the date of the inspection to only occur on October 19, 2021 at 9:00 am. *See* Ex. A, attached. Respondents' insurance company circulated a proposed inspection protocol on October 15, 2021, a mere three days prior to the scheduled inspection. *See* Ex. A. Applicants never agreed to Respondents' proposed protocol.

51. On the eve of the inspection, Respondents' attorney Donald A. Ferrill surreptitiously sent counsel for Applicants a document entitled "Release of Liability, Indemnity and Agreement Not to Disclose" and required that every party invited to the site inspection on October 19, 2021, sign the same prior to the time of the inspection. *See* Exs. B & C. This document was not originally included in or contemplated by Defendants' proposed protocol and was sprung up on Counsel for Plaintiff at the last minute. This document contained the following excerpted language:

"IN CONSIDERATION FOR THE RIGHT TO ENTER THE LICENSED PREMISES, I [...] HEREBY RELEASE AND AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE LICENSOR AND ITS TENANTS, [...] FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, AND DAMAGES, INCLUDING ATTORNEY FEES RESULTING FROM ANY ACCIDENT, INCIDENT, OR OCCURRENCE ARISING OUT OF, INCIDENTAL TO OR IN ANY WAY RESULTING FROM THE LICENSED PREMISES AND ALL IMPROVEMENTS THERE ON, WHETHER OR NOT CAUSED BY THE LICENSOR OR THE LICENSOR PARTIES' NEGLIGENCE OR GROSS NEGLIGENCE. I UNDERSTAND THAT BY SIGNING THIS DOCUMENT I AM WAIVING IMPORTANT LEGAL RIGHTS, AND I AM RELEASING AND INDEMNIFYING LICENSOR AND LICENSOR PARTIES FROM AND AGAINST THEIR OWN NEGLIGENCE AND GROSS NEGLIGENCE." Ex. C.

Counsel for Applicants objected and asked that the release be narrowed, amended, or that the inspection be unconditional. Upon asking Mr. Ferrill whether this language could be amended to specify that the release only cover potential causes of action related to counsel or counsel's experts' potential causes of action, he responded no and indicated that counsel for

Applicants would not be allowed to inspect the subject premises without signing. As such, Applicants' counsel has yet to enter the subject premises for the purposes of an inspection or evidence-gathering.

Intent of Defendants to Repair, Remedy, or Otherwise Irreparably Alter the Fire Scene

52. Respondents, through their attorneys, have made it clear that they would like to release the scene of the fire at Ponderosa Pet Resort to destroy the building and thereby all evidence of the fire. Respondents have also circulated emails to Applicants and other pet owners notifying the same that they do not intend to re-open as a kennel.

53. Releasing the scene prematurely and allowing Respondents to repair or otherwise destroy the premises of the kennel would result in irreparable damage to key evidence in this case. Applicants' cause would be severely prejudiced. Applicants are likely to succeed on the merits in their cause as outlined in their Petition.

Preliminary Injunction Request, Bond, & Relief Requested

54. Applicants ask that the Court waive the necessity for bond to be posted and issue an order restraining Defendants from altering or otherwise destroying the evidence located at the Ponderosa Pet Resort pending an investigation by Plaintiffs' experts. Applicants also ask that the Court set a hearing date for a preliminary injunction.

IX. Attorney's Fees

55. Plaintiffs are entitled to an award of attorney's fees and court costs pursuant to Tex. Civ. Prac. & Rem. Code Ch. 38 as the claims enumerated in this Petition are made pursuant to a contractual relationship and Defendants' various breaches of warranty.

56. Additionally, Plaintiffs are entitled to an award of attorney's fees and court costs under the DTPA's cost-shifting provision which entitles the prevailing party to an award of attorney's fees and court costs.

X. Jury Demand

57. Plaintiffs request a trial by jury and have paid or otherwise will pay the required statutory jury fee.

XI. Prayer

58. Plaintiffs pray that the Court grant a temporary restraining order preventing further destruction of evidence at the scene of the unlicensed kennel, set this cause for trial, render judgment in Plaintiffs' favor, award actual, exemplary, and additional damages as allowed by law, grant an award of Plaintiffs' attorney's fees and court costs, and for any other such relief to which Plaintiffs show themselves entitled.

Respectfully submitted.

Dated: 11/4/2021

/s/Ard Ardalan

Ard Ardalan

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