

II.
PARTIES

1. Plaintiff Amanda De La Garza is a resident of Corpus Christi, Nueces County, Texas. She brings this suit in her individual capacity, and as a person entitled to recover under the Wrongful Death Statute for the death of her father, Joe Albert De La Garza, Sr.

2. Joe Albert De La Garza, Jr., is an individual who resides in Corpus Christi, Nueces County, Texas.

3. Anita De La Garza, is a citizen of Sacramento County, California.

4. Defendant, PetSmart, Inc., is a Delaware corporation that has conducted business in the State of Texas within the meaning of Section 17.042 of the Texas Civil Practice and Remedies Code, including, but not limited to the fact that it committed a tort in whole or in part within the State of Texas. It may be served with process in this case by serving its Registered Agent for service:

CT Corporation System, 350 N. St. Paul Street, Dallas, Texas
75201-4201.

5. Defendant, Rainbow Exotics, Inc., is a Texas corporation with its principal place of business in Hamilton, Hamilton County, Texas. It may be served with process by serving its Registered Agent for service of process:

Jack D. Graham, 4772 CR 105, Hamilton, Texas 76531.

III.
VENUE

Venue is proper in Nueces County, Texas, under Texas Civil Practice and Remedies Code, Section 15.002(a) because Nueces County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

IV.
BACKGROUND FACTS

PetSmart, Inc. (“PetSmart”) is a corporate retailer of live animals, pet sales, and pet supplies. It has hundreds of retail outlets across the United States of America, including the one located at 5214 Blanche Moore Drive, Corpus Christi, Texas 78411.

PetSmart offered birds for sale at its Corpus Christi location. PetSmart claims that it is responsible for providing its bird customers healthy, well-cared for pets. PetSmart claims that it discharges that responsibility through the “VET ASSURED” program, to include:

“Vet Assured is PetSmart’s exclusive program of health care for all of the small pets, birds, reptiles and amphibians sold in our stores. Developed in 1997 by our in-house team of veterinarians and pet experts, it is a comprehensive veterinarian-supervised care program that includes setting standards for and monitoring the breeding, care and transportation practices and policies of PetSmart’s pet suppliers, conducting examinations by our trained associates of all pets before they are offered for sale, and providing expert care to the pets while in stores.”

“Before arriving at each store, birds receive veterinary care including preventative treatments to ensure their health. Additionally, Pet Care Specialists are trained to handle the birds following strict safety procedures. Upon arrival in our stores, birds are quarantined for a minimum of three days – allowing them time to acclimate to the new environment and to confirm the pet’s health. If a bird becomes ill, it’s promptly moved to a Quiet Room where the pet receives appropriate treatment and veterinary care as necessary.”

The actual operation is much different. The “pet supplier” for birds at the Corpus Christi location at the time in question, was Rainbow Exotics, Inc. (“Rainbow Exotics”). Rainbow Exotics is a massive breeding mill that produces live animals in quantity without regard to the health and well-being of the individual animal. The animals, including birds, are bred and raised in overcrowded cages in generally filthy conditions. The animals, including birds, suffer a lack of basic enrichment, inadequate food and water supply and live in an environment of excessive noise. There is no veterinary care or supervision. The staff members are not experts; indeed, they are not trained at all. As a result of filth, overcrowding and lack of veterinary care, Rainbow Exotics, Inc. produces suffering birds that are diseased.

PetSmart, despite its claim to the contrary, exercised no supervision or control over the breeding, care and transportation practices and policies of Rainbow Exotics. PetSmart, however, knew of the practices of Rainbow Exotics because its care program included “monitoring the ... practices and policies of PetSmart’s pet suppliers ...” which would have included Rainbow Exotics. PetSmart simply accepted sick and injured animals and offered them for sale at its retail outlets, including the outlet in Corpus Christi, Texas.

PetSmart did not provide birds’ veterinary care, including preventative measures, to insure their health, before or upon arrival at the retail location in Corpus Christi. The birds were accepted, logged on to an inventory record and offered for sale. If the birds were so sick that they became “unsaleable,” the inventory records were noted by an entry on the “removal log” and the unsaleable birds were set aside. The sick birds received

neither appropriate treatment nor veterinary care. As the sick birds die, PetSmart simply demands replacements from the same breeding mill that produced the diseased birds in the first place.

The practices of Rainbow Exotics and PetSmart described above are not only abysmal and cruel to the animals these companies offer for sale as pets, the practices pose a significant risk of injury to the retail customer. The diseases of birds can cross over to the human population and can cause disease in the people who buy the birds. One such disease is *chlamydophila psittaci*, a bacterial infection in birds that can cause psittacosis disease in humans. PetSmart was aware of this, and sets out in its facts sheet that *chlamydophila psittaci* is “an infection (in birds) that in rare cases can cause respiratory infection in humans **similar to a cold or flu** and is treatable with antibiotics.” What PetSmart was aware of, but did not set out in its facts sheet nor communicate to its customers, is that psittacosis in humans can cause death.

PetSmart was aware that its birds from Rainbow Exotics were at risk of carrying the disease of psittacosis. In March of 2006, PetSmart determined that cockatiels in Texas were infected with psittacosis.

On September 30, 2006, Amanda De La Garza purchased a cockatiel from the PetSmart location in Corpus Christi, Texas, that had been supplied by Rainbow Exotics. She noted that the bird she purchased was subdued and had separated itself from the other birds offered for sale. She was told that the bird was having a “bad day.” Unknown to her, the bird was infected with psittacosis. Amanda De La Garza purchased this sick bird for a pet for herself and her father, Joe Albert De La Garza, Sr.

The “pet care specialist” that dealt with Amanda De La Garza did not warn her of the risk of disease in the bird. The specialist did not warn her that bird disease could affect humans and that the disease could result in death. Amanda De La Garza was not advised to seek medical attention in the event she, or any other person who came into contact with the bird, begin to exhibit any symptom of respiratory infection, nor what symptoms she should watch for.

By October 16, 2006, Joe Albert De La Garza, Sr. was dead as a result of psittacosis. Joe Albert De La Garza, Sr. was survived by his mother, Anita De La Garza, and by his two children, Amanda De La Garza and Joe Albert De La Garza, Jr. By October 14, 2006, both Amanda De La Garza and her father, Joe Albert De La Garza, Sr. were sick. By October 19, 2006, Amanda De La Garza was hospitalized and in a coma as a result of psittacosis. She went on to recover after a lengthy hospital stay. It is not known for certain if she has recovered completely.

On November 15, 2006, Amanda De La Garza notified PetSmart of her father’s death and her illness as a result of psittacosis. She informed PetSmart that an autopsy of bird purchased from PetSmart performed by the Texas Veterinary Medical Diagnostic Laboratory confirmed that the bird was infected by psittacosis. She asked PetSmart to cease the sale of species of birds that might harbor that disease. PetSmart did not respond to her, but in February 20, 2008, when it found infected birds in 44 of its stores, issued a press release that included the statement:

“We are not aware of any confirmed cases where associates or customers associated with PetSmart have contracted ...” psittacosis

When publicly confronted with evidence of the breeding conditions at Rainbow Exotics, PetSmart issued another press release stating:

“Rainbow is a valued partner and we have no plans at this time to discontinue receiving pets from them.”

V.
CAUSES OF ACTION

Defendants, PetSmart, Inc. and Rainbow Exotics, Inc., were negligent in the inspection, housing, handling and delivery of the subject bird, and such negligence was a proximate cause of injury to Amanda De La Garza, and injury to and death of Joe Albert De La Garza, Sr.

In addition, PetSmart, Inc. was negligent in failing to give adequate warning to Amanda De La Garza of the nature and extent of the risk of injury associated with the bird and how to avoid injury.

At the time the bird left the hands of Rainbow Exotics, Inc., the bird was diseased, defective and unreasonably dangerous. Such defective condition was a producing cause of injury to Amanda De La Garza and injury to and death of Joe Albert De La Garza, Sr. Rainbow Exotics, Inc. is, therefore, strictly liable to Plaintiffs herein.

At the time the bird left the hands of PetSmart, Inc., the bird was diseased, defective, and unreasonably dangerous. In addition, at the time the bird left the hands of PetSmart, Inc., there was a marketing defect. The defective condition of the bird and the marketing defect were both producing cause of injury to Amanda De La Garza and injury to and death of Joe Albert De La Garza, Sr. As a result, PetSmart, Inc. is strictly liable to the Plaintiffs herein.

Finally, there was a misrepresentation by PetSmart, Inc. that was a proximate and producing cause of injury to Amanda De La Garza and injury to and death of Joe Albert De La Garza, Sr. PetSmart, Inc. represented to the public that its birds had been “VET ASSURED,” when the birds were not vet assured. The representation about the vet assurance program involved a material fact concerning the quality and health of the bird in question. Amanda De La Garza relied upon the representation of PetSmart in the purchase of the bird in question. This misrepresentation constitutes fraud, as it was made for the purpose of inducing Amanda De La Garza into purchasing the subject bird.

VI. DAMAGES

Plaintiffs are the surviving children and parent of Joe Albert De La Garza, decedent, and bring this action pursuant to the Texas Wrongful Death Act. TEX. CIV. PRAC. & REM. CODE §§ 71.001-71.012. Decedent died as a result of the Defendants’ wrongful conduct. Decedent would have been entitled to bring this action against Defendants if Decedent had lived. Defendants’ conduct that caused Decedent’s death was a producing cause of injury to Plaintiffs, which resulted in the following damages: the pecuniary loss of advice and counsel, services, care, maintenance, support, funeral expenses, past and future mental anguish, and loss of companionship and society.

Amanda De La Garza, Joe De La Garza, Jr. and Anita De La Garza each seek compensatory damages in an amount in excess of the minimal jurisdictional limits of this court as a result of Defendants’ wrongfully causing the death of their father, and son.

Plaintiff, Amanda De La Garza, also seeks an additional damages to compensate her for her past and future pain, mental anguish, mental and physical impairment, and past medical bills all arising from her illness and hospitalization that was the proximate result of Defendants' wrongful conduct described above.

Plaintiff's and Decedent's injury and death resulted from Defendants' gross negligence, malice, and fraud, which entitle Plaintiffs to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a). Accordingly, Plaintiffs respectfully request the jury to award an amount of exemplary or "punitive" damages against both Defendants in an amount in the sole discretion of the jury.

VII.
JURY DEMAND

Plaintiffs demand a jury trial and tender the appropriate fee with this petition.

VIII.
REQUEST FOR DISCLOSURE

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

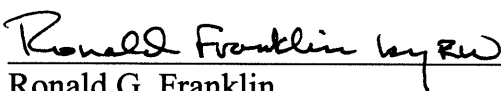
IX.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs ask that the court issue citation for Defendants to appear and answer, and that Plaintiffs be awarded a judgment against each Defendant, jointly and severally, for the full amount of their just damages, prejudgment and post-judgment interest, and costs of court, and that Plaintiffs have such

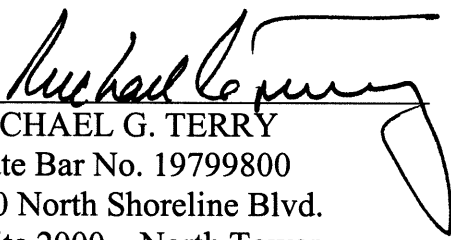
other and further relief, both general and special, in law and equity, to which they may show themselves justly entitled.

Respectfully submitted,

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