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TARRANT COUNTY, TEXAS
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Mary Louise Nicholson
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NO. 2019-001047-2

DAISHA CHILDRESS,	§	IN THE COUNTY COURT
	§	
PLAINTIFF,	§	
	§	
VS.	§	
	§	AT LAW NO. 2
CHAD EDWARD SNYDER, JENNIFER SUZANNE SNYDER, AND LEGACY BOXER RESCUE, INC.	§	
	§	
DEFENDANTS.	§	TARRANT COUNTY, TEXAS

DEFENDANTS' SUPPLEMENTAL MOTION FOR PROTECTIVE ORDER

TO: Plaintiff, Daisha Childress, through her attorney of record, Randy Turner, Law Offices of Randall E. Turner, PLLC, 5017 El Campo Ave., Fort Worth, Texas 76107.

Defendants Chad Edward Snyder, Jennifer Suzanne Snyder and Legacy Boxer Rescue, Inc file this Motion for Protective Order and in support would show the following:

Background

1.1 This is a dispute over the rightful owner of a dog. Plaintiff claims that defendants must return a dog to her after it was impounded by two shelters, rescued by Legacy Boxer Rescue and adopted to a family last year.

1.2 Plaintiff has not established that the dog she is seeking ever actually belonged to her. Nevertheless, she seeks a "Declaratory Judgment," which is nothing more than an inappropriate attempt to plead a cause for conversion and obtain attorneys' fees.

1.3 Defendant has set forth a challenge to the Court's jurisdiction because plaintiff has failed to join indispensable parties *and* the relief that plaintiff seeks is barred because such parties cannot be joined.

1.4 Plaintiff has served requests for admissions, requests for disclosures and now, an overly broad request for production. (See attached).

1.5 Plaintiff's discovery is overly broad and not calculated to lead to the discovery of admissible evidence. It is, in fact, being used to run up the defendant's costs, fees and expenses.

1.6 As a result, all discovery should be stricken, or alternatively stayed and abated pending a ruling by the Court on the jurisdiction to hear this matter.

Grounds for Protection

1.7 Defendant is entitled to a protective order on the following grounds:

1.7.1 Plaintiff's discovery should be abated and/or stayed until such time as the Court has rules upon it's jurisdiction.

1.7.2 The costs of expense of discovery in light of the jurisdictional challenge provision are unduly burdensome.

1.8 Further, plaintiff's discovery is overly broad and requests for production seek information that is not reasonably calculated to lead to the discovery of admissible evidence.

1.9 Until such time as the Court determine whether or not plaintiff has properly invoked jurisdiction, discovery should be in all things abated.

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DEFENDANTS ARE ENTITLED TO A PROTECTIVE ORDER

2.1 Legal Standard

Rule 192.3(a) of the Texas Rules of Civil Procedure permits discovery of non-privileged information that is "reasonably calculated to lead to the discovery of admissible evidence." However, permissible discovery is not unbounded. In *In re State Farm Lloyds*, the Supreme Court re-affirmed the bedrock principle that

> [r]easonableness and its bedfellow, proportionality, require a case-by-case balancing of jurisprudential considerations, which is informed by factors the discovery rules identify as limiting the scope of discovery and geared toward the ultimate objective of obtain[ing] a just, fair, equitable and impartial adjudication" for the litigants

> with as great expedition and dispatch at the least expense . . . as may be practicable.[1]

Further, in a decision decided in June of 2017, the Supreme Court cautioned against abusive discovery practices, stating:

> Discovery is often the most significant cost of litigation and a potential weapon capable of imposing large and unjustifiable costs on one's adversary. Especially in the context of multi-party litigation, costs are magnified by expanding the scope of discovery, and the costs of multi-party litigation can drive defendants to settle regardless of the merits. While litigants should have the opportunity to obtain the fullest knowledge of the facts and issues prior to trial, our rules also protect against unnecessary burgeoning of litigation costs.[2]

The propounding party bears "the initial burden of showing a 'reasonable expectation' that the requested information [is] relevant."[3] The Texas Supreme Court has made clear that relevance may not be established by any speculative theory proffered by a plaintiff—discovery requests "must show a reasonable expectation of obtaining information that will aid the dispute's resolution."[4] The relevance of the proposed discovery "must be obvious or at least linked, more or less concretely, to a claim or defense. Hypothetical needs, surmise, and suspicion should be afforded no weight."[5] Thus, parties may not engage in fishing expeditions.[6] The purpose of

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1 *In re State Farm Lloyds*, 520 S.W.3d 595, 599 (Tex. 2017) (orig. proceeding) (internal quotation marks omitted, alterations in original)

2 *In re Nat'l Lloyds Ins. Co.*, __, S.W.3d __, 2017 WL 2501107, at *14 (Tex. June 9, 2017) ("*Nat'l Lloyds III*") (internal quotation marks and citations omitted).

3 *In re Am. Power Conversion Corp.*, No. 04-12-00140-CV, 2012 WL 5507111, at *5 n.8 (Tex. App.—San Antonio Nov. 14, 2012, orig. proceeding) (mem. op.); *see also In re Mobil Oil Corp.*, No. 09-06-392 CV, 2006 WL 3028063, *2 (Tex. App.—Beaumont Oct. 26, 2006, orig. proceeding) (per curiam) (mem. op.) ("[T]he requesting party has the initial responsibility of drafting discovery requests tailored to include only matters relevant to the case.").

4 *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam).

5 *In re State Farm Lloyds*, 520 S.W.3d at 609.

6 *See, e.g.*, *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996) (orig. proceeding) (per curiam) ("We reject the notion that any discovery device can be used to 'fish.'").

post-suit discovery is to assist a party to prove a claim he or she reasonably believes to be viable without discovery, not to find out if there is any basis for a claim.[7]

Even if a discovery request implicates relevant information, it "must be tailored to include only relevant matters. Requests that are overly broad and that seek irrelevant information are not permissible."[8] A request can be overbroad regardless of whether it is burdensome.[9] Moreover, "[w]ith today's technology, it is the work of a moment to reissue every discovery request one has ever sent to an insurer before. But by definition such a request is not 'reasonably tailored.'"[10] Similarly, "[d]iscovery orders requiring document production from an unreasonably long time period or from distant and unrelated locales are impermissibly overbroad."[11]

Finally, the Texas Rules of Civil Procedure "explicitly encourage trial courts to limit discovery when 'the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.'"[12] Where the benefits of proposed discovery are "negligible, nonexistent, or merely speculative," any expense associated with responding is "undue and sufficient to deny the requested discovery."[13] Similarly, the Rules require courts to limit discovery that is "cumulative

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7 *See Dillard Dep't Stores, Inc. v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995) (orig. proceeding) (per curiam) (describing plaintiff's request for document production "to explore whether he can in good faith allege racial discrimination," as "the very kind of 'fishing expedition' that is not allowable'").

8 *In re GMAC Direct Ins. Co.*, No. 09-10-00493-CV, 2010 WL 5550672, at *1 (Tex. App.—Beaumont Dec. 30, 2010, orig. proceeding) (mem. op. (per curiam) (citation omitted).

9 *In re Allstate Cnty. Mut. Ins. Co.*, 227 S.W.3d 667, 670 (Tex. 2007) (orig. proceeding) (per curiam).

10 *Id.*

11 *In re CSX Corp.*, 124 S.W.3d at 152.

12 *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999) (quoting TEX. R. CIV. P. 192.4(b).)

13 *In re State Farm*, 520 S.W.3d at 608; *see also id.* at 610 (observing that "the amount in

or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive."[14]

2.2 The Court Should Stay Discovery While It Determines Jurisdiction

The Court should limit discovery while it considers the defendants' plea to the jurisdiction. The Texas Supreme Court has held that courts must determine subject matter jurisdiction at the earliest opportunity before allowing litigation to proceed.[15] As discussed more fully in the Defendant's Objection to the Temporary Restraining Order and Challenge to the Jurisdiction, there is no justiciable controversy in this case. Plaintiff's request for a Declaratory Judgment attacking the validity of the local ordinances in Glen Rose and Hood County without joinder of those parties is nonjusticiable. Plaintiff's attempt to seek recovery of a dog through a Declaratory Judgment action is improper. Further, plaintiff's complaint would require this Court to evaluate the political correctness of shelter workers in other communities in giving a dog to rescue. The actions of those workers are protected by governmental immunity.

The Court should abate discovery while it decides these threshold jurisdictional issues. *See In re Hoa Hao*, 2014 WL 7335188, at *6. In *Hoa Hao*, the petitioner Huynh sought to inspect church records and filed for mandamus in the trial court naming the church's records custodian. *Id.* at *1. The church filed a plea for jurisdiction, asserting that the Court was not entitled to determine "who ought to be members of the church." *Id.* (internal quotes omitted). The church also moved to stay discovery while the Court determined jurisdiction, but that motion was denied. *Id.* at *3. On a petition for writ of mandamus, the Houston Court of Appeals found the "the trial

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controversy plays a pivotal role" in determining whether proposed discovery should be allowed").

14 TEX. R. CIV. P. 192.4(a); *see also* TEX. R. CIV. P. 192.6(b).

15 *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226-228, 233-34 (Tex. 2004).

court abused its discretion in requiring relators to comply fully with Huynh's discovery demands before determining the jurisdiction question raised in relators' motion for protective order and plea to the jurisdiction." *Id.* at *6. Although there might arguably have been a need for narrowly tailored jurisdictional discovery, Huynh's discovery went much further. *Id.* at *5.

As in *In re Hoa Hao*, defendants in this case have filed a plea for jurisdiction and thus if any discovery is warranted at all, it should be narrowly limited to jurisdictional issues; Plaintiff's requests are not so tailored. For example, Request for Production No. 1 requests all social media posts about plaintiff, plaintiff's counsel and "Tig." Posts that may have been written on defendant's Facebook post almost a year after plaintiff claims her dog went missing have no relevance to the appropriateness of the shelter's actions in giving the dog to Legacy Boxer Rescue.

To the extent the Court authorizes jurisdictional discovery, "[t]he plaintiffs bear the initial burden to craft a discovery request that is narrowly tailored to include only relevant matters."[16] The Court should reject any nebulous arguments that unspecified discovery is needed to determine jurisdiction. It should require plaintiff to explain, specifically, what jurisdictional facts she seeks to establish with discovery and how her discovery requests relate to those facts.[17] Plaintiff cannot meet that burden here.

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16 *See In re Am. Power Conversion Corp.*, 04-12-00140-CV, 2012 WL 5507111, at *4 (Tex. App.—San Antonio Nov. 14, 2012, no pet.).

17 *See Patten v. Johnson*, 429 S.W.3d 767, 781 (Tex. App.—Dallas 2014, pet. denied) (court did not err in deciding jurisdictional plea in advance of discovery where the plaintiffs failed to show how discovery could have raised a material fact issue as to jurisdictional issue); *Bexar Metro. Water Dist. v. Evans*, No. 04-07-00133-CV, 2007 WL 2481023, at *4 (Tex. App. —San Antonio Sept. 5, 2007, no pet.) (reversing denial of plea to the jurisdiction, noting that need for discovery could not support denial where plaintiff had failed to serve *targeted* discovery directed at jurisdictional issues).

2.3 The Court Should Grant Defendant's Motion for Protection to Preclude Discovery That Is Neither Relevant nor Proportional to the Claims Asserted in the Petition

2.3.1 The Petition Raises Issues of Law and Statutory Construction That Do Not Require Discovery

Plaintiff expressly pleads that she is "asking the Court to declare that she is the lawful owner of Tig, aka Bowen, and that she is entitled to immediately and permanently possess him." (Pet. ¶ 140. Putting aside the lack of merit in plaintiff's claims, the discovery that she seeks is not relevant to that issue.

2.3.2 The Discovery Sought Is Not Relevant to the Claims Pled in the Petition

Plaintiff's petition raises the following questions: (1) Who owns the dog that the Snyders adopted? (2) Can the Court issue a Declaratory Judgment to alter the rights and remedies of the parties? and (3) Can the Court enter an injunction to prevent defendants from transferring possession of the dog to "another personal or remove him from the Court's jurisdiction during the pendency of this suit." Putting aside the fact that these are questions of law that should be answered based on the terms of the statutes, the discovery sought by plaintiff has no relevance to them.[18] As a result, her vague and overly broad discovery requests are "not merely an impermissible fishing expedition"; they are an "effort to dredge the lake in hopes of finding a fish."[19]

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[18] Much of the discovery sought by Plaintiff Plaintiff would be irrelevant even if he did seek to recover for breach of contract or extra-contractual damages. While defendants have focused their arguments in this motion on the threshold legal issues raised by its Plea to the Jurisdiction and the claims currently plead in the Petition, it reserves all its objections to Plaintiff's discovery.

[19] *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995).

As a matter of fact, most of plaintiff's requests are crafted as the type of fishing expedition expressly prohibited by *Loftin v. Martin.* Her requests seek:

- All Facebook posts by any person on any Defendant's Facebook page pertaining to Tig, Plaintiff, or her attorney. . .
- All posts on any social media by any Defendant pertaining to Tig, Plaintiff or her attorney. . .
- All communications any Defendant has had with:
    - Any city animal shelter…
    - Any animal rescue organization…
    - Any person who fostered Tig. . .
    - Any other person concerning Tig that took place prior to the date Defendants anticipated litigation. . .
- Legacy Boxer Rescue, Inc.'s entire file. . .
- All veterinary records pertaining to Tig….
- All posts on social media pertaining to Tig which you claim have been made by Plaintiff.
- All documents and records showing the "fines and fees imposed by municipalities or the expenses incurred for (Tig's) adoption, care, and treatment" as alleged in Paragraph 6.3.2 of Defendants' Original Answer and Counterclaim.
- All documents and records showing the "pecuniary loss, namely the costs associated with fostering the dog, veterinary expenses, and other damages" as alleged in Paragraph 6.2.4 of Defendants' Original Answer and Counterclaim.
- All documents and records which show that the Snyders were "good faith purchasers for value" as alleged in Paragraph 5.5 of Defendants' Original Answer and Counterclaim.
- All documents and records which show that Legacy Boxer Rescue, Inc. is a "merchant" as that term is defined in the Texas Business and Commerce Code.
- All documents and records which show that Legacy Boxer Rescue remitted sales tax to the Texas Comptroller for the sale of Tig.

- All documents and records which show that Legacy Boxer Rescue has ever remitted sales tax to the Texas Comptroller.

- The "adoption contract" referred to in Paragraph 6.1.1 of Defendants' Original Answer and Counterclaim.

- All documents and records which show that Plaintiff "failed to exercise due diligence in seeking reclamation of the dog in question" as alleged in Paragraph 5.3 of Defendants' Original Answer and Counterclaim.

- All documents and records which show that "Plaintiff's claim is barred by laches" as alleged in Paragraph 5.4 of Defendants' Original Answer and Counterclaim.

- All documents and records which show the costs for the dog to be "boarded from the time he was fostered by LBR until he was adopted by the Snyders and for the time he was cared for by the Snyders until judgment, as well as any veterinary expenses, and other costs incurred for his care" as alleged in Paragraph 6.3.2 of Defendants' Original Answer and Counterclaim.

Prayer

WHEREFORE, Defendants pray that the Court enter a protective order prohibiting any written or oral discovery. Alternatively, defendants pray that the Court enter a protective order striking such discovery and awarding to defendants all costs associated with any such discovery compelled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 2019. a true and correct copy of the foregoing document was forwarded by electronic service to all counsel of record pursuant to the Texas Rules of Civil Procedure:

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