

CAUSE NO. C-5049-19-I

**NORTH AMERICAN BUTTERFLY ASSOCIATION d/b/a THE NATIONAL BUTTERFLY CENTER, AND MARIANNA TREVINO WRIGHT,**  
*Plaintiffs,*

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**IN THE DISTRICT COURT**

v.

       **JUDICIAL DISTRICT**

**NEUHAUS & SONS, LLC, BRIAN KOLFAGE, AND WE BUILD THE WALL INC.**  
*Defendants.*

**HIDALGO COUNTY, TEXAS**

**PLAINTIFFS’ ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COME NOW, **NORTH AMERICAN BUTTERFLY ASSOCIATION d/b/a THE NATIONAL BUTTERFLY CENTER (“*Butterfly Center*”)**, and **MARIANNA TREVINO WRIGHT (“*Wright*”)**, hereafter collectively referred to as “*Plaintiffs*,” and file this Original Petition and Application for Injunctive Relief, complaining of **NEUHAUS & SONS, LLC (“Neuhaus”), BRIAN KOLFAGE (“Kolfage”), and WE BUILD THE WALL INC. (“WBTW”)**, hereafter collectively called “*Defendants*,” and would show unto this Honorable Court the following:

**I. Discovery Control Plan**

1. Plaintiffs hereby plead and allege that, pursuant to Texas Rule of Civil Procedure 190.4, discovery in this case is intended to be conducted under Discovery Level 3.

**C-5049-19-I**

**II. Parties**

2. Plaintiff, **NORTH AMERICAN BUTTERFLY ASSOCIATION d/b/a THE NATIONAL BUTTERFLY CENTER** (hereinafter referred to as “**Butterfly Center**”), is a Not for Profit doing business in Hidalgo County, Texas as The National Butterfly Center.

3. Plaintiff, **MARIANNA TREVINO WRIGHT** (hereinafter referred to as “**Wright**”), is an individual resident of Hidalgo County, Texas. Plaintiff Wright appears in her individual capacity.

4. Defendant, **NEUHAUS & SONS, LLC**, (hereinafter referred to as “**Neuhaus**”) is a registered Texas Limited Liability Company which owns property and does business in Hidalgo County, Texas. This Defendant may be served by serving its registered agent, Eugene R. Vaughan III, with process by private process server, or by certified mail, return receipt requested at **2300 West Pike Blvd., Suite 300, Weslaco, TX 78596** or wherever said person may be found.

5. Defendant, **BRIAN KOLFAGE**, (hereinafter referred to as “**Kolfage**”) is a resident of the State of Florida. **BRIAN KOLFAGE** was at all times material hereto doing business in Texas. The causes of action asserted arose from and/or are connected with purposeful acts committed by said Defendant in Texas, as more fully described below. Defendant **BRIAN KOLFAGE** has minimum contacts with the State of Texas necessary to establish specific and general personal jurisdiction over said Defendant in courts of the State of Texas. Defendant **BRIAN KOLFAGE** conducts and solicits business in the State of Texas and has purposely directed its activities to residents of the State of Texas such that exercise of jurisdiction over Defendant **BRIAN KOLFAGE** comports with and would not violate notions of fair play and substantial justice. He may be served with process by private process server, or by certified mail, return receipt requested at his place of work at **7940 Front Beach Rd, Suite 1042, Panama City Beach, FL 32407** or wherever said Defendant may be found.

**C-5049-19-I**

6. Defendant, **WE BUILD THE WALL INC.**, (hereinafter referred to as “**WBTW**”) is a Florida Not For Profit Corporation doing business in the State of Texas, and was at all times material hereto doing business in Texas, but does not maintain a place of regular business and does not maintain a registered agent for service of process in Texas. The causes of action asserted arose from and/or are connected with purposeful acts committed by said Defendant in Texas, as more fully described below. Defendant WBTW has minimum contacts with the State of Texas necessary to establish specific and general personal jurisdiction over said Defendant in courts of the State of Texas. Defendant WBTW conducts and solicits business in the State of Texas and has purposely directed its activities to residents of the State of Texas such that exercise of jurisdiction over Defendant WBTW, comports with and would not violate notions of fair play and substantial justice. Service is requested on this Defendant pursuant to Rule 108 of the Texas Rules of Civil Procedure, by United States Certified Mail, Return Receipt Requested. This Defendant may be served by serving its registered agent, Cogency Global Inc., with process by private process server, or by certified mail, return receipt requested at **115 North Calhoun Street, Suite 4, Tallahassee, Florida 32301** or wherever it may be found.

**III. Jurisdiction and Venue**

7. Venue is mandatory in Hidalgo County under Tex. Civ. Prac. & Rem. Code §15.011 because the cause of action involves damages to real property which is situated in Hidalgo County. Additionally, venue is proper because all or a substantial part of the acts and omissions giving rise to Plaintiffs’ claims and causes of action occurred in Hidalgo County, Texas. Tex. Civ. Prac. & Rem. Code §15.002(a)(1). Venue is also proper in Hidalgo County because at least one of the Defendants resided in Hidalgo County at the time the causes of action alleged herein accrued. Tex. Civ. Prac. & Rem. Code §15.002(a)(2) and (3). Venue is further proper in Hidalgo County under

**C-5049-19-I**

Tex. Civ. Prac. & Rem. Code §15.017 because this suit seeks damages for defamation and the Plaintiff resides in Hidalgo County.

8. Jurisdiction and venue are proper in this Court because the Plaintiffs seek relief within the jurisdictional limits of this honorable Court.

9. Pursuant to Texas Rule of Civil Procedure Rule 47, Plaintiffs seek monetary relief over \$200,000.00 but not more than \$1,000,000.00. Plaintiffs reserve the right to amend this provision.

**V. Facts**

10. Plaintiff Butterfly Center is the owner and in possession of a certain interest in real property located in Hidalgo County, Texas, referred to in this pleading as “Plaintiff’s property,” as more particularly described as follows:

- a. **Legal Description:** PORCION 52 BNG AN IRR TR S1230.40'-N11627.86'-  
W786.24' 18.62AC GR-18.21 AC NET.  
**Address:** 3333 BUTTERFLY PRK DR/ S SHUEBACH TX;
- b. **Legal Description:** PORCION 52 BNG AN IRR TR N443.42'-S7065.3'-  
W786.24' LOTS 7-10 8AC  
**Address:** 3 MILES S SCHUEBACH TX; and
- c. **Legal Description:** PORCION 52 BNG AN IRR TR N3065.29'-S6621.91'-  
W995.2' LOTS 7-10 72 AC GR 64.31AC NET  
**Address:** 3 1/2 MILES S SCHUEBACH TX

11. According to the Hidalgo County property records, Defendant Neuhaus is the owner of real property located in Hidalgo County, Texas, which neighbors the Plaintiff’s property. The Neuhaus’ property is more specifically described as:

- a. **Legal Description:** PORCION 53 POR 53-FDE LA GARZA & O OCHOA  
541.21AC  
**Address:** S LOS EBANOS RD ON RIVER TX; and
- b. **Legal Description:** BANCO NO. 65 TORTUGA 97.40AC  
**Address:** ON THE RIVER S LOS EBANOS RD TX

**C-5049-19-I**

(referred to herein as “Defendants’ property.”) Upon information and belief, Defendants Kolfage and WBTW purchased the right to build a wall on Defendant Neuhaus’ property.

12. Defendant WBTW is a Florida not for profit corporation which was registered with the State of Florida on or about January 2019. WBTW raises funds with divisive far-right rhetoric. Although WBTW is less than a year old, it is already under investigation for wrongdoing by the State of Florida. WBTW has entered into an agreement with Defendant Neuhaus to build an unpermitted and potentially illegal barrier on the banks of the Rio Grande River on Defendant Neuhaus’ above listed property.

13. Defendant Kolfage is the founder and president of Defendant WBTW. Defendant Kolfage has gained notoriety in recent years for his reckless and ornery magniloquence used to raise money for various causes he leads. Kolfage began to speak about the problem of immigration several years back and requested people donate money to him to help President Trump fund the building of a border wall. Kolfage raised a significant amount of money from private citizens who believed his rhetoric about the dangers of the impending invasion of brown skinned people across the southern border. It was then discovered that the money that Kolfage had taken from his supporters could not legally be given to the United States Government. In an effort to cover this up, Kolfage transitioned his efforts to building private border walls without governmental approval or oversight.

14. Kolfage and WBTW have engaged in their typical divide and profit approach of fundraising against residents of the Rio Grande Valley. Defendants have falsely claimed that the Catholic Church, Plaintiff Butterfly Center, and Plaintiff Wright are engaged in “human trafficking” and “drug smuggling” in an attempt to vilify the Plaintiffs and opponents of the Defendants’ efforts in the eyes of would be donors. These malicious false attacks on the Plaintiffs

**C-5049-19-I**

are part of the Defendant, WBTW and Kolfage's, plan to enrage parts of the populace so that Defendants WBTW and Kolfage can make a profit off the fears of Americans who are looking for victims to blame for what they believe is wrong with the world.

15. Defendants further their divide and profit approach by claiming that they have the solution to the fears that they have stoked. Defendants WBTW and Kolfage claim that they can single handedly build a border wall faster than the government and at a fraction of the price. They fail to mention that they can build it faster and cheaper because they do not get approvals for their plans, comply with any laws regarding construction, nor do they conduct any studies to ensure that they will not cause more harm than good. In short, they boast that they can build it faster, cheaper and riskier than professionals.

16. Defendants WBTW and Kolfage rush to avoid studies and inspection would result in an illegal structure that will cause permanent damages to neighboring American property belonging to the Plaintiffs. The stated intent of Defendants WBTW and Kolfage to build a permanent steel wall on a cleared portion of the banks of the Rio Grande River and within the floodplain would cause a redirection and build up of surface water during flooding events. This redirection of surface water and the accompanying debris would cause permanent damage to the Plaintiff's property which cannot be remedied with any monetary sum. See attached affidavit by Mark Tompkins which is attached and incorporated for all purposes as Exhibit "A."

17. Defendants refuse to wait for testing and inspections because Defendants plan to be long gone with their donors' money before plans can be vetted. Defendants plan to move on to other locales to fleece more people of more money leaving the Plaintiffs and other local landowners to suffer as a result their negligence.

**C-5049-19-I**

18. Defendants plan to ignore the government's request to study the Defendants' plans. On November 15, 2019, Fisher Industries, the construction company for We Build the Wall, and several of its directors received an official request from the United States Section of the International Boundary and Water Commission (USIBWC) to cease construction of the proposed private border wall in order to file permit applications and submit other required permits with the International Boundary and Water Commission (IBWC) and give the IBWC time to study the plans to ensure compliance with international treaties.

19. On November 27, 2019, Defendant Kolfage, the founder and president of Defendant WBTW, published a tweet stating: "We are not stopping and we are on schedule [sic] start building the wall soon! If only the government could operate this fast, we would have half the border secured by now." A follower of Kolfage posted a reply stating he couldn't wait to see how fast it all goes up after the groundwork is done. Kolfage replied, "A couple of days." The Plaintiff's property is in immediate peril.

**VI. Land Use/Damage to Real Property Under Texas Law**

20. Beginning on or about November 15, 2019, the Defendants WBTW, Kolfage, and Neuhaus began to clear the banks of Defendants' property along the riverbank as the first steps to build an illegal wall. Such construction would violate the Texas Water Code. The excavation and construction on the land owned by Defendants will cause diversion of the natural flow of diffuse surface water across the land owned by the Defendants, allowing and causing the water to stream onto and over the Plaintiff Butterfly Center's property. Further, Defendants' actions would cause topographic and vegetative changes detrimental to the ecological values of the National Butterfly Center's land as well changes in erosion patterns that could effectively remove portions of the land

**C-5049-19-I**

and changes in deposition patterns that could effectively destroy portions of the land. Plaintiffs will be damaged and irreparably harmed as a direct result of Defendants' actions.

**VII. Injunctive Relief**

21. Unless the Defendants are restrained and enjoined from undertaking and maintaining the conduct and activities described in this petition, the Plaintiff Butterfly Center will continue to suffer the harm set out above, for which the Plaintiff has no adequate remedy at law. Accordingly, the Plaintiff asks pursuant to and under the authority of the Texas Water Code, that the court, after due notice and hearing, temporarily, until the final judgment in this cause, enjoin the defendants from construction of any kind on Defendants' above listed property. Further, the Plaintiff asks that the court, following final trial of this cause, extend the injunction so as to permanently enjoin the Defendants from such conduct.

**VIII. Defamation**

22. Allegations set forth in the above "Facts" section are hereby incorporated into the following section. A true and correct copy of the defamatory writing is attached to this petition as Exhibit "B" and incorporated herein by reference.

23. These defamatory statements constitute Defamation Per Se in that they tend to injure the reputation of the Plaintiffs and expose the Plaintiffs to public hatred, contempt, or ridicule in connection with his profession. Furthermore, the statements accuse Plaintiffs of criminal conduct.

24. The defamatory statements were entirely false. The Plaintiffs have never engaged in any criminal activities. More specifically, Plaintiffs have never engaged in or aided in the trafficking of humans or drugs. Defendants have maliciously attributed these false accusations to the Plaintiffs in order to enrage supporters enough to donate money to Defendant's business.

25. The statements were published when they were posted on Defendant Kolfage's Twitter account on November 16, 2019. These publications reached and were seen by a large number of



**C-5049-19-I**

people in the Rio Grande Valley and throughout the Country. Multiple supporters of Defendants have engaged in targeted harassment of the Defendants and continued the defamatory smears begun by Defendant Kolfage.

26. Defendant Kolfage was the author of the defamatory statements and he acted with actual malice in publishing and distributing the defamatory statements in that he knew the defamatory statements were false or published the statements with reckless disregard of their truth or falsity. In particular, the Defendant's malice was demonstrated by the fact that even after the Defendant requested that the statements be retracted, Defendant Kolfage responded by ridiculing the Plaintiffs' effort to resolve the matter amicably. There were no facts on which any reasonable person could have concluded that Plaintiffs had ever been engaged in the illegal activity of which Defendant Kolfage has accused them. Defendant's statements were made for the purposes of personal malice and intimidation.

27. Prior to the publication of the defamatory statements by the Defendant Kolfage, the Plaintiffs enjoyed an excellent personal, moral, and professional reputation.

28. As a direct and proximate result of Defendant's false and defamatory statements, the Plaintiffs have endured shame, embarrassment, humiliation, and mental pain and anguish. Additionally, Plaintiffs have and will in the future be seriously injured in its/her business reputation, good name, standing in the community, and will be exposed to the hatred, contempt, and ridicule of the public in general as well as of its/her business associates, clients, friends, and relatives. Consequently, Plaintiffs seek actual damages in a sum within the jurisdictional limits of this court.

29. The conduct of the Defendant was committed willfully, maliciously and with an actual and subjective intent to commit great harm to Plaintiffs, warranting the imposition of exemplary

**C-5049-19-I**

damages. The negligence, intentional and reckless acts and omissions of Defendant which were mentioned above, constitute malice/gross negligence in that there was (a) a specific intent by the Defendant to cause substantial injury to Plaintiffs or (b) that there was an act or omission: (i) which when viewed objectively from the standpoint of the Defendant at the time of its occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (ii) of which the Defendant had actual, subjective awareness of the risk involved, and nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others, including Plaintiffs. As a result, Plaintiffs are entitled to exemplary damages. For all such damages proximately caused by Defendants, Plaintiffs sue in an amount in excess of the minimum jurisdictional limits of this Court.

**IX. Conditions Precedent And Capacities**

30. All conditions precedent necessary for suit and recovery have been performed or have occurred. Plaintiffs sue Defendants in all capacities in which they are entitled to recover.

**X. Application For Injunctive Relief**

31. Plaintiff Butterfly Center incorporates by reference herein for all intents and purposes each and every allegation contained in above.

32. All of these facts and claims create a strong inference that Defendants will ignore governmental requests and the law and illegally construct a wall that will divert surface water causing permanent damage to the Plaintiff's property. Plaintiff requests that a temporary restraining order be issued, without notice to Defendants, for fear that Defendants will engage in the very conduct sought to be enjoined. Upon notice and hearing, Plaintiff asks that the temporary restraining order be continued as a temporary injunction.

**C-5049-19-I**

33. Defendants have failed to comply with local, state, and federal laws regarding the building of structures on the banks of the Rio Grande River. Defendants have openly stated they will not stop construction regardless of what any governmental entity orders. As a result, Plaintiff is certain that the injury to their property is imminent.

34. Plaintiff seeks a temporary restraining order and injunctive relief against Defendants. More specifically, Plaintiff seeks to enjoin Defendants, their agents, servants, employees, attorneys and/or those acting in concert therewith from the following:

- (a) Constructing any structure or wall on Defendants' property within the flood zone south of Mission, Texas.

35. This injunction would preserve the status quo because, although a certain amount of damage has already been done, continued damage to the Plaintiff and the Plaintiff's Property would be prevented. Construction of the proposed wall on the riverbank would cause a harm that could not be adequately remedied by monetary damages.

36. The Plaintiff has and will continue to be damaged and injured by the Defendants' conduct by loss of income, loss of property, and property value.

37. The Plaintiff has no adequate remedy at law for the injuries just described. The injuries and losses are continuing. The property and rights involved are unique and irreplaceable, so that it will be impossible to accurately measure, in monetary terms, the damages caused by the Defendants' conduct.

38. Without the imposition of the injunctive relief requested, there is an imminent harm that Defendant will cause irreparable damage to Plaintiff's real property in that Defendants' actions in building a wall would cause topographic and vegetative changes detrimental to the ecological values of the National Butterfly Center's land as well changes in erosion patterns that could

**C-5049-19-I**

effectively remove portions of the land and changes in deposition patterns that could effectively destroy portions of the land.

39. The imminent harm that will result but for the injunctive relief requested herein is irreparable because the property in question is unique property. Plaintiff is accordingly entitled to injunctive relief, irrespective of any remedy at law. Tex. Civ. Prac. & Rem. Code §65.011(5).

40. There is an imminent and immediate threat of irreparable injury, loss or damage that will result if Defendants are allowed to continue construction of the illegal wall.

41. As stated herein above, Plaintiff is not required to show lack of an adequate remedy at law because the real property and personal property whose destruction is sought to be restrained is unique and irreplaceable. It is impossible to accurately measure, in monetary terms, the damages caused by Defendants' conduct if allowed to occur.

42. There is insufficient time to serve notice of hearing on this application on Defendants. Defendants have demonstrated an ability to delete corrective information.

43. Plaintiff is willing to post bond deemed appropriate by the Court.

44. According to Texas Rule of Civil Procedure 680, no temporary restraining order shall be granted unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury will result. This application for temporary restraining order and injunctive relief is supported by the attached Affidavit of Mark Tompkins P.E., Ph.D., which is hereby incorporated herein by reference for all purposes. (Exhibit "A.")

**XI. Request For Temporary Injunction**

45. Plaintiffs incorporates by reference herein for all intents and purposes each and every allegation contained in Sections I through IX above. Plaintiffs ask the Court to set their application for temporary injunction for a hearing, and after hearing the application, issue a temporary

**C-5049-19-I**

injunction against Defendants and temporarily restrain the Defendants from the conduct described in this application.

46. In order to preserve the status quo and the property and rights of the Plaintiffs during the pendency of this action, Defendants should be cited to appear and show cause why they should not be temporarily restrained, during the pendency of this action.

**XII. Requests For Disclosure**

47. 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.

**XIII. Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request and pray that Defendants be cited to appear and answer herein, and that Plaintiffs recover against Defendants as follows:

- A. that the application for Temporary Restraining Order and Injunctive Relief be granted as requested herein;
- B. actual damages;
- C. attorneys' fees and costs;
- D. exemplary damages;
- E. prejudgment and post-judgment interest at the highest rate allowed by law; and
- F. such other and further relief, at law or in equity, to which Plaintiffs may show themselves justly entitled.

**C-5049-19-I**

Respectfully submitted,

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