

CL-21-2135-B

CAUSE NO. _____

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|----------------------------|---|-----------------------|
| ISAMAR CAVAZOS | § | IN THE COUNTY COURT |
| | § | |
| Plaintiff, | § | |
| | § | |
| V. | § | AT LAW NUMBER _____ |
| | § | |
| ALEX VILLARREAL AND DOGGIE | § | |
| EXPERTS SALON | § | |
| | § | |
| Defendants. | § | HIDALGO COUNTY, TEXAS |

PLAINTIFF'S ORIGINAL PETITION

COMES NOW, Isamar Cavazos, Plaintiff in the above styled and numbered cause and files this, her Original Petition complaining of Alex Villarreal and Doggie Experts Salon and for causes of action would plead as follows:

I. Selection of Discovery Level

1. The Plaintiffs affirmatively plead that discovery should be conducted in accordance with a discovery level control plan under Civil Procedure Rule 190.3.

II. Parties and Provision for Service of Citation

2. The **Plaintiff, Isamar Cavazos** (Cavazos) is an individual residing in Hidalgo County, Texas.

3. The **Defendant, Alex Villarreal** (Villarreal), is an individual residing in Hidalgo County that can be served at 720 W. Palma Vista Drive, #44, Palmview, Texas 78572.

4. The **Defendant, Doggie Experts Salon** (Salon) is a business established under the laws of the State of Texas. **Defendant, Doggie Experts Salon** may be served by serving its owner Alex Villarreal at 720 W. Palma Vista Drive, #44, Palmview, Texas 78572.

III. Venue

5. Because the incident upon which this suit is based occurred in Hidalgo County, Texas, and both Defendants and Plaintiff reside in Hidalgo County venue is proper in that county, as prescribed by Texas Civil Practice and Remedies Code Section 15.002(a)(1-3).

IV. Subject Matter Jurisdiction

6. This is a suit for negligence and gross negligence. Pursuant to TRCP 47 (c) (1) Plaintiff seek monetary relief of less than \$250,000.00; therefore, this Court has subject matter jurisdiction over this claim.

V. Statement of Facts

7. On or about April 10, 2021, **Plaintiff, Cavazos**, took her four-month old Corgi puppy, Hunter, to Defendant Salon for a routine grooming. Defendant Villarreal the owner and operator purported to be a professional groomer. When Plaintiff's husband picked up Hunter he immediately called Plaintiff and indicated that something was wrong. Hunter could barely stand and could not walk, was throwing up blood, and breathing erratically. Plaintiff immediately called Villarreal to inquire what happened and he became aggressive on the phone. He threatened Plaintiff for inquiring as to what had happened to Hunter. Despite telling the Plaintiff that Hunter would be muzzled during grooming, Villarreal claimed Hunter had bitten his child. Yet he could not explain how a muzzled dog had bitten anyone and further could not explain what his child was doing at his professional place of business.

8. Plaintiff immediately took Hunter to the veterinarian who indicated that it appeared Hunter had been drugged and then strangled. Hunter died shortly thereafter. During the entire time relevant to his claim Hunter was in the custody and control of Defendants. Upon realizing Hunter had died, Plaintiff reached out on social media and discovered that multiple people had experienced similar

results in terms of their dogs appearing drugged and distraught upon returning for Defendants business. It is clear now that Defendant Villarreal drugged Hunter and then somehow choked him to death in the process of grooming the dog. Defendants represent and hold themselves out to be professionals and competent. They are neither. Under no objective standard was the conduct of Villarreal and Salon acceptable.

VI. First Cause of Action: Negligence and Gross Negligence

Plaintiff incorporates paragraphs 1-8 as if fully set out herein under and in addition would plead as follows:

9. A negligence cause of action has three elements: (1) a legal duty owed by one person to Another (2) a breach of that duty, and (3) damages proximately caused by the breach. *D. Houston, Inc. v. Love*, 92 S.W.3d 450, 454 (Tex. 2002). Defendants owed a duty to the Plaintiff not to harm the Plaintiff's dog and to competently and safely perform a routine grooming procedure. Villarreal's conduct whereby Hunter was apparently drugged and then strangled while in his sole and exclusive custody is a direct breach of that duty.

10. Defendants' conduct however goes beyond mere negligence and falls squarely within the definition of gross negligence in Texas. There are two basic elements to a claim of gross negligence under Texas law. First, when "viewed objectively from the actor's standpoint, the act or omission must involve an extreme degree of risk, considering the probability and magnitude of the potential harm to others." It is inconceivable from an objective standpoint, that Villarreal could not have known that he was drugging Hunter and that his conduct was outrageous in strangling the dog.

11. The second element requires that "the actor must have actual, subjective awareness of the risk involved, but nevertheless proceed in conscious indifference to the right, safety or welfare of

others." *Mobil Oil Corp. v. Ellender*, 968 S.W.2d 917, 921 (Tex. 1998). Again, under the circumstances, it is inconceivable that Villarreal could not have been aware of the consequences of drugging Hunter and that what he was doing was strangling the dog. Yet he proceeded to act with clear conscious indifference toward Hunter's safety under circumstances where no objective evaluation of the situation justified such action. **Defendant Villarreal individually and Salon**, were therefore grossly negligent during the course of Hunter's grooming. **Defendant Villarreal**, at all times material to this cause of action was acting within the course and scope of his employment with **Salon**. Therefore, **Salon** is vicariously liable for **Villarreal's** acts and omissions under the doctrine of *respondeat superior*.

VII. Second Cause of Action: Negligent Hiring and/or Training

Plaintiff incorporates paragraphs 1-8 as if fully set out herein under and in addition and/or the alternative would plead as follows:

12. Employers have a broad duty to ensure that each of their employees receives adequate training for the job that they have to perform. In addition, employers who send their employees into their customers' homes are under a higher standard of care than those whose employees do not enter customers' homes. As set out herein above **Defendant, Salon** is liable for the acts of **Defendant Villarreal** to the extent that he was the apparent and ostensible agent of **Salon** and practicing under their apparent direction and auspices. However, **Salon** is liable for its own negligent failure to properly train **Defendant Villarreal**. The possibility that a groomer will encounter a young dog that has never been groomed or is unaccustomed to strangers is an everyday reality. Defendants should have been able to competently and compassionately groom Hunter without causing him any harm.

13. Given the clear foreseeability that encounters with animals will be a daily occurrence, in all likelihood on multiple occasions throughout a day, for **Salon** to not have properly trained **Defendant Villarreal** as to how to properly deal with an animal that posed no threat is negligence. **Salon** failed to prevent Hunter's death by allowing an improperly trained employee to groom Hunter. Each and every one of the foregoing acts and omissions, taken separately and collectively, constitute a direct and proximate cause of the injuries and damages described as set forth below.

VIII. Actual Damages

14 Prior to this incident, Hunter was a happy, full spirited and playful four month-old dog. By reason of the conduct described above, the Plaintiff has suffered losses and damages in a sum that is within the jurisdictional limits of the Court. Plaintiff sues for an amount not more than \$250,000.00.

IX. Special Damages

15. As a further result of the above and foregoing, the Plaintiff has incurred expenses for veterinary care and attention, veterinary fees, medical supplies and medicine, and hospitalization prior to Hunter's. These expenses were incurred for necessary care and treatment of the injuries resulting from the incident complained of. The charges are reasonable, and they were the usual and customary charges veterinarians charge for such services in Hidalgo County, Texas.

X. Punitive Damages

16. In Texas, punitive damages may be assessed against a corporation for gross negligence, but "only if the corporation itself commits gross negligence." The grossly negligent act or omission must be directly attributable to the corporation. A corporation can be held liable for punitive damages (1) if it authorizes or ratifies" the gross negligence of an employee or agent or (2) "if it commits gross negligence through the actions or inactions of a vice principal. It is Plaintiffs

contention that both **Defendants Villarreal and Salon** are guilty of gross negligence and that Plaintiff is therefore entitled to punitive damages.

X.I Jury Demand

17. **Plaintiff, Cavazos** make her demand for jury trial in the above styled and numbered cause in accordance with the Rules of Civil Procedure. Simultaneous with the making of said demand for jury trial, Plaintiffs hereby tender their jury fee to the Hidalgo County Clerk in accordance with the applicable statutes and laws of the State of Texas.

XII. Prayer

The Plaintiffs request that the Defendants be cited to appear and answer, and that on final trial the Plaintiffs have the following:

1. Judgment against the Defendants for a sum within the jurisdictional limits of the Court for their actual damages, special damages, and punitive damages for gross negligence.
2. Prejudgment and post-judgment interest as provided by law.
3. Costs of suit.
4. Such other and further relief to which the Plaintiff may be justly entitled.

Respectfully submitted,

/S/ Mark a. Weitz

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