

CAUSE NO. 18-C-3491

| | | |
|--|---|----------------------------|
| STREETS TO SHEETS ANIMAL RESCUE | § | IN THE COUNTY COURT |
| | § | |
| | § | |
| v. | § | AT LAW NO. 1 |
| | § | |
| MUTTS & MAYHEM ANIMAL RESCUE and SELENA SCHMIDT | § | ELLIS COUNTY, TEXAS |
| | § | |

**DEFENDANTS' ORIGINAL ANSWER, VERIFIED DENIAL,
AND COUNTERCLAIMS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, MUTTS AND MAYHEM ANIMAL RESCUE INC. and SELENA SCHMIDT (“DEFENDANTS”), in the above styled and numbered cause, and file this, their Original Answer, Verified Denial and Counterclaims, and respectfully shows:

**I.
GENERAL DENIAL**

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants generally deny each and every allegation set forth in Plaintiff’s Original Petition and demands strict proof thereof as required by law.

**II.
SPECIFIC DENIALS**

2. Defendants specifically deny the allegations in Paragraph 10 alleging an organization, and non-party to this suit, captured “Hobo.” Defendant Mutts & Mayhem Animal Rescue, Inc., (“M&M”) a non-profit 501(c)(3) organization, is responsible for the successful rescue, capture, subsequent medical care, and current rehabilitation of the stray animal known as “Hobo.” Streets to Sheets (“STS”) tried several times unsuccessfully to capture the animal, to no avail. M&M reached out to STS and offered its services to capture the stray animal who was

in dire need of medical care. M&M also offered to provide veterinary care for a period of two weeks for the animal and in the event M&M was able to care for the animal long-term, M&M would do so since STS did not have the funding to provide the animal with the care it required. At the time, STS expressed what appeared to be sincere gratitude for this offer. It was not until M&M published information regarding the successful capture of Hobo and his subsequent successful medical care that STS began lodging threats and alleging Hobo was to be transferred to them.

3. Defendants specifically deny the allegations in Paragraphs 13 and 14 of Plaintiff's Complaint alleging "[d]efendants have received thousands of dollars in donations from an unsuspecting public" and allegations that M&M "decided to keep Hobo as a fundraising gimmick." Attached hereto as Exhibit A, is M&M's most recent financial statement for donor-advised funds received from donors for Hobo's care reflecting a total amount received of \$967.72.

III. AFFIRMATIVE DEFENSES

4. Plaintiff's claims in this case are barred in whole or in part by the following affirmative defenses:

a. **Lack of capacity.** Defendant, Selena Schmidt, cannot be sued in the capacity in which STS brought suit. As an officer of a non-profit corporation, Ms. Schmidt, is insulated from any personal liability under the fiduciary shield doctrine. Plaintiff makes no allegations in its Petition to hold Ms. Schmidt personally liable. As such, Defendant, Ms. Schmidt, files a verified denial with affidavit attached hereto denying she is personally liable in the capacity in which she has been sued by Plaintiff.

III. **COUNTERCLAIMS**

I. DISCOVERY CONTROL PLAN

1. This case should be controlled by a Level 1 Discovery Control Plan, as authorized by Texas Rules of Civil Procedure 190.3.

II. PARTIES

2. Counter-Plaintiff Mutts & Mayhem Animal Rescue, Inc. is a Texas 501(c)(3) non-profit corporation with its principal place of business in McKinney, Texas.

3. Counter-Defendant Streets to Sheets is a 501(c)(3) non-profit corporation with its principal place of business in Waxahachie, Texas. By filing its Original Petition, STS has appeared in this case.

III. JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter because the transactions that give rise to M&M's claims occurred in Ellis County and because the relief sought in this case is within the jurisdiction of this Court.

5. Venue in this Court is proper because all or a substantial part of the acts and omissions that give rise to M&M's claims occurred in Ellis County.

IV. FIRST CAUSE OF ACTION – ACCOUNTING

6. The foregoing paragraphs are incorporated herein verbatim.

7. Plaintiff has received donor-advised funds meant specifically for Hobo's care into her own personal PayPal account. Defendants demand an accounting of the amounts of donor advised funds received and information regarding their disbursement.

V. SECOND CAUSE OF ACTION – MONEY HAD AND RECEIVED

8. The foregoing paragraphs are incorporated herein verbatim.

9. Plaintiff currently holds donor-advised funds specifically directed for use for the care of Hobo. In fact, Plaintiff is currently requesting funds for Hobo’s care from donors to utilize for Hobo’s much needed veterinary care which was agreed to be provided by M&M. In fact, STS is currently soliciting funds from the public for Hobo despite the fact Hobo is not in their care.

10. The money belongs to M&M in equity and in good conscience to be utilized for Hobo’s care.

**V.
JURY DEMAND**

11. Defendants request trial by jury.

**VI.
REQUESTS FOR DISCLOSURE**

12. Pursuant to Texas Rule of Civil Procedure 194, Defendants request that Plaintiff disclose, within 30 days of the service of this request, the information or material described in Rule 194.2

**VI.
CONCLUSION AND PRAYER**

Defendants respectfully request that Plaintiff recover nothing through this suit, that Defendants recover their reasonable attorney fees, expenses, costs of court, and all other and further relief to which they are justly entitled.

Respectfully submitted,

By: /s/ Nina L. Valdez

TODD J. HARLOW

Texas Bar No. 24036724

NINA L. VALDEZ

Texas Bar No. 24071179

COWLES & THOMPSON, P.C.

901 Main Street, Suite 3900

Dallas, TX 75202

(214) 672-2164 (Tel)

(214) 672-2364 (Fax)

E-mail: nvaldez@cowlesthompson.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of August, 2018, a true and correct copy of the foregoing was sent to the following counsel of record to the following counsel of record:

Via E-Service and Email

Randall E. Turner

randy@randyturner.com

LAW OFFICES OF RANDALL E.

TURNER, PLLC

5017 El Campo Avenue

Fort Worth, TX 76107

/s/ Nina L. Valdez

Nina L. Valdez

CAUSE NO. 18-C-3491

**STREETS TO SHEETS ANIMAL
RESCUE**

Plaintiff,

v.

**MUTTS & MAYHEM ANIMAL
RESCUE and SELENA SCHMIDT**

Defendant

§
§
§
§
§
§
§
§

IN THE COUNTY COURT

AT LAW NO. 1

ELLIS COUNTY, TEXAS

AFFIDAVIT OF SELENA SCHMIDT

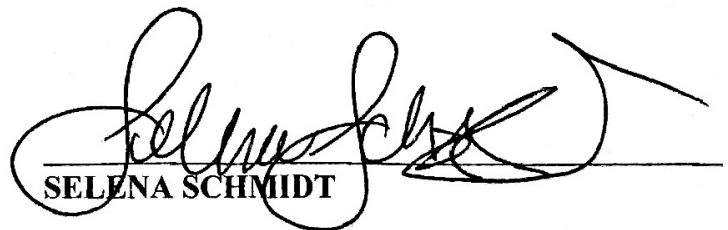
Before me, the undersigned authority, on this day personally appeared Selena Schmidt, who being duly sworn on his oath, deposed and said as follows:

1. "My name is Selena Schmidt. I am over the age of 18 and competent to make this Affidavit. I have never been convicted of a felony or a crime of moral turpitude, and I am qualified to give testimony under oath. I have personal knowledge of all of the facts presented in this affidavit and those facts are true and correct.

2. I am an officer of the non-profit corporation, Mutts & Mayhem Animal Rescue, Inc. I hereby deny Plaintiff has brought sued against me in the proper capacity by naming me personally in the present lawsuit.

3. I testify that all the facts contained in Defendant's Original Answer and Counterclaims are true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.

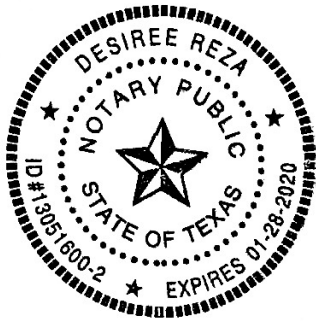

SELENA SCHMIDT

STATE OF TEXAS §

COUNTY OF DALLAS §

SWORN TO AND SUBSCRIBED before me by Selena Schmidt on this the 20th

day of August, 2018.



Desiree Reza
Notary Public in and for the State of Texas

EXHIBIT A

Mutts & Mayhem Animal Rescue
Donor Advised Contribution Details - 6/26/18 - 8/19/2018
All Transactions
Hobo (Hachi) 296-20180626

| Date | Name | Memo | Class | Clr | Pay Meth | Amount |
|--|-------------------------|---------------------------------------|---|-----|----------|---------------|
| 4 - Contributed Support | | | | | | |
| 40100 - Individual / Business Contrib | | | | | | |
| 06/27/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 25.00 |
| 06/27/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 10.00 |
| 06/28/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 25.00 |
| 06/28/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 50.00 |
| 06/28/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 100.00 |
| 06/29/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 20.00 |
| 07/02/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 25.00 |
| 07/03/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | Check | 5.00 |
| 07/06/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | Check | 100.00 |
| 07/07/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 50.00 |
| 07/15/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 20.00 |
| 07/18/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | Check | 25.00 |
| 07/19/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 15.00 |
| 07/19/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 30.00 |
| 07/19/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 200.00 |
| 07/19/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 25.00 |
| 07/19/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 25.00 |
| 07/19/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 100.00 |
| 07/19/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 50.00 |
| 07/19/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 50.00 |
| 07/31/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 10.00 |
| 08/07/2018 | Donor Name Confidential | Donor Advised Contribution-RESTRICTED | 901 Donor Restricted Funds:296-20180626 Hobo(Hachi) | | PayPal | 7.72 |
| Total 40100 - Individual / Business Contrib | | | | | | 967.72 |
| Total 4 - Contributed Support | | | | | | 967.72 |
| TOTAL | | | | | | 967.72 |