

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' AMENDED 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 demand strict proof thereof as required by law.

**II.
SPECIFIC DENIALS**

2. Defendants specifically deny the allegations in Paragraph 12 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 Paragraph 11 of Plaintiff's Complaint alleging that a volunteer of another non-party organization, Twisted Tails, ultimately captured the animal. M&M had tracked the animal for days prior to its ultimate capture. The entire operation was organized and executed by M&M. A Twisted Tails volunteer offered to pull the rope that was attached to the custom built trap owned by M&M. After the rope was pulled, the trap was locked and secured by an M&M volunteer using zip ties. Almost immediately, the animal was administered chemical sedation by M&M's team veterinarian, which allowed the animal to be safely transported and provided with the veterinary care it imminently required.

4. 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 \$1,077.72 as of September 16, 2018.¹ Exhibit A also reflects the costs expended by M&M for

¹ M&M has received a mere \$110 in additional donations since the filing of its Original Answer through September 16, 2018.

Hobo's care totaling \$6,427.71 of its own funds to provide veterinary care to Hobo, which includes the surgery required to remove the rope and excessively damaged tissue from his neck.

III. **AFFIRMATIVE DEFENSES**

6. 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, a violation of rules governing non-profit charitable organizations. Defendants demand an accounting of the amounts of donor advised funds received for Hobo and information regarding their disbursement and current status.

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 collected as donor advised funds by STS for the care of Hobo is money that belongs to M&M in equity and in good conscience to be utilized for Hobo's care, not STS's personal use.

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 pursuant to the Texas Theft Liability Act, 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

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that on the 18th 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

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

STREETS TO SHEETS ANIMAL	§	IN THE COUNTY COURT
RESCUE	§	
Plaintiff,	§	
	§	
v.	§	AT LAW NO. 1
	§	
MUTTS & MAYHEM ANIMAL	§	
RESCUE and SELENA SCHMIDT	§	
Defendant	§	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 Amended Answer and Counterclaims are true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.



SELENA SCHMIDT

STATE OF TEXAS §

§ Collin
COUNTY OF ~~DALLAS~~ §

SWORN TO AND SUBSCRIBED before me by Selena Schmidt on this the 17th day of September, 2018.



Notary Public in and for the State of Texas

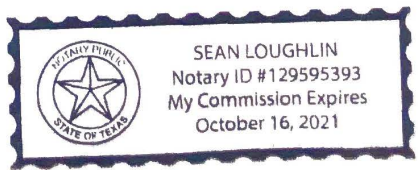


EXHIBIT A

Mutts & Mayhem Animal Rescue
Donor Advised Fund - Hobo (Hachi) 296-20180626
 Contributions v. Expenses 6/26/18 - 9/16/2018

	Search,Rescue,Rehab & Adoption (1-Program Services)	Total 1-Program Services	296-20180626 Hobo(Hachi) (901 Donor Restricted Funds)	Total 901 Donor Restricted Funds	TOTAL
Ordinary Income/Expense					
Income					
4 - Contributed Support					
40100 - Individual / Business Contrib	0.00	0.00	1,077.72	1,077.72	1,077.72
41010 - Donated Profess. Services-GAAP					
41011 - Veterinary Services	735.00	735.00	0.00	0.00	735.00
Total 41010 - Donated Profess. Services-GAAP	735.00	735.00	0.00	0.00	735.00
Total 4 - Contributed Support	735.00	735.00	1,077.72	1,077.72	1,812.72
Total Income	735.00	735.00	1,077.72	1,077.72	1,812.72
Gross Profit	735.00	735.00	1,077.72	1,077.72	1,812.72
Expense					
75000 - Contract Service Expenses					
75100 - Professional Fees					
75200 - Veterinary Services					
75201 - Exams	1,045.00	1,045.00	0.00	0.00	1,045.00
75205 - Chemical Capture/Sedation	447.50	447.50	0.00	0.00	447.50
75206 - Hospitalization	1,170.00	1,170.00	0.00	0.00	1,170.00
75207 - Labratory	586.00	586.00	0.00	0.00	586.00
75208 - Medications	700.00	700.00	0.00	0.00	700.00
75209 - Procedures/Surgical	841.00	841.00	0.00	0.00	841.00
75211 - Diagnostic Testing / Test Kits	36.00	36.00	0.00	0.00	36.00
75212 - Spay & Neutering	100.00	100.00	0.00	0.00	100.00
75213 - Vaccinations	111.00	111.00	0.00	0.00	111.00
75219 - Heartworm Preventative Rx	78.00	78.00	0.00	0.00	78.00
75221 - Medical Boarding	490.00	490.00	0.00	0.00	490.00
75222 - Wound Care	665.00	665.00	0.00	0.00	665.00
75225 - Other	15.00	15.00	0.00	0.00	15.00
Total 75200 - Veterinary Services	6,284.50	6,284.50	0.00	0.00	6,284.50
75300 - Animal Services					
75305 - Professional Grooming	36.00	36.00	0.00	0.00	36.00
Total 75300 - Animal Services	36.00	36.00	0.00	0.00	36.00
Total 75100 - Professional Fees	6,320.50	6,320.50	0.00	0.00	6,320.50
Total 75000 - Contract Service Expenses	6,320.50	6,320.50	0.00	0.00	6,320.50
81100 - Supplies					
81110 - Animal Supplies					
81111 - Flea/Tick Rx & Preventative	60.00	60.00	0.00	0.00	60.00
81130 - Nutrition for Animals					
81131 - Canine Nutrition	15.00	15.00	0.00	0.00	15.00
Total 81130 - Nutrition for Animals	15.00	15.00	0.00	0.00	15.00
81150 - Health & Medical					
81152 - Medications-Non Prescription	25.00	25.00	0.00	0.00	25.00
81153 - Microchips-Implanted & Regist.	7.21	7.21	0.00	0.00	7.21
Total 81150 - Health & Medical	32.21	32.21	0.00	0.00	32.21
Total 81110 - Animal Supplies	107.21	107.21	0.00	0.00	107.21
Total 81100 - Supplies	107.21	107.21	0.00	0.00	107.21
Total Expense	6,427.71	6,427.71	0.00	0.00	6,427.71
Net Ordinary Income	-5,692.71	-5,692.71	1,077.72	1,077.72	-4,614.99
Net Income	-5,692.71	-5,692.71	1,077.72	1,077.72	-4,614.99

Mutts & Mayhem Animal Rescue
Donor Advised Contribution Details - 6/26/18 - 9/16/2018
 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
08/23/2018	Donor Name Confidential	Donor Advised Contribution-RESTRICTED	901 Donor Restricted Funds:296-20180626 Hobo(Hachi)		PayPal	10.00
09/13/2018	Donor Name Confidential	Donor Advised Contribution-RESTRICTED	901 Donor Restricted Funds:296-20180626 Hobo(Hachi)		PayPal	100.00
Total 40100 - Individual / Business Contrib						1,077.72
Total 4 - Contributed Support						1,077.72
TOTAL						1,077.72