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MOTION SEQUENCE # 1.0

ORIGINAL RETURN DATE \_\_\_\_\_

RELIEF OTRO

At a JAS Part 9 of the Supreme Court of the State of New York, held in and for the County of Nassau at the courthouse located at 100 Supreme Court Drive, Mineola, New York, on the 17<sup>th</sup> day of December, 2021

PRESENT:

HON. Helen Voutsinas  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

PEOPLE OF THE STATE OF NEW YORK, by  
LETITIA JAMES, Attorney General of the  
State of New York,

Petitioners,

-against-

5 CORNERS PET, INC.; RISK ENTERPRISES, INC.  
d/b/a SHAKE-A-PAW, and GERARD O'SULLIVAN  
and MARC JACOBS, both individually and as  
owners of Shake-A-Paw,

Respondents.

ORDER TO SHOW CAUSE  
WITH TEMPORARY  
RESTRAINING ORDER

Index No. 615766-21

IAS Part  
Assigned to Justice

Upon reading the annexed Verified Petition, verified on December 15<sup>th</sup>, 2021; the  
Affirmation of Christina Bedell, Assistant Attorney General in support of the Petition, affirmed

on December 15<sup>th</sup>, 2021, together with Exhibits A through N, inclusive of twenty-seven sworn affidavits from consumers with their associated attachments; the Memorandum of Law in support of the Petition, dated December 15<sup>th</sup>, 2021;

NOW,

Upon the motion of LETITIA JAMES, Attorney General of the State of New York, attorney for Petitioners, it is

ORDERED that the Respondents in the above-entitled action, 5 CORNERS PET, INC., RISK ENTERPRISES, INC D/B/A SHAKE-A-PAW, and GERARD O'SULLIVAN and MARC JACOBS, both individually and as owners of SHAKE-A-PAW, show cause at a

Part 19 Term of this Court before the Hon. <sup>Helen</sup> ~~Watson~~, to be held at the New York State Supreme Court, Nassau County, located at 100 Supreme Court Drive, Mineola, New York 11501, on the 9<sup>th</sup> day of February 2022, at 10:00 o'clock in the

<sup>fore</sup>noon of that day, or as soon thereafter as counsel may be heard, why an order should not be made, pursuant to Executive Law § 63(12), General Business Law ("GBL") Articles 22-A and 35-D, and Agriculture & Markets Law ("AML") Article 26-A which provides the following relief:

1. Permanently enjoining Respondents from violating Executive Law § 63(12), Articles 22-A and 35D of the GBL, and Article 26-A of the AML, and from engaging in the fraudulent, deceptive and illegal practices alleged herein;
2. Permanently enjoining Respondents, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business ("Respondents"), from operating, promoting, or participating in any business relating to the selling, adopting out, rescuing or care of live animals, or relating to live animals in any way; requiring Respondents to execute and file with the Attorney General a performance bond in the sum of \$2,000,000 by a surety or bonding company licensed by, and in good standing with, the New York State Department of Financial Services, guaranteeing that Respondents comply with any injunction that may be entered herein, the proceeds of the bond to provide a fund for restitution to consumers

- defrauded or damaged by the past or future conduct of Respondents;
3. Directing Respondents to make full monetary restitution and pay damages to all injured consumers, including those not identified at the time of the order;
  4. Directing Respondents to pay a civil penalty in the sum of \$1,000.00 to the State of New York *for each instance* of violation of GBL Article 35-D, pursuant to § 755;
  5. Directing Respondents to render an accounting to the Attorney General of (a) the names and addresses of each customer who purchased an animal from Respondents from January 1, 2016 to the present, and the amount of money received from each customer; and (b) the names and addresses of each customer who paid fees to Respondents through any attorney or third-party from January 1, 2016;
  6. Directing Respondents to prepare an accounting of all dogs they sold, adopted, or fostered, or offered for sale, adoption or foster, from January 1, 2016 to present including the (i) name, sex and breed of the dog, (ii) the name, address, and phone number of the purchaser/adopter; (iii) the price paid; and (iii) the date of purchase/adoption/foster;
  7. Directing Respondents to provide any and all documentation between any and all veterinarians who have treated dogs in the care of Respondents and/or who have provided any treatment plans, medical supplies, support, or medication to Respondents;
  8. Directing Respondents to provide any and all documentation, including but not limited to certificates of health or fitness, and veterinary reports, reflecting that the dogs in possession of Respondents are fit for sale, adoption, or fostering;
  9. Directing Respondents to appear for an oral examination, under oath, which will be recorded by an official reporter;
  10. Directing Respondents to identify the name of any and all payroll processing companies used; and the names, addresses, and job description for each and every employee and/or volunteer;
  11. Permanently enjoining Respondents from, directly or indirectly, destroying or disposing of any records pertaining to their business;
  12. Permanently enjoining Respondents from converting, transferring, selling or otherwise disposing of funds paid to them by New York consumers;
  13. Directing Respondents to notify Petitioners of any change of address within five days of such change;

- 14. Directing Respondents to pay a civil penalty in the sum of \$5,000.00 to the State of New York for each instance of violation of GBL Article 22-A, pursuant to GBL § 350-d;
- 15. Awarding Petitioners costs and disbursements, together with an additional allowance of \$2,000.00 pursuant to GBL § 774 and CPLR § 8303(a)(6); and
- 16. Granting Petitioners any such other and further relief as the Court deems just, equitable and proper.


AND IT APPEARING that a cause of action for temporary injunctive relief exists under Executive Law § 63(12), General Business Law §§ 349, 350 and CPLR Sections 6301 and 6313, and that Respondents have engaged in repeated and persistent illegal, fraudulent and deceptive acts and practices which have caused and will continue to cause immediate and irreparable injury to members of the public;

AND IT APPEARING therefrom that immediate and irreparable injury, loss and damages will result, and the potential dissipation of Respondents' assets would tend to render a judgment of restitution ineffectual unless Respondents are temporarily restrained from transferring, selling or otherwise disposing of any of the assets owned by Respondents in the State of New York until a hearing on the Petition can be had,

ORDERED that pending the hearing of this special proceeding, <sup>the corporate</sup> Respondents are hereby temporarily restrained from transferring, selling or otherwise disposing of any assets owned, possessed or controlled by Respondents in the State of New York, with the exception of <sup>normal</sup> ~~\$500.00~~ <sup>operating costs incurred in the ordinary course of business such as rent, care for the animals, including food, vet care, utilities, insurance a day for Respondents' daily living expenses, and it is further</sup> ~~reasonable attorneys fees in defense of this action~~ <sup>wages and employee payroll\*</sup>

ORDERED that pending the hearing and determination of this special proceeding, and to protect the public and the animals in Respondents' care from likely damaging consequences, Respondents, their agents, employees, successors, and assigns, and any other person under their direction and control, whether acting individually or in concert with others, or through any

<sup>or withdrawals</sup>  
\* The payroll/wages of the individual Respondents shall be limited to average pay/withdrawals received during the last three months

  
S.S.C.

corporate or other entity or device, are hereby temporarily restrained, pursuant to Executive Law § 63(12), GBL § 349, and CPLR §§ 6301 and 6313 from purchasing or otherwise obtaining any live animal for re-sale in New York that is not already currently in the care and custody of the Respondents; and it is further

*HV*  
*S.S.C.*

**ORDERED** that in consideration of the well-being of the animals already purchased by the Respondents for sale to the public, Respondents are permitted to accept delivery and/or otherwise take possession of any animals who were purchased and/or ordered prior to the entry of this order to show cause, and Respondents are permitted to sell those animals and any already in Respondents' possession provided the following conditions are met:

- a. Respondents must produce to the Court and the Petitioners a full inventory of the puppies already purchased and not yet sold, including puppies scheduled to be transported to any store, identifying the store in which the animal is located and the date the store acquired the animal or will be acquiring the animal;
- b. ~~Assigning a monitor to oversee the sales of animals and placing any monies received from those sales into an escrow account, with any release of funds from that escrow account being subject to approval of the Petitioners;~~
- c. Until further order of this Court, Respondents must produce a weekly sworn affidavit to the Court and the Petitioners identifying the location and/or disposition status of all animals identified in paragraph (a). Respondents must certify that any animals sold to consumers in that time frame were examined by an independent veterinarian, approved by Petitioners, and found to be fit for sale, that all required disclosures were made to consumers, and that no other illegalities described in the petition occurred; and
- d. Violations of paragraphs (a) through (c) above, to include any underlying violation in the sale of an animal during the enforcement of this temporary restraining order, shall constitute a violation of this order and subject the Respondents to contempt proceedings pursuant to the Judiciary Law.

*seventy-two (72)*

**ORDERED** that Respondents shall provide to Petitioners, within ~~twenty-four (24)~~ *seventy-two (72)* hours after service of this Order, a list that identifies all New York assets for each Respondent and the names and addresses of all banks, savings and loan associations and other financial depositories.

located inside and outside of New York at which Respondents maintain any account(s) or have the right to have funds credited to them in any account(s), together with the account numbers and titles, and it is further

~~ORDERED that upon service of a copy of this Order upon said bank or depository, it is hereby temporarily restrained until further order of the Court from paying out, transferring, or setting off or assigning to themselves or to any other person or firm such funds, with the exception of \$500 a day for Respondent's daily living expenses, and it is further~~

~~ORDERED that upon service of a copy of this Order upon Bank of America, said bank is hereby temporarily restrained until further order of the Court from paying out, transferring, or setting off or assigning to themselves or to any other person or firm such funds including, but not limited to, funds held in Bank of America, account numbers [REDACTED] and it is further~~

~~ORDERED that upon service of a copy of this Order upon Chase Bank, said bank is hereby temporarily restrained until further order of the Court from paying out, transferring, or setting off or assigning to themselves or to any other person or firm such funds including, but not limited to, funds held in Chase Bank, account numbers [REDACTED]~~

~~[REDACTED]~~

and

SUFFICIENT CAUSE appearing to me therefore,

LET personal service of one copy of this order and supporting papers upon Respondents, on or before the 22<sup>nd</sup> <sup>petition</sup> day of December 2021, by personally serving their attorney, Richard Hamburger, of Hamburger, Maxson, Yaffe, & Martingale, LLP, by leaving a true copy at 225

*H.A.*  
*F.S.C.*

Broadhollow Road, Suite 301E, Melville, NY 11747, which is attorney Hamburger's place of business be deemed due and sufficient service on all Respondents hereof; and

Pursuant to CPLR § 403(b), answering papers, if any, are required to be served on the Petitioners' Nassau Regional Office at least two days before the return date of this special proceeding. If, however, this Order to Show Cause is served at least twelve days before the return date, answering papers, if any, are required to be served at least seven days before the return date.

Dated: Mineola, New York  
December 16<sup>th</sup>, 2021

ENTER

J.S.C.

HON. HELEN V. OUTSINAS  
J.S.C.