

THE FRAUDULENT SALE AND ISSUANCE OF “EMOTIONAL SUPPORT ANIMAL” LETTERS

Overview, Legal Analysis & Investigative Summary

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DISCUSSION

I. LEGAL UNDERPINNINGS OF EMOTIONAL SUPPORT ANIMALS

A. General Protections of Disabled Americans

Most disability and discrimination-related laws and regulations in the United States are direct or indirect descendants of the Civil Rights Act of 1964 (the “Act”), Pub. L. No. 88-352, 78 Stat. 241. Among other protections, the Act prohibited discrimination based upon race, religion, or national origin at hotels, motels, restaurants, theaters, and other “public accommodations.” Act, Title II. Four years later, the Civil Rights Act of 1968 (also known as the Fair Housing Act or “FHA”) extended the scope of federal protections to include equal housing opportunities. Civil Rights Act of 1968, Pub. L. No. 90-284, §§ 801-819, 82 Stat. 73, 81-90. In 1974, the FHA was amended to add “sex” as a protected class. Fair Housing Act, Pub. L. No. 93-383, § 808(b)(1)-(4), 88 Stat. 729, 729 (1974). The FHA’s protected classes were again expanded in 1988, this time to include “familial status” and “handicap.” Fair Housing Amendments Act of 1988 (“FHAA”), Pub. L. No. 100-430, § 1, 102 Stat. 1619, 1619 at § 5(a)-(b).

Not long thereafter, Congress enacted the Americans with Disabilities Act of 1990 (“ADA”), which established comprehensive and far-reaching protections against discrimination for handicapped individuals. ADA, Pub. L. No. 101-336, § 1, 104 Stat. 327, 327. The areas of discrimination prohibited by the ADA include public accommodations, commercial facilities, employment, state and local government services, transportation, and telecommunications. *Id.* § 2(a)-(b). In 2008, after a series of court decisions perceived as limiting or diminishing the protections afforded by the ADA, Congress passed the ADA Amendments Act, which expanded the definition of “disability” and lessened a claimant’s disability-related burden of proof, thereby increasing substantially the categories and numbers of disabled individuals protected thereunder. 42 U.S.C. § 12101 (2006 & Supp. II 2008). Generally, a person is considered to have a “disability” if he/she: (1) has a physical or mental impairment that substantially limits one or more “major life activities,” (2) has a record of such an impairment, or (3) is regarded as having such an impairment. ADA, Pub. L. No. 101-336, 104 Stat. 328 (1990); Section 504 of the Rehabilitation Act of 1973, 29 USC §701 et seq.; Section 188 of the Workforce Investment Act of 1998, Pub.L. 105-220, 112 Stat. 936, 29 U.S.C. § 2801, et seq.

B. Service Animals; Expanded Coverage for Housing and Flights

ADA regulations define “service animal” as a dog specially trained to perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The tasks performed must be directly related to the individual’s disability. For example, service animals may assist with navigation or stability, pull a wheelchair, retrieve items, or assist individuals with psychiatric disabilities by preventing destructive behaviors. (*See U.S. Dep’t of Justice, “ADA Requirements for Service Animals,”*

https://www.ada.gov/service_animals_2010.htm (2010) (copy attached at Exhibit A)). The ADA, Section 504 of the Rehabilitation Act, the Fair Housing Act, and the below-discussed Air Carrier Access Act all require that people with disabilities be permitted to use service animals in a variety of settings. These include places of employment; courts, benefits offices, police stations, and other public services buildings; stores, movie theaters, homeless shelters, medical offices, and other places of public accommodation; housing; and airports and air carriers. The definitions of “service animal” under the Fair Housing Act and the Air Carrier Access Act are, however, broader than the general ADA definition and, accordingly, include a larger universe of animals than does that term as used in the ADA. (*Id.*)

C. Emotional Support Animals

Because of this hodgepodge of competing definitions of “service animal” from the various disability-related statutes and regulations and for other practical reasons (including the lack of any required training), “emotional support animals” are not afforded the same rights and protections as the specially-trained dogs/miniature horses falling within the narrower ADA definition of “service animal.” Housing and travel-related accommodations for emotional support animals are nonetheless expressly required by the Fair Housing Amendment Act (28 CFR Sections 36.104, 35.104) and the Air Carrier Access Act (49 U.S.C. § 41705), respectively.

The Air Carrier Access Act prohibits discrimination against handicapped individuals by an air carrier. *Id.* The regulations enacted to carry out this act appear at 14 CFR Part 382, entitled “Nondiscrimination on the Basis of Disability in Air Travel.” Regulation 382.117 governs the rights of passengers traveling with service animals (including emotional support animals). Pertinent definitions of terms-of-art used in Regulation 117 appear at Regulation 382.3 (copy of both sections attached at Exhibit B). Specifically, Regulation 382.117 (e) provides:

- (e) If a passenger seeks to travel with an animal that is used as an emotional support or psychiatric service animal, you are not required to accept the animal for transportation in the cabin unless the passenger provides you current documentation (i.e., no older than one year from the date of the passenger's scheduled initial flight) on the letterhead of a licensed mental health professional (e.g., psychiatrist, psychologist, licensed clinical social worker, including a medical doctor specifically treating the passenger's mental or emotional disability) stating the following:
 - (1) The passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM IV);

- (2) The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger's destination;
- (3) The individual providing the assessment is a licensed mental health professional, and the passenger is under his or her professional care; and
- (4) The date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.

68 Fed. Reg. 24874 further explains – for the purposes of the Air Carrier Access Act and related regulations – that “animals that assist persons with disabilities by providing emotional support qualify as service animals . . . [A]n animal used for emotional support need not have specific training for that function. Similar to an animal that has been individually trained, the definition of a service animal includes: An animal that has been shown to have the innate ability to assist a person with a disability; or an emotional support animal.” (copy attached at Exhibit C).

II. BIG BUSINESS: THE SALE OF FRAUDULENT ESA LETTERS

A. Generally

The above-discussed emotional service animal-related laws, regulations, and administrative guidance have given rise to a burgeoning epidemic of fraud by duped or unscrupulous air travelers, unscrupulous healthcare givers, and sham Internet companies. This fraud arises from the fact that there is no additional airfare charged for an emotional service animal, which flies alongside its owner in the passenger cabin. The statutory prerequisite for such travel entails nothing more than the passenger showing a letter of the sort described in 14 CFR section 382.117(e) and discussed above (referred to hereinafter as an “ESA Letter”). **As a result, there now exist a plethora of shady companies (referred to hereinafter as “ESA Letter Mills”) who partner with unethical mental healthcare providers to sell ESA Letters to literally any applicant without regard to whether the purchaser actually has the requisite mental or emotional disability.** The involved ESA Letter Mills and mental healthcare professionals typically have no prior relationship with a purchaser; do not meet or even speak over the phone with the purchaser; have no further contact with or “treatment of” the purchaser after the provision of the purchaser’s ESA Letter (except possibly renewal of the bogus ESA Letter a year later); and often make the required diagnosis (the presence of a mental or emotional disability recognized in the DSM IV) solely on the basis of a few multiple-choice questions.

This unethical/illegal business model has exploded into a booming industry. In a study conducted by the University of California at Davis, researchers found that the number of registered emotional support and psychiatric service animals in California

increased 1,000% (*i.e.*, ten-fold) from 2002 to 2012. (*Yamamoto, "Registration of Assistance Dogs in California for Identification Tags: 1999-2012," PLOS ONE, <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0132820> (August 9, 2015) (copy attached at Exhibit D)*). Over the past several years, hundreds (it not thousands) of newspaper articles, television news stories, journal and magazine articles, and other journalistic exposes regarding these ESA Letter Mills and the healthcare providers who enable them have been published and aired across the country. A sampling of these articles and accounts is attached hereto at Exhibit E.

B. Consequences

The consequences of the widespread procurement and use of bogus ESA Letters by dishonest travelers goes far beyond the involved airlines' lost revenue for the traveling animals. As noted above, unlike other categories of service animals, emotional support animals receive no special training whatsoever. They may become uneasy or feel threatened around crowds or during a flight, thereby presenting a physical threat to other passengers and/or to legitimately present service animals. Travelers with allergies to an emotional support animal may be sickened, and those with a fear of animals may themselves experience substantial anxiety. At the very least, the emotional support animal may – as many media accounts have reported anecdotally – annoy other passengers and otherwise detract from their travel experience by everything from loud, unruly behavior to noxious odors to defecation or urination in the aircraft cabin.

C. Initial Investigation by Delta

After identifying a sampling of some of the most well-publicized and highest ranked (in a series of Google searches) ESA Letter Mill websites, Delta's investigators accessed these websites and, using assumed identities and giving "middle of the road" answers (and, in some cases, giving answers that clearly indicate that the applicant has no arguable mental disability), completed the ESA Letter certification and purchase processes for each website.

1. Emotional Pet Support

The substance of the entirety of the ESA Letter application process for Emotional Pet Support at its website EmotionalPetSupport.com was the following multiple-choice questionnaire, to which Delta's investigator gave the indicated responses (set forth in bold). Screenshots from the actual website application process are attached hereto at Exhibit F.

EMOTIONAL PET SUPPORT

For Questions 1-20, multiple choice answers to choose among were: **Never Rarely Sometimes Usually Always**

1	I am under high levels of Stress.*	SOMETIMES
2	I feel Overwhelmed by my current Life circumstances.*	SOMETIMES
3	I find myself feeling discouraged and pessimistic about my future.*	USUALLY
4	I find myself depressed and or saddened by my current life circumstances.*	USUALLY
5	I feel beat down and burnt out in my current life circumstances.*	SOMETIMES
6	I feel unhappy in my current life circumstances.*	SOMETIMES
7	I find myself worrying about my future, my finances, or my family.*	USUALLY
8	I feel frustrated and uneasy in my current life circumstances.*	SOMETIMES
9	I feel burdened by my current life circumstances.*	USUALLY
10	I find myself tense and up tight in my current life circumstances.*	SOMETIMES
11	My stress level is interfering with my work.*	SOMETIMES
12	My stress level is interfering with my sleep.*	USUALLY
13	My stress level is interfering with my ability to focus and concentrate on what I have to do.*	SOMETIMES
14	I turn to Alcohol, Food or drugs to comfort me in my current life circumstances.*	RARELY
15	I am finding that Anxiety and restlessness are disrupting my everyday Lifestyle.*	USUALLY
16	I find myself irritable and often impatient in my current life circumstances.*	USUALLY
17	Do you find yourself lonely in your current life situation?*	RARELY
18	Do you wish you had more and deeper emotional support systems?*	SOMETIMES
19	Does your stress level interfere with your communication with your loved ones, friends, or coworkers?*	USUALLY
20	I am subject to outbursts, Mood swings, or periods of negativity in my current life circumstances*	SOMETIMES
21	Which Life events have caused you significant stress this year?*	FINANCIAL CRISIS OR HARDSHIP
22a	In the past few weeks, have you wished you were dead or have you felt that you or your family would be better off if you were dead? (Doctor might contact you if selected)*	NO
22b	In the past week, have you been having thoughts about killing yourself? (Doctor might contact you if selected)*	NO
22c	Have you ever tried to kill yourself? (Doctor might contact you if selected)*	NO
	Please Explain Life Events in Detail (This section is important because the doctor will render their final decision based on your input. Try to provide some background as to why your animal provides a reduction of stress. Other factors include: Divorce, job loss, PTSD, and loss of a family member or friend.) Financial problems. Trying to meet obligations. Could lose my job. Wife has medical bills and medicine. Unsure of the future. When I am with Skipper, I don't feel stressed and can concentrate on the task.	

On the sole basis of these responses, Licensed Professional Counselor and Certified Professional Counselor Supervisor Nicole Mateo of Woodstock, Georgia issued an ESA Letter, a copy of which is attached hereto at Exhibit G.

2. Therapy Pet

The substance of the entirety of the ESA Letter application process for Therapy Pet at the website TherapyPet.com was the following multiple-choice questionnaire, to which Delta's investigator gave the indicated responses (set forth in bold). Screenshots from the actual application process for this website are attached hereto at Exhibit H.

THERAPY PET		
PERSONALITY OVERVIEW		
During the past TWO (2) WEEKS, how much (or how often) have you been bothered by the following problems?		
NONE Not at all SLIGHT Rare, less than a day or two MILD Several days MODERATE More than half the days SEVERE Nearly every day		
1	Little interest or pleasure in doing things?	MILD
2	Feeling down, depressed, or hopeless?	MILD
3	Feeling more irritated, grouchy, or angry than usual?	NONE
4	Sleeping less than usual, but still have a lot of energy?	SLIGHT
5	Starting lots more projects than usual or doing more risky things than usual?	NONE
6	Feeling nervous, anxious, frightened, worried, or on edge?	MILD
7	Feeling panic or being frightened?	SLIGHT
8	Avoiding situations that make you anxious?	MILD
9	Unexplained aches and pains (e.g., head, back, joints, abdomen, legs)	NONE
10	Feeling that your illnesses are not being taken seriously enough?	NONE
11	Thoughts of actually hurting yourself?	NONE
12	Hearing things other people couldn't hear, such as voices even when no one was around?	NONE
13	Feeling that someone could hear your thoughts, or that you could hear what another person was thinking?	NONE
14	Problems with sleep that affected your sleep quality over all?	SLIGHT
15	Problems with memory (e.g., learning new information) or with location (e.g., finding your way home)?	NONE
16	Unpleasant thoughts, urges, or images that repeatedly enter your mind?	NONE
17	Feeling driven to perform certain behaviors or mental acts over and over again?	NONE
18	Feeling detached or distant from yourself, your body, your physical surroundings, or your memories?	NONE
19	Not knowing who you really are or what you want out of life?	NONE
20	Not feeling close to other people or enjoying your relationships with them?	NONE
21	Drinking at least 4 drinks of any kind of alcohol in a single day?	NONE
22	Smoking any cigarettes, a cigar, or pipe, or using snuff or chewing tobacco?	MODERATE
23	Using any of the following medicines ON YOUR OWN, that is, without a doctor's prescription, in greater amounts or longer than prescribed [e.g., painkillers (like Vicodin), stimulants (like Ritalin or Adderall), sedatives or tranquilizers (like sleeping pills or Valium), or drugs like marijuana, cocaine or crack, club drugs (like ecstasy), hallucinogens (like LSD), heroin, inhalants or solvents (like glue), or methamphetamine (like speed)]?	NONE
SYMPTOMS BREAKDOWN (Part One)		
In the past SEVEN (7) DAYS... NEVER RARELY SOMETIMES OFTEN ALWAYS		
1	I was irritated more than people knew.	SOMETIMES
2	I felt angry.	RARELY
3	I felt like I was ready to explode.	NEVER
4	I was grouchy.	RARELY
5	I felt annoyed.	RARELY

SYMPTOMS BREAKDOWN (Part Two)	
(Selected Multiple-Choice Answer appears in BOLD for Questions 1-6. Applicant's narrative response to Question 7 appears in BOLD .)	
1 Describe your happiness.	I do not feel happier or more cheerful than usual. I occasionally feel happier or more cheerful than usual. I often feel happier or more cheerful than usual. I feel happier or more cheerful than usual most of the time. I feel happier of more cheerful than usual all of the time.
2 Describe your confidence level.	I do not feel more self-confident than usual. I occasionally feel more self-confident than usual. I often feel more self-confident than usual. I frequently feel more self-confident than usual. I feel extremely self-confident all of the time.
3 Describe your sleeping patterns.	I do not need less sleep than usual. I occasionally need less sleep than usual. I often need less sleep than usual. I frequently need less sleep than usual. I can go all day and all night without any sleep and still not feel tired.
4 Describe your social skills.	I do not talk more than usual. I occasionally talk more than usual. I often talk more than usual. I frequently talk more than usual. I talk constantly and cannot be interrupted.
5 Describe your activity levels.	I have not been more active (either socially, sexually, at work, home, or school) than usual. I have occasionally been more active than usual. I have often been more active than usual. I have frequently been more active than usual. I am constantly more active or on the go all the time.
6 Describe the reasons why you need an Emotional Support Animal AND what specific symptoms you are hoping to alleviate by having your ESA with you.	I sometimes have anxiety, especially in crowds or unfamiliar places. Dixie keeps me grounded and calm. I find that her presence and being able to pet her and have her respond to me helps me focus on her rather than my anxiety.

On the sole basis of these responses – which would seem to indicate a remarkably stable and well-grounded applicant with no hint of mental disability or disorder – Licensed Professional Counselor Dana Flynn of Austin, Texas issued an ESA Letter, a copy of which is attached hereto at Exhibit I.

3. The Dogtor

The substance of the entirety of the ESA Letter application process for The Dogtor at the website OnlineDogtor.com was the following multiple-choice questionnaire (plus additional narrative where requested), to which Delta's investigator gave the indicated responses (set forth in bold). Screenshots from the actual application process for this website are attached hereto at Exhibit J.

THE DOGTOR		
(Section 1 asks only for personally identifying information.)		
Section 2: General and Mental Health		
1	Do you feel that you have a debilitating mental health condition that qualifies you to obtain an emotional support animal under U.S. law?* If you answered yes to the above question, please describe what debilitating emotional/mental health condition(s) you have below.	Yes. Anxiety.
2	Have you ever been formally diagnosed with a mental-health related condition by a medical professional? (Examples include: anxiety, depression, post-traumatic stress disorder, insomnia, bi-polar disorder, just to name a few.)* If you answered yes to the above question, please write below which mental health condition(s)	Yes. My family doctor knows about my anxiety and trouble sleeping.

	you were diagnosed with. (Examples include: anxiety, depression, post-traumatic stress disorder, insomnia, bipolar disorder, just to name a few.)	
3	Has there been a major life event in the last year that has caused you great psychological stress? (Examples include: divorce, a break-up, financial troubles, unemployment, or a death in the family)*. If you answered yes to the above question, please list the major life event(s) below and how it has impacted you:	Yes. My mother passed away in April 2017.
4	Have you personally experienced any external physical symptoms over the last year? (Examples include: shortness of breath, sweating, trembling, crying, vomiting, etc..)* If you answered yes to the above question, please be as specific as possible in describing your symptoms and list the month and year that the symptoms began.	No. Not the symptoms above, but rapid heart rate and feeling very uncomfortable.
5	Do you feel that your emotional/mood condition negatively impacts your ability to carry put your day-to-day activities such as: walking, sleeping, working, learning, concentrating, focusing, communicating, reading, or standing?* If you answered yes to the above question, please list below which daily activities you are unable to perform due to extreme stress or another emotional condition and how it has impacted your life.	Yes. Hard to concentrate when heart is rapid, and I am uncomfortable and hard to focus on tasks.
Section 3: General Medical History		
1	Have you ever been diagnosed with a condition or illness not related to mental health?* If you answered yes to the above questions, please list below what you have been diagnosed with in the past.	No.
2	Are you currently taking any prescription medications, herbs, homeopathic or holistic treatments?* If you answered yes to the above question, please list ALL medications/treatments you are currently taking as well as dosage.	No.
3	Would you consider yourself to be in good physical health over the past 12 months?* If you answered No to the above question, please list which physical ailments you have endured over the last year. (Examples: cancer, broken bones, heart condition, stroke, just to name a few)	Yes.
4	Do you currently consume alcoholic beverages?* If you answered yes to the above question, please describe below how often and how much alcohol is consumed when drinking.	Yes. A few beers on weekends.
5	Do you currently use illicit drugs?* If you answered yes to the above question, please describe which drug(s) is used and how often you use it.	No.
Section 4: Major Depression		
1	Do you feel that you derive little pleasure in doing routine activities anymore?* If you answered yes to the above question, please describe which routine activities are impacted by your depression.	Yes. Sometimes, but not all the time.
2	Do you feel depressed on a daily basis?* If you answered yes to the above question, please list below the month and year the symptoms first appeared.	No.
3	Are you having trouble falling or staying asleep, or sleeping too much?* If you answered yes to the above question, please describe when the symptoms started below and how these particular symptoms are impacting your life.	Yes. Hard to fall asleep, tossing and turning, mind is racing. Sometimes wake up and takes 1-2 hours to go back to sleep.
4	Do feel overly tired throughout your day with little amounts of energy?*	Yes.
5	Do you feel that you have a tendency to overeat or undereat?* If you answered yes to the above question, please describe below the nature in which you over or undereat and the date the symptoms first appeared.	No.
6	Do you typically feel bad about yourself / or that you are a failure / or have let yourself or your family down?* If you answered yes to the above question, please explain below how often this feeling occurs and which events or situations give rise to these feelings.	Yes. Some days I feel bad. Others days are better.
7	Do you have difficulty concentrating on things, such as reading the newspaper or watching television?* If you answered yes to the above question, please list when the symptoms first appeared.	Yes. Reading - my mind wanders and I don't know what I read. Started about 1 year ago.
8	Have you ever thought that you would be better off dead or of harming yourself in some way?* If you answered yes to the above question, please list below the situation(s) or event(s) that first gave rise to these thoughts and the month and year that they first occurred.	No.
9	Do you currently consider yourself to be suicidal at the present time? If so, do you have a plan to carry it out?* If you answered yes to the above question, please describe below the nature of your plan.	No.
10	Does your major depression negatively impact your school, work, family life, or ability to carry out a reasonably normal lifestyle?* If you answered yes to the above question, please describe in detail how it impacts your life below.	No. I don't think I am depressed.
Section 5: Generalized Anxiety & Panic Disorder		
1	Do you experience sudden episodes of intense and overwhelming fear that seem to come on for no apparent reason?* If you answered yes to the above question, do you experience any of the following symptoms during	Yes. At times I get anxious and my heart races and can't concentrate.

	these episodes: racing heart, chest pain, difficulty breathing, choking sensation, lightheadedness, tingling or numbness? Please describe below which symptoms apply to you:	
2	Do you worry about something terrible happening to you, such as embarrassing yourself, having a heart attack or dying when having an episode of anxiety? If you answered yes to the above question, please describe the event or situation that first gave rise to your anxiety episodes and list the month and year in which the symptoms first appeared.	Yes. Sometimes about a year ago.
3	Do you worry about having future episodes of anxiety or panic? If you answered yes to the above question, please describe below which symptoms begin to surface whenever you start to worry about future episodes of anxiety or panic. (Examples include: Heavy breathing, shortness of breath, feeling that you will have a heart attack, sweating, etc.)	Yes. Racing heart, very uncomfortable with surroundings.
4	Do you worry about a number of events or activities (such as work, family life, or a school performance)? If you answered yes to the above question, please describe the nature of this worry:	No.
5	is it difficult to control the worry? If you answered yes to the above question, please describe how you have been attempting to control your worries.	No
6	Do you feel as though you have two or more of these symptoms? (Feeling restless or on edge, being easily fatigued, having difficulty concentrating, feeling irritable, muscle tension, having difficulty falling or staying asleep, or restless unsatisfying sleep? If you answered yes to the above question, please list below which two or more symptoms from the previous question you have.	Yes. Anxious and trouble sleeping.
7	Have you experienced or witnesses a frightening traumatic event either recently or in the past? If you answered yes to the above question, please describe the nature of the event without going into too much detail.	No.
8	Do you feel that your overall anxiety negatively impacts your school, work, family life, or your ability to carry out a reasonably normal lifestyle? If you answered yes to the above questions, please describe how this anxiety has impacted your life.	Yes. When anxious to want to leave and go somewhere else.
Section 6: Post Traumatic Stress Disorder		
1	Have you experienced or witnessed an event in your past that was any or all of extremely scary, horrifying, assaulting, and/or life-threatening? If you answered yes to the above question, please explain below the nature of the situation or event (s) and the month and year they occurred.	No.
2	Do you have recurrent and distressing memories of the event, even when you try not to think about it? If you answered yes to the above question, please describe below the symptoms you experience when you recall these traumatic events.	No.
3	Do you have recurrent dreams of all or parts of the trauma?	No.
4	Do you sometimes feel like you are experiencing some part, parts and/or all of the traumatic event over again? If you answered yes to the above question, please describe below how often you experience these feelings and in which setting the feeling usually occurs. (Examples include: work, school, family life, etc).	No.
5	Do you sometimes find yourself feeling traumatized or very frightened about something and cannot associate any memories with the feeling? If you answered yes to the above question, please describe below the month and year you first started losing your memory as it relates to your fright.	No.
6	Are you making efforts to avoid thoughts, feelings or talking about the trauma? If you answered yes to the above question, please describe below what you typically do to avoid recalling the past traumatic event(s).	No.
7	Do you avoid certain places, people, events and/or situations because they trigger (or might trigger) thoughts of the trauma?	No.
8	Are you unable to recall important aspects of the trauma? If you answered yes to the above question, please list the month and year in which you first experienced your inability to recall important aspects of the trauma.	No.
9	Do you feel detached or estranged from yourself and/or others? If you answered yes to the above question, please describe below when you first began feeling this way.	No.
10	Are you experiencing any problems falling or staying asleep?	Yes.
11	Are you having trouble concentrating, being irritable or jumpy? If you answered yes to the above question, please describe below which symptom(s) in the previous question you have and the month and year you first began noticing that these symptoms were becoming a problem.	Yes. 12-18 months ago. Trouble going to sleep and staying asleep. It has continued. I am irritable at times when my heart races.
12	When you think about the future, do you get a sense that it will be shortened for some unknown reason? If you answered yes to the above question, please list why you feel that the future will be shortened for some unknown reason.	No
Section 7: Social Phobias		
1	Do you have difficulty speaking in front of groups or a fear of talking to strangers in general?	Yes.

2	If you answered yes to the above question, please describe the difficulty as it relates to you below.	Occasionally. I don't do public speaking but uneasy when talking to people I don't know.
3	Does the fear in the previous question cause you to have debilitating anxiety?* If you answered yes to the above question, please describe below the symptoms associated with your anxiety.	Yes. Not all the time. Some days are better than others.
4	Are you afraid of embarrassing yourself in public or in front of others?* If you answered yes to the above question, please explain below why you feel this way.	No.
5	Has your fear of embarrassing yourself in public caused you to avoid your daily responsibilities such as work, school, or any other public events?* If you answered yes above, please describe below what major life activities have been impacted by your social phobias? Examples include: Walking, talking, lifting, reading concentrating, communicating, sleeping, and/or writing).	Yes. I don't fear embarrassing myself but when I feel anxious, I want to be somewhere else.
6	Are you afraid of flying on a commercial airliner?*	No.
7	Do you get anxious and worried if you fly?* If you answered yes to the above question, please describe the nature of your anxiety and worry below.	No.
8	Do you avoid flying when possible?*	No.
9	In your past and/ or present life experiences, has had having an animal helped alleviate/ ameliorate your complaints, problems or issues, and is that the reason in which prompted you to submit this medical exam?*	Yes. Having Roscoe on my lap and petting takes my cares way. I feel at ease and comfortable.

On the sole basis of these responses, Licensed Clinical Social Worker Deborah Weatherby of Aventura, Florida issued an ESA Letter, a copy of which is attached hereto at Exhibit K.

4. ESA Doctors

The substance of the entirety of the ESA Letter application process for ESA Doctors at the website ESADoctors.com was the following multiple-choice/short answer questionnaire, to which Delta's investigator gave the indicated responses (set forth in bold). Screenshots from the actual application process for this website are attached hereto at Exhibit L.

ESA DOCTORS	
(Step 1 of 5 is personally-identifying information)	
Step 2 of 5 - Part II: General Mental and Physical Health	
Do you find it difficult or unable to perform major life activities? Major Life Activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, learning, communicating, and working.	Yes No
If you answered yes, which major life activities are you unable to or find difficult to carry out?	Caring for oneself Working Communication Sleeping Eating Standing or Walking Learning or Studying Other
General Medical History: Please list ANY illness (psychological or physical) you have been diagnosed with. Please include details.* Write "NONE" if you have not been diagnosed with any illness.	High blood pressure
Prescription Drug Use: Please list the frequency and amount of drugs (OTC, prescription) in the last 12 months.* Write "NONE" if you have not consumed any prescription drugs in the last year.	Amoldine 5-40 mg daily
Step 3 of 5 - Part III: Post-Traumatic Stress Disorder	
Have you experienced feelings of intense fear or helplessness after a traumatic event?*	Yes No

In the last 90 days, how often have you been bothered by your emotions/symptoms from the traumatic event?	Rarely Moderately Often Very Often
Due to your traumatic event, do you experience any or all of the following?*	Avoid people or places that remind you of the traumatic event Less interested in activities that you previously enjoyed Physical distress as a result of reminders of the event Difficulty sleeping Other
Do the unwanted thoughts or feelings related to the traumatic interfere with any major life activity?*	Yes No
Major Life Activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.	
Have you ever been exposed to a traumatic event you would like to share with your therapist?	I have not had a traumatic event.
Step 4 of 5 - Part IV: Generalized Anxiety Disorder	
During the past six months have you been frequently worried about big or small events in your life?*	Yes No
If you answered YES above, how frequently has your worrying caused anxiety or stress in the last six months on a daily basis?	Every Day Several times per week A few times per month None
Do you have difficulty controlling your worries or anxiety?*	Yes No
When worried, do you experience any of the following?*	Difficulty sleeping Tension and muscle aches Sudden unexplained loss of energy None of the above
Have you ever experienced sudden and unexpected intense fear or anxiety for no apparent reason (panic attack) where you did not expect it to occur in the past 6 months?*	Yes No
If you answered YES, how often do these anxiety attacks occur?	Daily Several times a week A few times a month
Do you often worry that you will experience more panic attacks in the future?*	Yes No
During your last panic attack have you experienced any of the following?	Increased heart rate Uncontrollable shaking Dizziness or nausea Difficulty breathing Hot flashes or profuse sweating Numbness of extremities None of the above
Does your worrying, panic attacks or fear of future panic attacks interfere with any of your major life activities?*	Yes No
Major Life Activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.	
Step 5 of 5 - Part V: Panic Disorder	
Do you often feel sad or depressed for unknown reasons?*	Yes No
If you answered yes, how often have you felt sad or depressed in the last 30 days?	Daily Several times per week A few times per month
On a typical day, how long do your feelings of sadness or depression persist?*	Less than 1 hour 1 – 3 Hours 3 – 5 Hours Greater than 5 hours None of the above

Has your depression or feelings of sadness caused significant changes in appetite, causing you to eat significantly more or less?	Yes No
Have you lost interest in activities you previously enjoyed because of feelings of sadness or depression?*	Yes No
Do you often have feelings of worthlessness or often experience low self-esteem?*	Yes No
Do you have difficulty sleeping or sleep too much? If so, in the last 3 months how often do you experience difficulty sleeping?*	Daily Several times per week A few times per month
Do the unwanted feelings of sadness or depression interfere with any major life activity.* Major Life Activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working	Yes No
In your past and/ or present life experiences, has had having an animal helped alleviate/ ameliorate your complaints, problems or issues, and is that the reason in which prompted you to submit this questionnaire?*	Yes No
If you answered YES above, please let your therapist know why your animal helps you. Please use this space to communicate anything else you would like your therapist to be aware of.	Very comforting. I don't feel anxious and having Roscoe is calming.

On the sole basis of these responses, Licensed Professional Counselor Dana Flynn of Austin, Texas issued an ESA Letter, a copy of which is attached hereto at Exhibit M. This is the same Dana Flynn who signed the Therapy Pet ESA Letter discussed above (the most egregiously fraudulent of all the ESA Letters addressed herein). Except for patient name and birthday, these letters are word-for-word identical, as is probably also the case with every other bogus ESA Letter Flynn has issued.

III. THE IMPROPRIETY AND ILLEGALITY OF ESA LETTER MILLS

A. Bogus Diagnoses in Violation of Professional Standards

1. Unequivocal Professional Condemnation of ESA Letter Mills

Review of the fruits of Delta’s investigations, analysis of literature containing expert/medical commentary, and study of anecdotal reports in media outlets across the country all yield one inarguable conclusion – in relation to most, if not all, ESA Letter Mills, the underlying examination upon which the relevant diagnosis is made is necessarily and indefensibly insufficient. **The involved healthcare givers are accordingly, as a matter of law, engaged in fraud and committing professional malpractice and egregious violations of their respective governing codes of professional ethics with every bogus ESA Letter that is issued.** According to William Deardorff, Ph.D of the American Board of Professional Psychology (“ABPP”), “[the vast majority of these [ESA Letter Mill] web sites begin by hav[ing] the user take a medical or psychological ‘questionnaire’. It is clear that these questionnaires are not actually standardized tests with specific scoring and interpretation algorithms (based on empirical research).” (*Deardorff, “So You’ve Been Asked to Certify an Emotional Support Animal: Ethics and Risk Management,” BehavioralHealthCE Program Materials (April 30, 2017) (“Deardorff Article”)*) (copy attached at Exhibit P). Dr. Deardorff concludes that “these questionnaires very likely [do] not have any predictive value in terms of determining a DSM diagnosis, predicting the user’s response to the service/support animal

in term of symptom reduction, etc.” (*Id.*). Some courts considering ESA Letter-related issues in the housing setting have likewise indicated that an insufficient basis for the underlying diagnosis – even one that includes in-person counseling sessions – will invalidate the diagnosis and the corresponding ESA Letter:

Although the defendants could not have known this at the time, the record shows that at the time Dr. Evans signed this one-page letter, his entire treatment of plaintiff consisted of two recent one-hour counseling sessions. During the second session, the plaintiff gave Dr. Evans the “text” or “template” for the letter that he wanted to be sent to Shoreline. Dr. Evans testified during deposition that he used “much” of what the plaintiff wrote, although he “probably made some changes” to the letter before sending it to the board.

Hawn v. Shoreline Towers Phase I Condominium Association Inc., 347 Fed. Appx. 464, WL 691378 (N.D. Fla. 2009) (granting summary judgement to the defendant condo association); see also *Lucas v. Riverside Park Condominiums Unit Owners Association*, 776 N.W.2d 801 (N.D. 2009) (defendant prevailed in part because the plaintiff’s ESA Letters were “conclusory and ambiguous”).

Noting that “[t]he certification of ESAs has become a large commercial enterprise,” Deardorff explained that, even in relation to ESA Letter Mills that use a combination of a questionnaire and a follow-up call, “making a psychiatric diagnosis based on a cursory questionnaire and a telephone interview seems unethical on its face.” (*Exhibit P, Deardorff Article*). Deardorff stated without qualification that “[a]ny mental health professional who participates in these online . . . ESA certifications . . . is likely acting in an unethical manner.” (*Id.*). William Allen, a professor of medical ethics at the University of Florida College of Medicine concurred, stating that “it’s not really adequate to simply take in some survey information and issue somebody a letter that’s a real diagnosis or some disability other than the fact that we all like dogs.” (*Sweeney, “Airline Industry: Emotional Support Animal Fraud Increasing,” WINK-TV News (Fort Myers, Fla.)*, <https://www.winknews.com/2017/02/02/airline-industry-emotional-support-animal-fraud-increasing/> (Feb. 2, 2017) (“*Sweeney Article*”) (copy attached at Exhibit Q)).

In an article published on his blog at the Psychology Today website, Western Carolina University emeritus professor of psychology Hal Herzog concluded, “There are a couple of ways you can get one of these letters. The wrong way is to purchase it from a bogus outfit like CertaPet. . . . The right way, on the other hand, is to obtain an emotional support animal letter from the doctor or therapist who is treating you.” (*Herzog, “Emotional Support Animals: The Therapist’s Dilemma,” Psychology Today*, <https://www.psychologytoday.com/blog/animals-and-us/201607/emotional-support-animals-the-therapists-dilemma> (July 19, 2016) (“*Herzog Article*”) (copy attached at Exhibit R)). Discussing the proliferation of online ESA Letter Mills, the former chair of the Ethics Committee of the American Psychological Association – forensic psychologist Jeffrey

N. Younggren, Ph.D. of the University of Missouri – characterizes the cursory or non-existent “commercial evaluative services” conducted by the mental healthcare professionals working with ESA Letter Mills as “questionable from a professional standards perspective and inconsistent with psychological ethics and forensic standards and the law.” (*Younggren, Examining Emotional Support Animals and Role Conflicts in Professional Psychology, Professional Psychology: Research and Practice, Vol 47(4) at 255- 260 (“Younggren Article”) (copy attached at Exhibit S)*). Younggren also noted the lack of rigorous empirical study in the field of emotional support animals and concluded that:

[g]iven the paucity of evidence regarding the efficacy of ESAs in augmenting human physical/mental health, it is problematic that psychologists are writing letters of support for their patient’s need for an ESA. . . . Psychologists who perform these assessments also need to be aware of how little scientific literature exists that supports the assumption that the presence of an animal has any palliative impact on a patient. The dearth of research evidence showing that the presence of the animal is necessary only makes the determination and subsequent recommendation more complex.

(*Id.*) Younggren stressed the work and time that a legitimate DSM diagnosis – and thus a legitimate ESA Letter determination – actually require:

Like all forensic functions, a disability determination that would justify special accommodations for an ESA is almost always a complex professional activity that requires records review, consultation with treating professionals, interviews, and possibly psychological testing. Unlike the services offered by those who provide questionable, online assessments, determinations of psychological disability are not easy and are time consuming. Simply put, they should be performed with all of the care and caution of any forensic assessment. What is clear from the literature regarding the use of ESAs is that the person that qualifies for an ESA not only has to present with a DSM diagnosis, but they have to be significantly impaired by that psychological disorder or problem. Finally, the presence of the ESA has to have a significant impact on their psychological disorder or problem such that without its presence, the individual cannot adequately function. In essence, this type of determination is a complex process.

(*Id.*; see also Clay, “Is That a Pet or a Therapeutic Aid?,” *Monitor on Psychology, Vol 47, No. 8 at 38-40 (September 2016) (citing required elements of a diagnosis justifying the issuance of an ESA Letter, which includes in-person observation of the animal and the applicant) (“Clay Article”) (copy attached at Exhibit T)*).

Deardorff related his anecdotal experience of visiting an online ESA Letter Mill and responding “sometimes” to each of the questions on the required questionnaire. (*Exhibit*

P, Deardorff Article). (On the basis of the questions he reproduced, it appears that he may have visited the “Emotional Pet Support” website discussed above in relation to Delta’s investigation.) Deardorff explained that his intentionally middle-of-the-road responses “seemed reasonable for anyone managing the usual, and fluctuating, daily stressors in life” and emphasized that he did not believe that such responses could possibly “amount to a definitive DSM diagnosis and the ‘substantial’ need for an ESA.” (*Id.*) Upon completion of the questionnaire, Dr. Deardorff was immediately informed by the ESA Letter Mill website that he had probably qualified for either or both of a travel-related ESA Letter and a housing-related ESA Letter. (*Id.*) He was then prompted for payment. (*Id.*)

In criticizing the unethical healthcare givers who rubber-stamp ESA Letter requests, Deardorff reiterated the requisite depth and gravity of the patient’s symptoms and manifestations necessary for the diagnosis of a true “disability:”

The important issue here is the definition of “disability.” Under the law, the presence of the ESA is required because it helps to ameliorate the symptoms of the disability in some meaningful way. This goes significantly beyond a pet that happens to emotionally comfort an individual (who does not have a “substantial” psychological disability). Most pets provide some type of psychological and emotional comfort for their owners. From a legal standpoint, disability refers to a physical or mental impairment that substantially limits one or more major life activities. . . . The word “substantially” clearly goes beyond discomfort, daily stress, or normal fluctuations in mood. In addition, the ESA must be shown to provide disability-related benefit, which would imply going far beyond the individual simply enjoying company of his/her pet, or the normal positive feelings that any pet-owner might experience.

(*Id.*) Younggren echoed this concern, writing:

Legally, disability refers to a physical or mental impairment that substantially limits one or more major life activities. Another definition, taken from California law . . . defines disability as “any mental or psychological disorder or condition . . . that limits a major life activity.” “Major life activities” is to be broadly construed, and includes “physical, mental, and social activities and working.” Consequently, for the psychologist working with a patient, disability is not just a matter of discomfort, but a psychological disorder or problem that interferes with the patient’s ability to perform major life activities. Note the word substantially in the definition. **This obviously does not mean discomfort, attachment to, or just wanting to be with the animal. It means that the patient needs the presence of the animal to remain psychologically stable, ergo the term disabled.**

(Exhibit S, Younggren Article (cits. omitted and emphasis added)).

In contrast to the sham diagnostic methodology of the ESA Letter Mills, Deardorff laid out the characteristics of the bona-fide disability diagnosis necessary for the issuance of a medically-justified ESA Letter:

1[The mental health professional must be ready to] support the DSM diagnosis of the patient resulting in the disability requiring the ESA. Although the ESA letter does not need to list the diagnosis, if further information is required, that will likely need to be documented and justified.

2The mental health professional must be ready to show, in detail, how the ESA helps to ameliorate symptoms that are disability-related. Although not required in the ESA letter, further exploration for any reason would require this justification.

3The mental health professional should be ready to state whether or not she/he directly observed the patient interacting with the ESA. **Otherwise, the ESA recommendation is based solely on the patient's self-report. If that is the case, be prepared to justify why one would not pursue direct observation and how it was concluded that the results are still valid.** If observation is completed, document how the ESA helped ameliorate the symptoms (being simple emotional comfort).

4The mental health professional should be prepared to discuss the possible negative effects should the patient not be able to live with the animal, or take it on an airplane (or both). This argument must be based on the ESA providing some benefit beyond that experienced by just having a pet (either in the home or on airplane).

5A mental health professional should not write a letter unless it can be shown that the ESA provides some demonstrable benefit(s) to the patient. ("disability-related benefit").

6The mental health professional should actually be familiar with the research on emotional support animals.

(Exhibit P, Deardorff Article (emphasis added)).

In short – according to every professional who has written on the subject other than those working for/with ESA Letter Mills (see subsection 2 immediately below) – mental healthcare providers who empower the ESA Letter Mills and issue the bogus ESA Letters

described above commit a variety of ethics-related and standard of care-related violations with every fraudulent ESA Letter they sign.

2. Attempted Defense of ESA Letter Mill Practices

Discussed below are two letters prepared in defense of the practices of ESA Letter Mills and the involved mental healthcare providers. The first is from CertaPet (the “CertaPet Letter”), a copy of which is attached at Exhibit U. The second, a copy of which is attached at Exhibit V, is from Lisa Isaac, Ph.D. (the “Isaac Letter”). Isaac is a Clinical Psychologist who issues ESA Letters for Emotional Pet Support solely on the basis of the same cursory questionnaire discussed above in relation to Delta’s investigation. These two letters were prepared in response to an expose of ESA Letter Mills written by reporter Lauren Sweeney. (*Exhibit Q, Sweeney Article*).

a. The Isaac Letter

The Isaac Letter, dated January 22, 2017, represents Isaac’s response to inquiries from Sweeney, an investigative reporter who completed the online application at EmotionalPetSupport.com and – despite having no mental disability or disorder – received an ESA Letter generated by Isaac. (*Exhibit V, Isaac Letter*). As an initial matter, the Isaac Letter evidences either a blatant disregard or a profound ignorance of the law governing healthcare giver/patient relationships – in the initial portion of the letter, Isaac alleges that Sweeney, as Isaac’s “patient,” would be in grave violation of federal law were she (Sweeney) to disclose or discuss any communication to or from Isaac and/or any aspect of the questionnaire at EmotionalPetSupport.com. (*Id. (misstating the most fundamental aspect of the physician-patient privilege, which is that the privilege belongs to the patient, not the doctor)*). The Isaac Letter responded to a single question from Sweeney – how was Isaac able to assess Sweeney’s candidacy for an ESA Letter if Isaac and Sweeney never met or even spoke by phone? (*Id.*).

The gist of Isaac’s explanation was exactly what one would expect: rote recitation that the “patient’s responses are presumed to be truthful and accurate;” circular reasoning to the effect that the issuance of an ESA Letter was proper because the questionnaire responses indicated that an ESA Letter should be issued; and a specific allegation regarding Isaac’s supposed compliance with uncited and unexplained telemedicine protocols:

Our assessment protocol conforms to the clinical standard of care for remote psychological services. An in-person or telephonic clinical assessment is not a necessary component of psychological evaluation according to the American Psychological Association. Remote psychological services are considered "telemedicine" and are consistent with the statutes and regulations in Florida, where I hold an active psychologist's license.

(Id.). (Interestingly, according to Sweeney, the Florida Department of Health stated that telemedicine typically involves meeting via telephone or some type of video conferencing, and that online surveys are only part of the telemedicine process. *(Exhibit Q, Sweeney Article)*. Isaac concluded her correspondence by blaming Sweeney and other non-disabled applicants for any improper diagnoses: “As in seeking any medical care, patients should not misrepresent their need for an emotional support animal based on a fraudulent report of mental health disability.” *(Id.)*.

b. The CertaPet Letter

The undated CertaPet Letter represents CertaPet’s response to inquiries from Sweeney regarding the ESA Letter issued to Sweeney’s colleague (reporter Katie Cribbs), who completed the online application at CertaPet.com and received an ESA Letter despite having no mental disability or disorder. *(Id.; Exhibit U, CertaPet Letter)*. In response to specific questions posed by Sweeney, CertaPet:

- cited a handful of articles supporting the general concept that “animal ownership has a net positive impact on a person's psychological well being” (stressing this point with a smiley-face emoticon); *(Exhibit U, CertaPet Article)*;
- claimed that the CertaPet questionnaire is “based off the DSM-5 Cross Cutting Symptom Measures” and other portions of the DSM and therefore “filter[s] out those that may simply be trying to obtain an ESA Letter under false pretenses; *(Id.)*;
- criticized reporter Cribbs for “fabricating answers,” for using the online questionnaire for a reason other than “obtain[ing] legitimate treatment,” and for consuming therapist time that could otherwise have been spent “helping those that genuinely need it;” *(Id.)*; and
- repeatedly placed the sole blame for any “gam[ing] of the system” (*i.e.*, for any improperly issued ESA Letters) on “dishonest” and “dishonorable” applicants. *(Id.)*.

The most telling portion of the CertaPet response, however, was the attempt by CertaPet to characterize the investigative journalists’ ESA Letter-related concerns as a general attack on telemedicine:

That being said, it sounds like your question is really whether or not telehealth is a valid means of practicing medicine. Based on case studies as well as other successful ventures in health care, it seems that the answer is a resounding yes. A few prime examples would be Blue Cross Blue Shield and

Talkspace.com. Blue Cross Blue Shield saw the advantages of telehealth when it created LiveHealth Online and now has the ability to treat hundreds of thousands of patients solely through online interaction. Talkspace.com has become another great example of how telehealth can help those in need while leveraging the accessibility and comfort provided by the internet. Telehealth is not just legal, it is a highly effective means of practicing medicine. We are proud to say that we abide by all pertaining regulations surrounding telehealth as well as the generally expected standards covered by HIPAA.

(Id.). Finally, in specific response to the negative opinion of a medical ethicist consulted by Sweeney regarding the ESA Letter Mill issue, the crux of CertaPet’s unsupported, conclusory response was simply that the ethicist did not understand telemedicine and was ill-informed. *(Id.)*.

B. Conflict of Interest: Prepayments & Contingent Payments

Many ESA Letter Mills require payment prior to the taking of the online psychiatric questionnaire, between completion of the test and communication of the results, or after likely eligibility for an ESA Letter has been communicated, but prior to final certification and issuance. These ESA Letter Mills require payment in full at that time and promise a full refund if the reviewing healthcare giver does not ultimately issue the requested ESA Letter. Deardorff characterized this dynamic as “an inherent conflict of interest [that] would impair objectivity . . . [and] se[t] up a contingency that would tend to pressure the mental health professional to certify the [applicant].” (*Exhibit P, Deardorff Article*). This conflict would be multiplied many times over if – as seems almost certain to be the case with most, if not all, of the ESA Letter Mill business models – the involved mental healthcare provider is paid by the ESA Letter Mill only in relation to ESA Letter applications that are approved (*i.e.*, the provider receives no payment if he/she does not approve the application).

C. Misuse of Healthcare Giver Work

Deardorff also cites the misuse and mischaracterization of the mental healthcare provider’s abilities and expertise as another category of professional/ethical violations necessarily arising from the ESA Letter Mill model. (*Exhibit P, Deardorff Article*). Specifically, the ESA Letter Mill websites communicate expressly and implicitly that, simply by reviewing a brief multiple-choice questionnaire, a mental health professional can accurately evaluate the applicant, assess the alleged disability, make a DSM diagnosis, assess the efficacy of an emotional support animal in that particular situation, and otherwise properly provide treatment necessitated by the patient’s condition. *(Id.)*. In a worst-case scenario, an ESA Letter applicant with serious or even life-threatening mental illness may rely on the rubber-stamped ESA Letter, falsely believing that letter to be – as represented by the mental healthcare provider – full and proper treatment for the applicant’s condition.

D. Competence

The ethical guidelines for virtually every category of healthcare provider include a caveat regarding the rendering of services outside the provider's area of competence. In the setting of an ESA Letter Mill, the required areas of competency include diagnosis of DSM disorders, the severity of the symptoms and manifestations of the condition in that particular applicant, the degree of impairment (*i.e.*, does the impairment truly rise to the level of "disability"), and the efficacy in that particular patient of an emotional support animal. Notwithstanding the categories of healthcare givers listed at 14 CFR Part 382, numerous commentators have suggested that certain categories of mental healthcare givers (*e.g.*, some social workers and therapists) are not competent to perform these tasks and make a valid ESA Letter determination. (*See e.g. Exhibit P, Deardorff Article*). Therapist and Doctor of Psychology Benjamin Caldwell echoed this concern, explaining that:

questions come up about our [therapists'] scope of practice, our scope of competence, our ethics, and ultimately, what the purpose is for our work. Determining whether to write an ESA letter is not simply a matter of issuing a mental health diagnosis. It also involves assessing whether an ESA would meaningfully help. And therapists are typically not trained to make this determination. We are not trained to assess disability, and we cannot certify a client's claim for disability benefits. Given this lack of training, writing ESA letters is arguably outside of our scope of practice.

(Caldwell, PsyD, "Therapists Should Not Write Emotional Support Animal Letters," Basics of California Law for LMFTs, LPCCs, and LCSWs (4th Ed. 2017) (the "Caldwell Article") (copy attached at Exhibit W)).

IV. GRAVITY OF THE ESA ISSUE; POSSIBLE CHARGES AND CAUSES

The issues presented by the fraudulent ESA Letters touch upon both individual mental health and the well-being and safety of the general public. This is especially true in light of the increased likelihood of incidents involving attacks on third-party passengers by an untrained emotional support animal and the above-discussed possibility of an erroneous under-diagnosis of an applicant – *i.e.*, a patient who mistakenly believes that the emotional support animal is complete and sufficient treatment for his/her true mental disorder. These issues also affect millions of air travelers each year, who may be inconvenienced (or worse) as a result of bogus emotional support animals in the passenger cabin of the aircraft.

From early June to early August 2018, Delta had at least six incidents involving bites by traveling animals. (*S. McCartney, "On U.S. Planes, the Dogs are Winning," Wall Street*

Journal (August 8, 2018) at <https://www.wsj.com/articles/on-u-s-planes-the-dogs-are-winning-1533734133> (“WSJ-Dogs”). The Wall Street Journal reported in August 2018 that the number of emotional support animals carried by U.S. airlines in 2017 was 751,000, representing a 56% increase from the prior year. (*Id.*) The total number of animal-related incidents on Delta flights has increased 84% in the last two years alone. (*Id.*) There can be no doubt that this is a vital matter of great public interest – indeed, when the Department of Transportation asked for public input on this issue in May 2018, it received almost 4,500 comments. (*Id.*) The controversy also calls into play the competence and trustworthiness of licensed professionals dutybound by specific standards of care and codes of ethics. Finally, the bogus certification of emotional support animals results in the theft of services from a vital sector of the transportation industry (*i.e.*, all commercial airlines).

Some states have already enacted laws that may give additional teeth in the fight against both the issuers and the recipients of bogus ESA Letters. For example, in 2014, the Colorado General Assembly adopted changes to its state code, prohibiting and criminalizing fraudulent claims of disability. Colorado State Code 18-13-107 states that “a person shall not falsely impersonate an individual with a disability” as that term is defined within state code. Florida has likewise criminalized such conduct, specifically making false representation of a service animal punishable by up to 60 days in jail and a \$500 fine. Section 413.08 of the Florida Statutes stipulates that “a person who knowingly and willfully misrepresents herself or himself, through conduct or verbal or written notice, as using a service animal and being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree.” Other states, as well, including Indiana, Hawaii, Wisconsin, South Carolina, South Dakota, Oklahoma, and others, have active or proposed emotional support animal-specific laws, as well.

In May 2018, on behalf of the State of California, the Board of Behavioral Sciences – Department of Consumer Affairs (the “Board”) filed an action (the “Accusation”) against Licensed Marriage and Family Therapist Carla Jean Black (“Black”) arising from her issuance of fraudulent ESA Letters, including such letters ordered by customers of “The Dogtor.” The Board’s Causes for Discipline included, among others: (1) Unlicensed Practice, insofar as Black issued ESA Letters to non-California residents; (2) Dishonest, Corrupt, or Fraudulent Acts, for Black’s issuance of ESA Letters without having made a true and proper assessment of the recipient’s mental health; (3) General Unprofessional Conduct, insofar as she issued baseless ESA Letters and failed to inform patients of the risks, consequences, and limitation of the baseless diagnoses and the bogus ESA Letters; (4) Gross Negligence, insofar as she issued ESA Letters with no meaningful patient assessment; and (5) False Advertising, in relation to her advertisements for her bogus ESA Letters. In relation to the various causes set forth in the Accusation, the Board seeks the revocation or suspension of Black’s professional license and reimbursement of all investigative and matter-related costs. A copy of the Accusation is attached hereto at Exhibit X.

CONCLUSION

In short, the sale of bogus ESA Letters by ESA Letter Mills and the certification/execution of those letters by the involved mental healthcare professionals necessarily give rise to a plethora of fraud, malpractice, consumer protection, and theft-related criminal and civil violations. Given the breadth and nature of the underlying fraud and other misconduct, the ESA Letter scam might also give rise to charges and civil claims pursuant to federal RICO and state RICO statutes against the ESA Letter Mills and the involved mental healthcare professionals. Finally, it is imperative that professionals who are found to have violated laws, regulations, and/or professional canons in relation to fraudulent ESA Letters be held accountable via meaningfully severe consequences. **ESA Letter Mills could not function without complicit mental healthcare professionals to sign and issue the bogus ESA Letters.** The effects of such prosecutions will resonate far beyond any given case-at-bar because of the deterrent effect of such prosecutions in relation to other mental healthcare professionals deciding whether to participate or to continue participating in the fraudulent issuance of ESA Letters for ESA Letter Mills.

Should you have any questions regarding the content of this Memorandum, or if you require or would like to request assistance from Delta or the author in any way in relation to the facts and law discussed herein, please contact the author via the contact information shown on the cover page of this Memorandum.