

CAUSE NO. 16-O-075

TOM AND PAULA GOYNES,
INDIVIDUALLY AND D/B/A
THE SAN MARCOS RIVER
RETREAT
Plaintiffs

IN THE DISTRICT COURT

v.

CALDWELL COUNTY, TEXAS

RKY, LTD D/B/A DON'S FISH
CAMP, TEBO III
MANAGEMNT, LLC, AND
TEXAS STATE TUBES, LLC
Defendants.

421ST JUDICIAL DISTRICT

ORDER AND TEMPORARY INJUNCTION

After oral argument and a partial hearing, the parties have submitted an agreed Temporary Injunction and as such, the Court **GRANTS** Plaintiffs requested relief for a temporary injunction and **ORDERS** the Defendants' compliance with the following terms until such time as the Court's final hearing for a permanent injunction. The Court **ORDERS** the Clerk of Court to issue a Writ of Injunction to Defendants as stated below as soon as is possible.

INJUNCTIVE RELIEF

The parties agree and it is **ORDERED** that specifically:

1. Defendants will provide additional signage at their location(s) similar to the pictures of signage shown at the August 4, 2016.
2. Defendants will display a looping video that will discuss the desired use and prohibited behavior along the San Marcos River. Each customer, prior to entering the San Marcos River, shall review the video in an area where all customers can hear and view the video. The video, along with the additional

signs and waivers (further defined below), will serve as an orientation to customers prior to entering into the San Marcos River. The looping video shall include language similar to the following items:

- a. “Your float of approximately 2 miles is completely through private property, including a Scout and Church Camp. Respect the rights of others. Absolutely no loud, offensive and/or profane language. Thank you.”
- b. “No beer bonging allowed and no participating in ‘bonging’ with anyone, including non-customers on the river.”;
- c. “No leaving your tube or stopping along the way, except for emergencies. Remember that entering property along the river is trespass and law enforcement personnel may fine and could eject you from the float.”;
- d. “Music players will not be audible beyond 50 feet. Please be considerate of our neighbors.”;
- e. “If, in the opinion of our friendly off duty officers at the put-in, you are intoxicated, and/or behaving erratically, you will not be allowed to enter the river but will take a ‘time-out’ at the put in until such time as you are deemed ready to enter the water.”
- f. “We will have Monitors along the way on kayaks to assist and remind you of the rules – they are authorized to check the contents of your ice chests and are in communication with law enforcement. They should be courteous, friendly, and respectful to you. Thank you for being the

same to them. We want you to enjoy our beautiful river and its environment along with all the other families and children of all ages.

Have a great trip.”

3. Defendants will provide a uniformed officer at the tube put-in and take-out locations from 10:30 a.m. - 4:30 p.m. on weekends and holidays (“Peak Times”), in addition to the approximately 8-12 other officers currently stationed along the river at various locations. The uniformed officer will be instructed to report any offenses or citations issued to Defendants daily. Each officer will specifically have the authority to prohibit Defendants’ customers from entering the river from the put-in if they appear to be a danger to themselves or others or exhibit behavior that warrants legal intervention, or if they are too intoxicated and will have authority to intervene along the river in response to any dangerous, disorderly or unlawful conduct, or trespassing. The above uniformed officers at the put-in and take-out are in addition to Defendants continuing to furnish to Plaintiffs two police officers each weekend, all day long, for specific protection of Plaintiffs’ property. Further, any off-duty law enforcement, security personnel, or independent contractor charged with enforcement of these provisions should specifically be instructed to enforce the “no stopping” provision along the San Marcos River.
4. Defendants shall provide collectively at least four (4) monitors on kayaks or other floating devices in the San Marcos River (“Monitors”) during Peak Hours, and at least 2 or 3 Monitors at all other times. The Monitors will also prepare summary reports on the days they work, which will include reports of

any referrals to the officers and such reports shall be made available to Plaintiffs and other interested parties.

5. Defendants will “card” all customers along the San Marcos River, meaning that prior to entering the San Marcos River, Defendants will ask for a state-issued identification, or other form of identification (I.D.), showing the customer’s age in order to provide a wrist band, or some other form of identification, to each customer that is over the age of 21 and thus legally permitted to drink alcohol. The contractors or employees of Defendants who are tasked with carding customers are not required to be certified by the Texas Alcoholic Beverage Commission (TABC) nor are they responsible for attempting to determine the validity or authenticity of any I.D. At the time of carding, a wrist band, or some other form of identification, will be provided to those over 21 years of age. The agreement to card customers who intend to drink alcohol is being performed as an accommodation to the other persons that use the San Marcos River or live on the river and to provide security personnel, including off-duty police officers, a means to better identify under-age drinking but shall not create a duty of Defendants to any third parties nor create any liability for Defendants or be the basis of a negligence or negligent undertaking cause of action.
6. Defendants waivers will be amended to allow Defendants’ employees, agents and contractors to check the contents of customers’ coolers and such checks shall occur at the time that each customer is carded before entering the San Marcos River. Should prohibited items be found in customers’ coolers,

including alcohol if the customer is under 21, Defendants' employees', agents' and contractors will reiterate the rules and request that the customers remove the items from their cooler.

7. Defendants will provide a reusable trash bag to all individual tubers who will take one and instruct each and every customer that "empties" shall be placed in the bag.
8. Defendants shall require the entity Pristine Texas Rivers, Inc., or any other clean-up association, group, or company engaged under the Memorandum of Understanding (MOU) entered into between RKY, Ltd. d/b/a Don's Fish Camp and Texas State Tubes, LLC in February 2015 to provide a video recording of their weekly river clean-ups that are performed during the tubing season or at any time. These video recordings will be made available weekly to Plaintiffs and other agreed parties.
9. Defendants will amend their waivers to inform their customers that there are no glass containers allowed on the San Marcos River. If necessary, this requirement will be reiterated during the checking of the customers' coolers and customers who have glass containers will not be permitted to enter the San Marcos River until they forfeit the glass container.
10. Defendants' waiver that is signed by all customers and signage visible to all customers and loop video watched by all customers before entering the San Marcos River will be amended to inform customers that no beer bongs are allowed.
11. Defendants waivers will include an agreement that customers' music must not

be audible past 50 feet.

12. This Temporary Injunction and the mandatory nature of these provisions shall apply, and is binding upon, any and all successors, assigns or separate corporate entities initiated or created by these same principals or respective representatives or business partners of the Parties.

Nothing in this Agreed Temporary Injunction precludes any party from seeking further injunctive relief.

Timeline for Injunction

Defendants shall provide a copy of the amended waiver to the parties and to this Court by September 1, 2016. Defendants shall install new signs and provide the loop video to all customers beginning September 15, 2016. Defendants shall immediately provide additional police officers or security personnel as described above as well as Monitors in order to enforce state and local law.

Bond

The Court ORDERS Plaintiffs to pay a \$500 cash bond to the Clerk of Court by August 19, 2016 in connection with the above injunctive order.

Trial Setting

The Court sets this matter for trial and a hearing on a permanent injunction for November 28, 2016.

FILED this 29 day of Aug 2016
2:00 P. M
TINA MORGAN FREEMAN
CLERK, DISTRICT COURT, CALDWELL CO TX
By Juanita Allen Deputy

Signed this day 29th of August, 2016

[Signature]
Judge