

FILED

AT _____ O'CLOCK _____ M

MAY 04 2006

NO. C-1096-06-A

THE STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT OF CLERK
District Courts, Hidalgo County
By _____ Deputy

v.

HIDALGO COUNTY, TEXAS

JOEL MOLANO,
Defendant

92 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of JOEL MOLANO, hereinafter referred to as defendant, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to T EX. R. Civ. P. 190.2(b)(3).

NATURE OF THIS SUIT

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection Division against defendant for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, T EX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (hereinafter "DTPA"). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. T EX. BUS. &

COM CODE ANN. § 17.47.

DEFENDANT

3. Defendant JOEL MOLANO is an individual who regularly conducts business in Hidalgo County, Texas, and may be served with process by serving him at his place of business at 10232 N. Conway, Mission, Hidalgo County, Texas.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to § 17.47(b) of the DTPA.

VENUE

5. Venue of this suit lies in Hidalgo County, Texas, for the following reasons:

- a. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and
- b. Under DTPA § 17.47(b), venue is proper because defendant has done business in the county of suit.

PUBLIC INTEREST

6. Plaintiff, STATE OF TEXAS, has reason to believe that defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that defendant has, by means of these unlawful acts and practices, caused damage to and acquired money or property from persons, and that defendant adversely affects the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer

Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

8. *Whenever in this petition it is alleged that defendant did any act, it is meant that defendant performed or participated in the act, or that the officers, agents or employees of defendant performed or participated in the act on behalf of and under the authority of defendant.*

NOTICE BEFORE SUIT NOT GIVEN

9. There is good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary restraining order to enjoin defendant from continued violations of the DTPA. If defendant is not immediately restrained, he will continue to engage in the unauthorized practice of law and thereby cause immediate and irreparable injury, loss, or damage to persons who receive his services. Namely, the provision of legal services and/or advice by defendant, a non-attorney, will have dire legal consequences and prejudice the legal rights of persons seeking benefits under state law and/or federal laws. As such, the Consumer Protection Division filed this lawsuit without notice to defendant, as authorized by § 17.47(a) of the DTPA.

NATURE OF DEFENDANT’S OPERATIONS

10. Defendant Joel Molano owns and operates a business that purports to be a document preparation service for uncontested matters like divorce, deed transfers, and immigration

proceedings.

FACTUAL ALLEGATIONS

11. Defendant Joel Molano holds himself out to the public as a Registered Paralegal and advertises his business by posting a large sign in front of his place of business, located at 10232 N. Conway, Mission, Hidalgo County, Texas, that reads, in pertinent part, as follows:

Quik Docs
Document Serv.
Divorce \$250
Deed/Trasposos \$55
Immigracion \$150
Notary Public
519-9002

A copy of photograph taken of defendant's storefront sign taken in November 2005 is attached hereto as State's Exhibit 1 and incorporated herein for all purposes.

12. Based on information and belief, plaintiff alleges that defendant is engaged in, has engaged in, or is about to engage in activities that constitute the unauthorized practice of law by:

- a. interviewing clients for the purpose of preparing pleadings or documents in judicial or administrative proceedings relating to divorce and immigration matters;
- b. giving legal advice with respect to divorce and immigration matters;
- c. drafting and preparing pleadings, documents, and/or papers incident to divorce actions and immigration proceedings;
- d. exercising discretion or analysis in selecting and preparing legal forms in divorce actions and immigration proceedings; and/or
- e. preparing legal instruments affecting title to real property.

13. Defendant solicits, charges, or receives compensation for performing the services described in paragraph 12 above. Defendant was commissioned as a Notary Public for the State of Texas by the Texas Secretary of State on September 20, 1999, and was a notary public at such time when he solicited, charged, or received compensation for preparing documents on behalf of clients for judicial or administrative proceedings.

14. Defendant is not now nor has ever been an attorney at law duly licensed by the State of Texas to engage in acts, practices and/or conduct which constitute the practice of law. In addition, defendant is not now nor has he ever been a recognized organization or accredited representative by the Board of Immigration Appeals as able to represent individuals in immigration matters or in proceedings before the immigration courts.

DTPA VIOLATIONS

15. Defendant, as alleged above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA as follows:

- a. By advertising, offering for sale, selling, or providing a service that constitutes the unauthorized practice of law, defendant is engaging in or has engaged in an act or practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA;
- b. By agreeing to perform a service that constitutes the practice of law, defendant is representing, by implication, that he has the status of a licensed attorney, which he does not, in violation of §17.46(b)(5) of the DTPA;
- c. By agreeing to perform a service which constitutes the unauthorized practice of law,

defendant is representing that his agreement with customers confers or involves an obligation which is prohibited by law, in violation of §17.46(b)(12) of the DTPA; and

d. By violating Section 406.017 of TEX. GOV'T CODE ANN., defendant is in violation of the DTPA. Section 406.017(f) of the Notary Public Law provides that failure to comply with Section 406.017 of the Act is a deceptive trade practice and is actionable under the DTPA.

NOTARY PUBLIC LAW VIOLATIONS

16. Defendant, as alleged above, has in the course of trade and commerce violated Chapter 406 of the Texas Government Code, TEX. GOV'T CODE ANN. § 406.001, *et seq.* (herein referred to as "Notary Public Law") as follows:

a. By soliciting or accepting compensation to prepare documents for another in judicial or administrative proceeding, defendant, a notary public, is in violation of TEX. GOV'T CODE ANN. § 406.017(a)(2); and

b. By soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of Texas or the United States, defendant, a notary public, is in violation of TEX. GOV'T CODE ANN. § 406.017(a)(3).

EQUITABLE RESCISSION

17. All agreements between defendant and his clients should be subject to the equitable remedy of rescission.

INJURY TO CONSUMERS

18. Defendant has, by means of these unlawful acts and practices, obtained money or property

from consumers who are entitled to restitution, or in the alternative, has caused actual damages to identifiable persons who are entitled to compensation.

19. Because defendant has engaged in the unlawful acts and practices described above, defendant has violated the law as alleged in this petition. Unless restrained by this Honorable Court, defendant will continue to violate the laws of the State of Texas and cause injury to the general public.

PRAYER

20. WHEREFORE, plaintiff prays that defendant be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon trial of this cause a PERMANENT INJUNCTION be issued, restraining and enjoining defendant, his officers, agents, servants, employees and attorneys and any other person in active concert or participation with defendant from engaging, directly or indirectly, in the following acts or practices:

- a. Operating a business or conducting business at 10232 N. Conway, Mission, Hidalgo County, Texas;
- b. Owning, operating, or managing a legal document preparation business or service;
- c. Advertising, offering for sale, selling, or providing a legal document preparation service;
- d. Accepting or soliciting money or valuable consideration for performing a legal document preparation service;
- e. Advising or counseling any person as to matters of law or legal rights under city, state or federal laws, rules, and/or regulations, including, but not limited to, matters relating to divorce actions and immigration proceedings;

- f. Advising or counseling any person whether or not to file a pleading, document, or other form to obtain relief or a benefit of any kind under city, state, or federal laws, rules, and/or regulations, including, but not limited to, matters relating to divorce actions and immigration proceedings;
- g. Accepting or soliciting money or valuable consideration for advising or counseling any person as to matters of law or legal rights under city, state or federal laws, rules, and/or regulations, including, but not limited to, matters relating to divorce actions and immigration proceedings;
- h. Selecting, preparing, or completing for any other person a pleading, document, or other form incident to legal actions or immigration proceedings;
- i. Drawing any paper, document, or instrument effecting or relating to secular rights excepting documents to which he is a primary party;
- j. Selecting, preparing, or completing a legal instrument affecting title to real property, including, but not limited to a deed, deed of trust, note, mortgage, and transfer or release of lien;
- k. Representing, directly or by implication, that defendant has the skill, expertise, or competence to handle legal matters or holding himself out to any person as competent to give legal advice or counsel;
- l. Representing, directly or by implication, that defendant can obtain relief or a benefit of any kind on behalf of another from any officer, agency, or employee of the this state or the United States;

- m. Advertising, offering for sale, selling, or performing a notarial service;
- n. Accepting money or valuable consideration for performing a notarial service;
- o. Soliciting employment for any lawyer or furnishing an attorney to render legal services for another person;
- p. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of defendant currently or hereafter in defendant's possession, custody or control except in response to further orders or subpoenas in this cause; and
- q. Representing, directly or by implication, that this Court or the Office of the Attorney General has approved any good or service sold or offered for sale by defendant, or approved of any of defendant's business practices.

21. Plaintiff, STATE OF TEXAS, further prays that this Court order defendant to post notice at his place of business, 10232 N. Conway, Mission, Hidalgo County, Texas, which notice shall be conspicuous, in bold-faced type of a minimum size of 16 points, in both English and Spanish, and shall state:

JOEL MOLANO HAS BEEN SUED BY THE OFFICE OF THE TEXAS ATTORNEY GENERAL FOR ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW.

THE DISTRICT COURT HAS ORDERED JOEL MOLANO TO STOP CONDUCTING A LEGAL DOCUMENT PREPARATION BUSINESS. THIS OFFICE IS CLOSED UNTIL FURTHER ORDER OF THE COURT.

IF YOU HAVE ANY QUESTIONS, OR IF YOU BELIEVE YOU WERE A

VICTIM, PLEASE CALL 956-682-4547, EXT. 114.

22. Plaintiff, STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of defendant and witnesses prior to any scheduled Temporary Injunction hearing and prior to defendant's answer date, with reasonable shortened notice to defendant and his attorney, if known.

23. In addition, plaintiff, STATE OF TEXAS, respectfully prays that this Court will:

- a. Adjudge against defendant civil penalties in favor of plaintiff, STATE OF TEXAS, in the amount of \$20,000 per violation of the DTPA;
- b. Order defendant to restore all money or property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;
- c. Adjudge against defendant reasonable attorney's fees and court costs pursuant to ~~TX~~ GOV'T. CODE ANN. § 402.006;
- d. Adjudge against defendant prejudgment and postjudgment interest at the highest lawful rate;
- e. Rescind all agreements entered into by and between defendant and consumers;
- f. Appoint a receiver or sequester defendant's assets if defendant has been ordered by this Court to make restitution and defendant has failed to do so within three months after the order to make restitution has become final and nonappealable;
- g. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).

Further, plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which plaintiff,

STATE OF TEXAS, may be justly entitled.

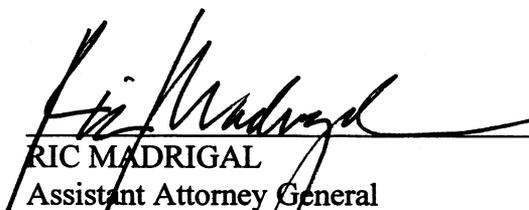
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
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Attorney for Plaintiff



STATE'S
EXHIBIT
1

VERIFICATION

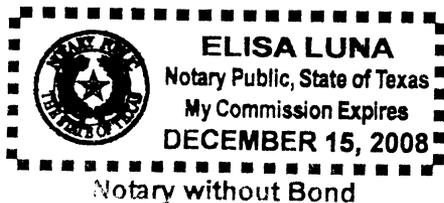
STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION, and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

Rozanne N. Lopez
ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 4th day of May, 2006.



Elisa Luna
NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS