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THE STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT

v.

CAMERON COUNTY, TEXAS

NEWCO IMAGING, L.L.C., and

HAROLD F. TAYLOR, Individually,
Defendants.

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

COMES NOW THE STATE OF TEXAS, plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of NEWCO IMAGING, L.L.C., and HAROLD F. TAYLOR, individually, referred to as defendants, 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 TEX. R. Civ. P. 190.2(b)(3).

NATURE OF THIS SUIT

2. This action is brought by Attorney General Greg Abbott through his Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS, and at the request of the Texas Commissioner of the Department of State Health Services, or authorized agent, under §§ 401.342 and 401.381 of the Texas Radiation Control Act ("TRCA"), TEX. HEALTH & SAFETY

CODE ANN. § 401.0005 *et seq.*

DEFENDANTS

3. Defendant NEWCO IMAGING, L.L.C. is a Texas corporation whose business address is P.O. Box 6266, Brownsville, Texas 78523. Defendant may be served with process by serving its registered agent Harold F. Taylor at 164 Shoreline Drive, Brownsville, Texas 78521, or at his place of business at 8105 East 14th Street, Brownsville, Texas.

4. Defendant HAROLD F. TAYLOR is an individual and may be served with process at defendant's place of residence at 164 Shoreline Drive, Brownsville, Texas 78521, or at his place of business at 8105 East 14th Street, Brownsville, Texas.

JURISDICTION

5. This Court has jurisdiction over this action under the TRCA §§ 401.342 and 401.381.

VENUE

6. Venue of this suit lies in Cameron County, Texas, for the following reasons:

a. Under TRCA § 401.342(a), venue is proper because the violation or threat of violation is alleged to have occurred in the county of suit; and

b. Under TRCA § 401.381(b), venue is proper because the violation alleged herein occurred in the county of suit.

PUBLIC HEALTH AND SAFETY

7. The Texas Commissioner of the Department of State Health Services, through his authorized agent, believes that defendants have violated, are violating, and will continue to violate the TRCA, as alleged below, and that unless defendants are enjoined from doing so, their continued operation in such manner poses a threat to the public health and safety.

TRADE AND COMMERCE

8. Defendants, at all times described below, engaged in conduct that constitutes trade or commerce.

ACTS OF AGENTS

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

FACTUAL ALLEGATIONS

10. Defendant, NEWCO IMAGING, L.L.C., (hereinafter referred to as "defendant Newco") owned a facility that did business as Central Imaging and that was located at 864 Central Blvd., Ste. 600, Brownsville, Cameron County, Texas. From on or about July 22, 2004, to on or about February 12, 2008, defendant Newco was certified for the use of a mammography system (as defined in 25 TEX. ADMIN. CODE § 289.230(c)(44)) authorizing defendant Newco to conduct breast cancer screening or diagnosis through mammography activities, including the operation of equipment to produce a mammogram.

11. Based on information and belief, an inspector from the Texas Department of State Health Services determined that a large volume of mammography films and reports were sold and transferred to San Antonio Silver Recovery by defendant Newco in June and July 2008. In November 2008, a TDSHS inspector reviewed a sample of such records purchased and held by

San Antonio Silver Recovery and found numerous mammograms taken at defendant Newco's facility within the last five years.

12. Based on information and belief, an inspector from the Texas Department of State Health Services determined that defendant Newco ignored requests by a medical institution on behalf of female patients, who underwent a mammography examination at the facility, to provide the medical institution with the mammograms and copies of the patients' reports. In addition, on or about February 2008, defendant Newco ceased the operation of Central Imaging and closed its facility located at 864 Central Blvd.

13. Defendant, HAROLD F. TAYLOR, was employed by defendant Newco as the director and/or managing director and operated the facility described in paragraph 10 above. In his capacity as director, defendant Taylor has the duty and responsibility to maintain, store, and retain mammography films and reports in accordance with the Texas Radiation Control Act and rules promulgated thereunder. However, defendant Taylor caused, allowed, or permitted the violations of law alleged herein by failing to maintain mammography films and reports in a permanent medical record for the required minimum period of time and by failing to transfer the original mammograms and copies of the patient's reports to the medical institution requesting them. In addition, since the time the operation of Central Imaging ceased, defendant Newco and defendant Taylor have failed to provide a means by which a medical institution, physician, or patient would be able to request and get hold of a patient's mammogram and reports.

TEXAS RADIATION CONTROL ACT VIOLATIONS

14. Defendants have engaged in conduct, as alleged above, in violation of the TRCA § 401.342 by engaging in an act or practice that violates a rule adopted or issued by the Texas Department of State Health Services. Specifically, defendants failed to maintain mammography films and reports in a permanent medical record for the prescribed five or ten year minimum in violation of 25 TEX. ADMIN. CODE § 289.230(t)(4)(A). In addition, defendants failed to transfer the original mammograms and copies of the patient's reports to a medical institution upon request on behalf of patients in violation of 25 TEX. ADMIN. CODE § 289.230(t)(4)(B).

CIVIL PENALTY

15. As authorized by TRCA § 431.381, the Attorney General may file suit to recover a civil penalty in a district court from a person who causes, suffers, allows, or permits a violation of the TRCA, a department rule or order, or a license or registration condition. A civil penalty of not less than \$100 or more than \$25,000 for each violation and for each day that a continuing violation occurs may be assessed.

PRAYER

16. WHEREFORE, plaintiff prays that defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, ordering and commanding defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with defendants, to:

- a. For mammograms performed at the facility, keep and maintain mammography films and reports in a permanent medical record at a suitable storage facility for a minimum of five years, or if no additional mammograms of the patient are performed at the facility, for a minimum of ten years;
- b. Recover mammography films and reports transferred to San Antonio Silver Recovery and retain them in a permanent medical record at a suitable storage facility for a minimum of five years, or if no additional mammograms of the patient are performed at the facility, for a minimum of ten years;
- c. Transfer the original mammograms and copies of the patient's reports to a medical institution, a physician, or to the patient directly within 30 days of a request by or on behalf of the patient; and
- d. For each patient whose mammogram was performed at the Central Imaging facility within the last ten years, provide written notice, in English and Spanish, of the availability of the patient's mammograms and reports, which notice shall be mailed to the patient's last known address and shall state:
 - i. Newco L.L.C. has ceased operations as Central Imaging;
 - ii. Patient's mammograms and reports are available and may be claimed;
 - iii. Specific contact information and method by which a patient may claim her mammograms and reports;
 - iv. There is no cost for claiming a patient's mammograms and reports; and

- v. If the patient's records are not claimed by the patient within one year of the date on the notice, the records may be destroyed.

17. Plaintiff, STATE OF TEXAS, further prays that this Court issue an injunction 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. For mammograms performed at the facility, failing to maintain mammography films and reports in a permanent medical record at the facility for a minimum of five years, or if no additional mammograms of the patient are performed at the facility, for a minimum of ten years;
- b. Failing to transfer the original mammograms and copies of the patient's reports to a medical institution, a physician, or to the patient directly within 30 days of a request by or on behalf of the patient;
- c. 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 defendants currently or hereafter in defendants' possession, custody or control except in response to further orders or subpoenas in this cause; and
- d. Representing, directly or by implication, that this Court, the Texas Department of State Health Services, or the Office of the Attorney General has approved any

good or service sold or offered for sale by defendants, or has approved any of defendants' business practices.

18. Plaintiff THE STATE OF TEXAS further prays that this Court will:

- a. Adjudge against defendants civil penalties in favor of plaintiff THE STATE OF TEXAS in an amount not less than \$100 or more than \$25,000 for each violation of the TRCA, and rules promulgated thereunder, and for each day that a continuing violation occurs; and
- b. Order defendants to pay plaintiff THE STATE OF TEXAS reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006.

19. 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.

20. Further, plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which plaintiff, STATE OF TEXAS, may be justly entitled.

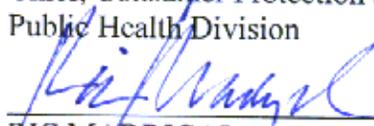
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection and
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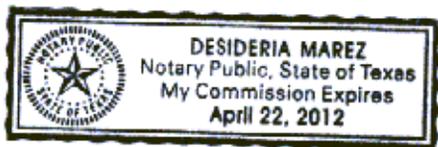
VERIFICATION

STATE OF TEXAS §
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COUNTY OF Cameron §

BEFORE ME, the undersigned authority, on this day personally appeared Julio Torres, who, after being duly sworn, stated under oath that the affiant is over 18 years of age, that he is competent to make this affidavit, that he is an inspector with the Texas Department of State Health Services, and as such is duly authorized to make this affidavit, that the affiant has carefully read the Factual Allegations in the foregoing petition, and is familiar with the facts alleged in paragraphs 10 and 13 that said facts are within his personal knowledge and are true and correct, and that matters in paragraph 12 are alleged on information and belief and are believed by him to be true.

Julio Torres
Julio Torres
Inspector
Inspection Unit for Regulatory Services
Texas Department of State Health Services

SUBSCRIBED AND SWORN TO BEFORE ME on the 30 day of January, 2009, to certify which witness my hand and official seal.

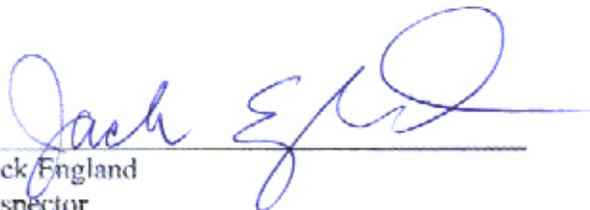


Desideria Marez
Notary Public in and for the
State of Texas

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Jack England, who, after being duly sworn, stated under oath that the affiant is over 18 years of age, that he is competent to make this affidavit, that he is an inspector with the Texas Department of State Health Services, and as such is duly authorized to make this affidavit, that the affiant has carefully read the Factual Allegations in the foregoing petition, and is familiar with the facts alleged in paragraphs 10 that said facts are within his personal knowledge and are true and correct, and that matters in paragraph 11 are alleged on information and belief and are believed by him to be true.



Jack England
Inspector
Inspection Unit for Regulatory Services
Texas Department of State Health Services

SUBSCRIBED AND SWORN TO BEFORE ME on the 30th day of January, 2009, to certify which witness my hand and official seal.

 ISABEL QUINTERO
Notary Public, State of Texas
My Commission Expires
MARCH 01, 2010
Notary without Bond



Notary Public in and for the
State of Texas