

FILED/COPY

AT _____ O'CLOCK ____ M

NO. C-2947-13A

MAY 27 2013

LAURA HINOJOSA, CLERK

DISTRICT COURT, Hidalgo County

By _____ Deputy #47

STATE OF TEXAS,

Plaintiff

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IN THE DISTRICT COURT, Hidalgo County

HIDALGO COUNTY, TEXAS

v.

MARILIA LUZ D/B/A
IMMIGRATION HELP,

Defendant

92 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS, acting by and through Attorney General of Texas Greg Abbott, complains of MARILIA LUZ D/B/A IMMIGRATION HELP, Defendant, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. Discovery in this case should be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.
2. This case is not subject to the restrictions of expedited discovery under TRCP 169 because
 - a. The relief sought by the State includes non-monetary injunctive relief; and
 - b. The State's claims for monetary relief including penalties, consumer redress and attorneys' fees and costs are less than \$100,000.00.

JURISDICTION

3. This enforcement action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted by §17.47 of the Texas Deceptive Trade

Practices-Consumer Protection Act (DTPA), TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* upon the ground that Defendant have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b) of the DTPA. In enforcement suits filed pursuant to Section 17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers and injunctive relief. This enforcement action is brought pursuant the Notary Public Act (NPA), TEX. GOV'T CODE ANN. § 406.001 *et seq.* and the State Bar Act (SBA), TEX. GOV'T CODE ANN. § 81.101 *et seq.*

DEFENDANT

4. Defendant MARILIA LUZ is an individual doing business in Texas as alleged specifically below. No service is necessary at this time.

VENUE

5. Venue of this suit lies in Hidalgo County, Texas, under DTPA § 17.47(b) because Defendant has done business in the county of suit.

PUBLIC INTEREST

6. Because Plaintiff STATE OF TEXAS has reason to believe that Defendant has engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe Defendant has caused and will cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State and further, will cause damage to the State of Texas and to persons from whom moneys or properties are unlawfully acquired by Defendant. 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 Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

NOTICE BEFORE SUIT

9. The Consumer Protection Division informed Defendant in general of the alleged unlawful conduct described below, at least seven days before filing suit, as may be required by §17.47(a) of the DTPA.

NATURE OF DEFENDANT'S OPERATIONS

10. Defendant owns and operates a business that purports to provide immigration services to persons who purchase her services.

CONDITIONS PRECEDENT

11. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

SPECIFIC FACTUAL ALLEGATIONS

12. Defendant is engaging in and has engaged in the business of providing immigration services. Defendant solicits and charges those persons who seek and/or

purchase their services (hereafter “customers”). Defendant holds herself out to the public as an immigration service provider and/or immigration consultant. Defendant has solicited customers by representing that they have the skill or knowledge necessary to handle immigration cases and/or matters. On or about August 12, 2010, Defendant was commissioned as a Notary Public for the State of Texas by the Texas Secretary of State and is currently commissioned as a Notary Public.

13. Defendant’s customers are persons who sought to obtain immigration benefits, visas, permanent residency, and/or citizenship to the United States (hereafter referred to collectively as “immigration benefits”) for themselves or their relatives. The immigration services rendered by Defendant for her customers include the following activities:

- a. interviewing customers to determine eligibility for immigration benefits under United States immigration laws;
- b. advising customers as to whether or not to file a petition or application under United States immigration laws to secure an immigration benefit for the customer or a relative of the customer;
- c. selecting and preparing a petition or application and other forms on behalf of customers, which were filed with the Bureau of Citizenship and Immigration Services in order to obtain an immigration benefit; and
- d. gathering the documentation supporting a customer’s petition and/or application for immigration benefits under United States immigration laws.

14. On or after Defendant was commissioned as a Notary Public, Defendant solicited and agreed to perform the unlawful immigration service described above in exchange for compensation from customers for the performance of the immigration services.

15. Defendants held herself partnering with an attorney David Harch, however Mr. Harch is not licensed to practice law in the State of Texas. Defendant is not presently or 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 nor were they employees of an attorney at law duly licensed by the State of Texas. In addition, Defendant is not presently nor have ever been a recognized organization or accredited representative by the Board of Immigration Appeals to represent individuals in immigration matters or in proceedings before the immigration courts nor were they employees of a recognized organization or accredited representative.

NOTARY PUBLIC ACT VIOLATIONS

16. Defendant, as alleged above, have in the course of trade and commerce violated the NPA as follows:

- a. By providing a service that constitutes the unauthorized practice of law or accepting compensation for a service that constitutes the unauthorized practice of law, in violation of §406.016(d) of the NPA;
- b. By stating or implying that they are attorneys licensed to practice law in this state, in violation of §406.017(a)(1) of the NPA;
- c. By soliciting or accepting compensation to prepare documents for another in an administrative proceeding relating to immigration to the United States, in violation of §406.017(a)(2) of the NPA; and
- d. By soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of the United States, in violation of §406.017(a)(3) of the NPA.

FALSE, MISLEADING OR DECEPTIVE ACTS

17. Defendant, as alleged above and detailed below, 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. Such acts include:

- a. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, as alleged more specifically in paragraphs 11 through 14 above, in violation of §17.46(b)(5) of the DTPA;
- b. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, as alleged more specifically in paragraphs 11 through 14 above, in violation of §17.46(b)(12) of the DTPA; and
- c. By violating §406.017 of the NPA, Defendant is in violation of the DTPA. Section 406.017(f) of the NPA provides that failure to comply with §406.017 of the NPA is a deceptive trade practice and is actionable under the DTPA.

STATE BAR ACT VIOLATION

18. Defendant, as alleged above, was practicing law in the State of Texas while not being a member of the State Bar of Texas, in violation of §81.102 of the SBA.

INJURY TO CONSUMERS

19. Defendant has, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored or who, in the alternative, are entitled to an award of damages.

PRAYER

20. WHEREFORE, Plaintiff prays that this court will award judgment for the Plaintiff and against the Defendant as follows:

- a. Order Defendant to pay civil penalties to the STATE OF TEXAS in the amount of \$2,000.00 per violation of the DTPA up to a total of \$20,000.00 per each violation;
- b. Order Defendants to pay civil penalties to the STATE OF TEXAS in an additional amount of up to \$250,000.00 for acts or practices that were calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred;
- c. Order Defendant to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses;
- d. Order Defendant to pay the STATE of TEXAS its attorneys' fees and costs of court pursuant to TEX. GOV'T. CODE § 402.006(c) and order Defendant to pay pre-judgment interest on all awards of restitution, damages or civil penalties, as provided by law.

21. Plaintiff further prays that Defendant be cited according to law to appear and answer herein and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, Defendant's officers, agents, servants, employees and attorneys and

any other person in active concert or participation with Defendant from engaging in the following acts or practices:

- a. Operating a business or conducting business that provides immigration services or a legal document preparation service;
- b. Advertising, offering for sale, selling, or providing an immigration service or a legal document preparation service;
- c. Accepting money or valuable consideration for performing an immigration service or a legal document preparation service;
- d. Accepting money or valuable consideration from any person seeking assistance to obtain a benefit under United States immigration laws for himself/herself or any other person;
- e. Advising or counseling any person whether or not to file a petition, application, or other form to obtain a benefit under United States immigration laws for himself/herself or any other person;
- f. Selecting, preparing, or completing for any other person a pleading, document, or other form incident to legal actions or United States immigration proceedings;
- g. Holding out, by any means, to the public as an "immigration specialist," "immigration counselor," "immigration consultant," or "immigration service provider" and by any title or designation incorporating the word "immigration," "inmigracion," or an abbreviation thereof;
- h. Stating or implying that Defendant is an attorney licensed to practice law in this state unless Defendant is a member of the State Bar of Texas;

- i. Representing, directly or by implication, that Defendant has the skill, expertise, or competence to handle immigration or legal matters;
- j. Representing, directly or by implication, that Defendant can get legal status, a work permit, or other benefit under United States immigration laws for a person who purchases her services;
- k. Practicing law in the State of Texas while not being a member of the State Bar of Texas;
- l. Advising or counseling any person as to matters of law or legal rights under state or federal laws, rules, and/or regulations, including but not limited to, matters relating to legal actions or United States immigration proceedings;
- m. Accepting or soliciting money or valuable consideration for advising or counseling any person as to matters of law or legal rights under state or federal laws, rules, and/or regulations, including but not limited to, matters relating to legal actions or United States immigration proceedings;
- n. Stating or implying that Defendant is a recognized organization or accredited representative by the Board of Immigration Appeals;
- o. Advertising, offering for sale, selling, or performing a notarial service;
- p. Accepting money or valuable consideration for performing a notarial service;
- q. 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

r. Representing, directly or by implication, that this Court, the Bureau of Citizenship & Immigration Services (also known as the Immigration and Naturalization Service), 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.

22. If Defendant fails to pay restitution ordered by this Court within three months after the order to make such restitution has become final and non-appealable, Plaintiff prays that this Court appoint a receiver or sequester Defendant's assets.

23. The State further prays that this court grant all other relief to which the Plaintiff STATE OF TEXAS may show itself entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN SCOTT
Deputy Attorney General for
Civil Litigation

TOMMY PRUD'HOMME
Chief, Consumer Protection Division

Michael Aguirre

MICHAEL AGUIRRE

Assistant Attorney General

State Bar No. 24038593

JOE D. GARCIA

Assistant Attorney General

State Bar No. 00785896

Office of the Attorney General

Consumer Protection Division

3201 N. McColl, Suite B

McAllen, Texas 78501

(956) 682-4547; Fax (956) 682-1957

Attorney for Plaintiff

VERIFICATION

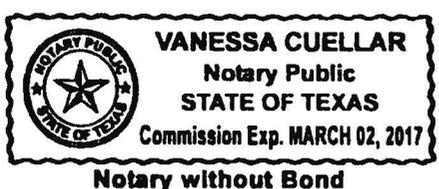
STATE OF TEXAS §

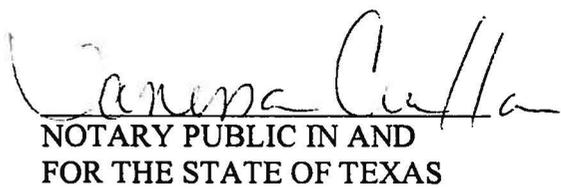
COUNTY OF HIDALGO §

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 has reason to believe that each and all said "Specific 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
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 6th day of May, 2013.


VANESSA CUELLAR
Notary Public
STATE OF TEXAS
Commission Exp. MARCH 02, 2017
Notary without Bond


NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS

FILED/COPY

AT _____ O'CLOCK ____ M

NO. C-2947-13A

MAY 22 2013

STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURTS, CLERK
District Courts, Hidalgo County
By _____ Deputy #47
HIDALGO COUNTY, TEXAS

v.

MARILIA LUZ D/B/A
IMMIGRATION HELP,
Defendant

_____ JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

1. On this day, came before the Court Plaintiff STATE OF TEXAS and Defendant MARILIA LUZ in the above entitled and numbered cause. The STATE OF TEXAS, by and through Texas Attorney General GREG ABBOTT, and Defendant, announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled, presented to the Court this Agreed Final Judgment and Permanent Injunction ("Judgment"), and asked the Court to render and sign this Judgment based on the agreement of the parties.

STIPULATIONS

2. By their duly authorized signatures affixed below, the parties stipulated to the Court the following: that they understand the terms of this Judgment; that they agree to the terms of this Judgment; that their agreement is freely and voluntarily made without duress; that they actively participated in the negotiations leading up to this Judgment and are aware of the duties placed upon them by it, and are desirous and capable of carrying out those duties in full; that each named party acknowledge receipt of copies of this Judgment and have full and actual notice of the terms of this Judgment; that the issuance and service of a writ of injunction are waived; that the terms of this Judgment are sufficiently detailed and specific to be enforceable by the Court in conformance with TEX. R. CIV. P. 683 and enforceable by the Court pursuant to TEX. R. CIV. P.

692; that they have waived all rights of appeal from this Judgment; and that this Judgment represents a compromise and settlement of all matters arising out of facts alleged by the STATE OF TEXAS in this cause.

3. Pursuant to their agreement, the parties submit to the jurisdiction of the Court and do not contest the entry of this Judgment. Defendant desire to resolve the Attorney General's concerns without a trial or adjudication of any issue of fact or law, and its consent to the entry of this Judgment is not an admission of liability by Defendant as to any issue of fact or law, but is because of the uncertainty and costs of litigation.

4. It is further agreed by and between the parties that this Judgment shall constitute the record of this cause and that the making of a further record in this cause is waived.

FINDINGS

5. It appears to the Court that all parties agree to the entry of this Judgment and that they have approved its entry by their duly authorized signatures and the signature of their respective attorney(s) below, the Court, upon having read the verified pleadings of Plaintiff, the stipulations of the parties and after being fully advised in this matter, finds as follows:

- a. That it has jurisdiction of the parties and subject matter of this suit;
- b. That the settlement of this dispute is fair, reasonable, and just;
- c. That this Judgment is in accord with the Notary Public Act ("NPA"), TEX. GOV'T CODE ANN. § 406.001 *et seq.*, Texas Deceptive Trade Practices - Consumer Protection Act ("DTPA"), TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.*, and the State Bar Act ("SBA"), TEX. GOV'T CODE ANN. § 81.001 *et seq.*, and is proper in all respects;

d. That Defendants violated the notary public oath during their commission as a notary public, and the State of Texas is entitled to make a claim on the notary public bond;

e. That the civil penalty payable to and for the benefit of the State of Texas is not dischargeable under bankruptcy pursuant to 11 U.S.C. § 523(a)(7); and

f. That it would be in the best interests of the parties if the Court approved the settlement and rendered judgment accordingly.

6. Based on these findings, and having heard and considered the representations made by the parties, the Court is of the opinion that a permanent injunction should be issued as granted in this Judgment and that Plaintiff STATE OF TEXAS is entitled to recover of and from Defendants as set forth below.

PROHIBITORY INJUNCTIVE RELIEF

7. IT IS THEREFORE ORDERED that Defendant MARILIA LUZ, her officers, agents, servants, employees, attorneys, and any other persons acting in concert or participation with Defendant who receive actual notice of this injunction by personal service or otherwise, shall permanently desist and refrain from engaging in, or attempting to engage in, the following described acts:

a. Operating a business, managing a business, or conducting business that provides immigration services or a legal document preparation service;

b. Advertising, offering for sale, selling, or providing an immigration service or a legal document preparation service;

- c. Accepting money or valuable consideration for performing an immigration service or a legal document preparation service;
- d. Accepting money or valuable consideration from any person seeking assistance to obtain a benefit under United States immigration laws for himself/herself or any other person;
- e. Advising or counseling any person whether or not to file a petition, application, or other form to obtain a benefit under United States immigration laws for himself/herself or any other person;
- f. Selecting, preparing, or completing for any other person a pleading, document, or other form incident to legal actions or United States immigration proceedings;
- g. Holding out, by any means, to the public as an "immigration specialist," "immigration counselor," "immigration consultant," or "immigration service provider" and by any title or designation incorporating the word "immigration," "inmigracion," or an abbreviation thereof;
- h. Stating or implying that Defendant is and attorney licensed to practice law;
- i. Representing, directly or by implication, that Defendant has the skill, expertise, or competence to handle immigration or legal matters;
- j. Representing, directly or by implication, that Defendant can get legal status, a work permit, or other benefit under United States immigration laws for a person who purchases her services;
- k. Practicing law in the State of Texas while not being a member of the State Bar of Texas;

- l. Advising or counseling any person as to matters of law or legal rights under state or federal laws, rules, and/or regulations, including but not limited to, matters relating to legal actions or United States immigration proceedings;
- m. Accepting or soliciting money or valuable consideration for advising or counseling any person as to matters of law or legal rights under state or federal laws, rules, and/or regulations, including but not limited to, matters relating to legal actions or United States immigration proceedings;
- n. Stating or implying that Defendant is a recognized organization or accredited representative by the Board of Immigration Appeals;
- o. Advertising, offering for sale, selling, or performing a notarial service;
- p. Accepting money or valuable consideration for performing a notarial service; and
- r. Representing, directly or by implication, that this Court, the Bureau of Citizenship & Immigration Services (also known as the Immigration and Naturalization Service), or the Office of the Attorney General has approved any good or service sold or offered for sale by Defendants, or approved of any of Defendants' business practices.

MANDATORY INJUNCTIVE RELIEF

8. IT IS FURTHER ORDERED that Defendant post notice at their place of business, which notice shall be conspicuous, in bold-faced type of a minimum size of 16 points, in both English and Spanish, and shall state:

NOTICE

MARILIA LUZ IS PROHIBITED FROM PREPARING ANY LEGAL DOCUMENT OR CONDUCTING BUSINESS AS AN IMMIGRATION SERVICE PROVIDER BY ORDER OF THE DISTRICT COURT OF

HIDALGO COUNTY. THE DISTRICT COURT HAS ALSO ORDERED MARILIA LUZ TO RETURN ALL IMMIGRATION CLIENT FILES TO THEIR CUSTOMERS.

IF YOU HAVE ANY QUESTIONS, OR IF YOU BELIEVE YOU WERE A VICTIM, PLEASE CALL 956-682-4547.

AVISO

LA CORTE DEL DISTRICTO HA ORDENADO A MARILIA LUZ PARAR SU NEGOCIO DE SERVICIOS DE INMIGRACION Y DE PREPARAR DOCUMENTOS LEGALES O JURIDICOS. LA CORTE DEL DISTRICTO HA ORDENADO A MARILIA LUZ QUE REGRESE LOS EXPEDIENTES DE INMIGRACION DE LOS CONSUMADORES.

SI USTED TIENE ALGUNA PREGUNTA O PIENSA QUE FUE UNA VICTIMA, POR FAVOR LLAME AL 956-682-4547.

9. IT IS FURTHER ORDERED by the Court that Defendant shall return to the rightful owner, upon his/her request, any file, fees, document, petition, application, or other form filed with the Bureau of Citizenship & Immigration Services (formerly known as Immigration and Naturalization Service) by Defendant on behalf of a person, including all documents used to support the person's petition and/or application for immigration benefits under U.S. immigration laws, file, or fees remitted to the Defendant.

MONETARY JUDGMENT

10. IT IS FURTHER ORDERED by the Court that Plaintiff STATE OF TEXAS have and recover from Defendant MARILIA LUZ the sum of \$10,000.00 comprised of the following amounts:

- a. The amount of \$5,000.00 as a civil penalty to STATE OF TEXAS; and
- b. The amount of \$5,000.00 as reasonable and necessary attorney's fees to the STATE OF TEXAS.

11. IT IS FURTHER ORDERED by the Court that the payment of the above sum shall be made in the form of a certified check and made payable to the Office of the Attorney General of Texas. The certified check shall bear the identifying number "AG No. 133391789" and shall be delivered to the Office of the Attorney General, Consumer Protection Division, 3201 N. McColl Road, Suite B, McAllen, Texas 78501.

12. IT IS FURTHER ORDERED that Defendant is liable for all costs of court expended or incurred in this cause.

13. IT IS FURTHER ORDERED that Plaintiff shall have all writs of execution and other process necessary to enforce this Judgment.

14. Nothing in this Judgment shall be construed as a waiver of any private rights, causes of action, or remedies of any person against the Defendant with respect to any acts or practices described in the Petition or herein.

15. This Judgment is final, disposes of all claims and all parties. The Court retains the jurisdiction to enforce this Judgment.

16. All relief not expressly granted herein is denied.

SIGNED on _____, 2013.

JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:



MICHAEL AGUIRRE

Assistant Attorney General

State Bar No. 24038593

Office of the Attorney General

Consumer Protection Division

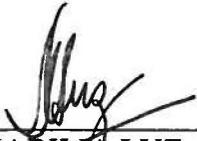
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McAllen, Texas 78501

(956) 682-4547

Fax: (956) 682-1957

Attorney for Plaintiff



MARILIA LUZ

Defendant *Pro Se*