

FILED/COPY

AT _____ O'CLOCK _____ M

NO. C-2903-13E

MAY 21 2013

STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT OF JUDICIAL DISTRICT NO. 275, CLERK
District Courts, Hidalgo County
By _____ Deputy #47
HIDALGO COUNTY, TEXAS

v.

EDELMIRO ALCOCER AND
JESUS GARCIA,
Defendants

275 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR
TEMPORARY AND PERMANENT INJUNCTIONS, AND
APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS, acting by and through Attorney General of Texas Greg Abbott, files this Original Petition, Application for Temporary and Permanent Injunctions, and Application for Ex parte Temporary Restraining Order and complains of EDELMIRO ALCOCER and JESUS GARCIA, (collectively "Defendants"), 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 TEX. R. CIV. P. 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.

NATURE OF THIS SUIT

3. 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 Defendants for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, Texas Business and Commerce Code, sections 17.41 to 17.63 (hereinafter "DTPA"). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. Tex. Bus. & Com Code Ann. § 17.47.

DEFENDANTS

4. Defendant EDELMIRO ALCOCER is an individual doing business in Hidalgo County, Texas as alleged specifically below and may be served at 1901 N. Glasscock Road, Lot 2, Mission, Texas 78572.
5. Defendant JESUS GARCIA is an individual doing business in Hidalgo County, Texas as alleged specifically below and may be served at 1810 Village Square, Mission, Texas 78572.

JURISDICTION

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

VENUE

7. Venue of this suit lies in Hidalgo County, Texas, under DTPA §17.47(b) because Defendants have done business in the county of suit.

PUBLIC INTEREST

8. Because Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in, are engaging in, and will continue to engage in, the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe Defendants have 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 Defendants. 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

9. Defendants have, 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

10. Whenever in this Petition it is alleged that Defendants did any act, it is meant that Defendants performed or participated in the act, or Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

NOTICE BEFORE SUIT NOT GIVEN

11. 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 Defendants from continued violations of the DTPA. If Defendants are not immediately restrained, they will continue to engage in the unauthorized practice of dentistry and thereby cause immediate and irreparable injury, loss, or damage to persons who receive their services. As such, the Consumer Protection Division filed this lawsuit without notice to Defendants, as authorized by §17.47(a) of the DTPA.

NATURE OF DEFENDANTS' OPERATIONS

12. Defendants operate dentistry businesses offering services for a fee to lower and fixed income individuals. Defendants are not dentists nor are they licensed to practice dentistry in the State of Texas. However, Defendants represent that they can assist individuals and provide

dentistry services, when in fact, by law, they are prohibited from doing so.

CONDITIONS PRECEDENT

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

FACTUAL ALLEGATIONS

14. Defendants hold themselves out to the public as dentists and have solicited customers by representing that they have the skills or knowledge necessary to handle dental matters.

15. Defendants are engaged in, have engaged in, or are about to engage in activities that constitute the practice of dentistry. Defendant Alcocer refers consumers to Defendant Garcia who will inject the consumer with pain medication prior to the dental procedure. After Defendant Garcia injects the consumer, Defendant Alcocer will perform the dental procedure, including but not limited to, tooth fillings, partials, crowns, braces and fits and makes dentures for those persons who purchase his dental services. Defendant Garcia performs extractions and will also write a prescription to the consumer for medicine upon completion of the dental procedure. Defendants solicit, charge, or receive compensation for performing the dental services described above. For example, Defendant Alcocer will charge \$500.00 for acrylic dentures and \$800.00 for porcelain dentures.

16. Defendants are not presently nor have ever been duly licensed by the State of Texas to engage in acts, practices, and/or conduct which constitute the practice of dentistry or dental hygiene.

FALSE, MISLEADING OR DECEPTIVE ACTS

17. Defendants, as alleged above and detailed below, have 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. Advertising, offering for sale, selling, or providing a service that Defendants are unauthorized to provide, as alleged more specifically in paragraphs 11 through 13 above, in violation of §17.46(a) of the DTPA.
- b. Offering to perform or performing a service that constitutes the practice of dentistry or dental hygiene, when they are not duly licensed, as alleged more specifically in paragraphs 14 through 16 above, in violation of §17.46(b)(2) of the DTPA.
- c. Offering to perform or performing a service that constitutes the practice of dentistry or dental hygiene, as alleged more specifically in paragraphs 14 through 16 above, in violation of §17.46(b)(5) of the DTPA.

TDPA VIOLATIONS

18. Defendants, as alleged above, has in the course of trade and commerce violated the TDPA,

by:

- a. Practicing dentistry or dental surgery or representing to practice dentistry in the State of Texas without holding a license, in violation of §256.001 of the TDPA.
- b. Practicing dental hygiene in the State of Texas without holding a license, in violation of §256.052 of the TDPA.

INJURY TO CONSUMERS

19. Defendants have, 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.

APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER

20. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.
21. The State alleges that by reason of the foregoing, Defendants should not be allowed to continue to sell, or offer for sale, dental services in violation of the laws of Texas. Unless immediately restrained by this Honorable Court, the Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damages to the State of Texas and to the general public. The interests of the State of Texas and the public require immediate action to keep Defendants from continuing to operate their dental business, respectively. Further, unless injunctive relief is granted, Defendants will continue to collect monies from consumers by use of false, misleading or deceptive trade practices. Therefore, the State requests an Ex Parte Temporary Restraining Order, Temporary Injunction and Permanent Injunction, as indicated below. The State is requesting that the Temporary Restraining Order be granted on an ex parte basis because if provided notice, Defendants may continue to see consumers without giving them notice that they are not licensed by the State of Texas and may result in irreparable injury, loss or damages to consumers.
22. The State of Texas requests that pursuant to Texas Rule of Civil Procedure 680, the Court issue an Ex Parte Temporary Restraining Order, and ORDER that Defendants, their officers, agents, servants, employees, attorneys and any other person in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, be restrained from engaging in the following acts or practices:

- a. Owning, operating, managing, performing a consulting or other service in any capacity, or engaging in the practice of dentistry or medicine, dental surgery, dental hygienist, dental assistant, dental laboratory, or representing to practice dentistry (as those practices are defined by State law);
- b. Advertising, offering for sale, selling, or providing a service that constitutes the practice of dentistry or medicine, dental surgery, dental assistant, dental laboratory, or dental hygienist;
- c. Performing consulting or other service as an independent contractor or an as employee in any capacity with a person licensed to practice dentistry or dental hygiene;
- d. Holding themselves out, by any means, to the public as a “dentist”, “DDS”, “doctor”, “DMD”, “denturist” , or any other description or abbreviation thereof;
- e. Accepting, soliciting, or charging money or valuable consideration for any service that constitutes dentistry or medicine, dental surgery, dental assistant, dental laboratory, or dental hygienist;
- f. Using or operating any dental or medical devise or instrument on a third party;
- g. Prescribing any medication or injecting customers with any numbing agent;
- h. Diagnosing, treating, or offering to treat, a tooth or dental disorder or condition;
- i. Representing, directly or by implication, that Defendants have the skills, qualifications, and knowledge necessary to dispense a service that constitutes dentistry, dental surgery, dental assistant, dental laboratory, or dental hygienist;

- j. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any medical and/or dental device or equipment, 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
 - k. Representing, directly or by implication, that this Court or the Office of the Texas Attorney General has approved any good or service sold or offered for sale by Defendants, or has approved any business practice of Defendants.
23. The State requests leave of this Court to conduct discovery prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date with reasonably shortened deadlines. Any discovery and depositions, telephonic or otherwise, would be conducted with reasonable shortened notice to Defendants and their attorneys, if known. Further, the State request that Defendants comply with any pre-suit discovery noticed before this suit was filed.
24. Plaintiff, STATE OF TEXAS, further prays that this Court order Defendants and/or the Sheriff post notice at 1901 N. Glasscock Road, Lot 2, Mission, Texas 78572, 1810 Village Square, Mission, Texas 78572, and at any other place in the state of Texas where Defendants may conduct business, which notice shall be on the front-side of the front door, in red-faced type of a minimum size of 40 points, in both English and Spanish, and shall state:

NOTICE

EDELMIRO ALCOCER AND JESUS GARCIA ARE PROHIBITED FROM PERFORMING ANY DENTAL PROCEDURE OR CONDUCTING BUSINESS AS A DENTIST BY ORDER OF THE DISTRICT COURT OF HIDALGO COUNTY.

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

AVISO

EDELMIRO ALCOCER Y JESUS GARCIA ESTAN PROHIBIDO A REALIZAR CUALQUIER PROCEDIMIENTO DENTAL O NEGOCIOS COMO UN DENTISTA POR ORDEN DE LA CORTE DE DISTRITO DE CONDADO DE HIDALGO.

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

APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

25. For the foregoing reasons, the State requests that after due notice and hearing, a TEMPORARY INJUNCTION be issued restraining Defendants from the acts set forth in Paragraph 22a - k, *supra*. The State further requests that upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging, directly or indirectly, in the acts or practices set forth in paragraph 22a-k, *supra*.

PRAYER

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

- a. Order Defendants 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 Defendants to pay civil penalties to the STATE OF TEXAS in the amount not to exceed \$5,000.00 per violation of the TDPA;
 - d. Order Defendants 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;
 - e. Order Defendants 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.

27. 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

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

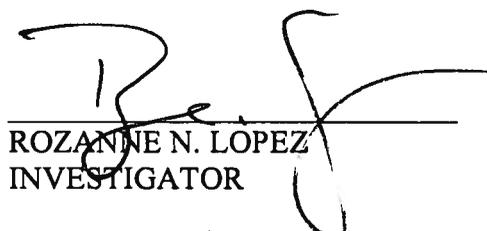
Attorney for Plaintiff

VERIFICATION

STATE OF TEXAS §

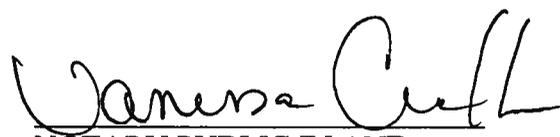
COUNTY OF HIDALGO §

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 "Specific Factual Allegations" in the foregoing PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS, AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, 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 21st 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

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MAY 21 2013

STATE OF TEXAS,
Plaintiff

v.

EDELMIRO ALCO CER AND
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Defendants

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IN THE DISTRICT COURT OF HIDALGO COUNTY, TEXAS
District Courts, Hidalgo County

By _____ Deputy #47

HIDALGO COUNTY, TEXAS

275 JUDICIAL DISTRICT

**EX PARTE TEMPORARY RESTRAINING ORDER AND
ORDER SETTING HEARING FOR TEMPORARY INJUNCTION**

1. After considering Plaintiff STATE OF TEXAS' application for temporary restraining order, the pleadings, and arguments of counsel, the Court finds there is evidence that Defendants EDELMIRO ALCO CER and JESUS GARCIA (collectively "Defendants") may be engaging in the unauthorized practice of dentistry in violation of the Texas Deceptive Trade Practices - Consumer Protection Act (DTPA), TEX. BUS. & COM. CODE ANN. §17.41 *et seq.*, and the Texas Dental Practice Act (TDPA), TEX. OCC. CODE ANN. §251.001 *et seq.* The Court further finds that an imminent emergency exists and a temporary restraining order is necessary to prevent Defendants from continuing to engage in the unauthorized practice of dentistry before notice can be given and a hearing held. The Court further finds that a temporary restraining order is necessary for the health and welfare of the public and to prevent irreparable injury, loss, or damage to persons who seek the Defendant's services.
2. IT IS THEREFORE ORDERED that Defendants EDELMIRO ALCO CER and JESUS GARCIA, their agents, servants, employees, relatives, attorneys and any other person acting in concert or participation with Defendants, are hereby restrained from engaging in, or attempting to engage in, the following:
 - a. Owning, operating, managing, performing a consultation or other service in any capacity, or engaging in the practice of dentistry or medicine, dental surgery, dental hygienist,

- dental assistant, dental laboratory, or representing to practice dentistry (as those practices are defined by State law);
- b. Advertising, offering for sale, selling, or providing a service that constitutes the practice of dentistry or medicine, dental surgery, dental assistant, dental laboratory, or dental hygienist;
 - c. Performing consulting or offering another service as an independent contractor or as an employee in any capacity with a person licensed to practice dentistry or dental hygiene;
 - d. Holding themselves out, by any means, to the public as a “dentist”, “DDS”, “doctor”, “DMD”, “denturist” , or any other description or abbreviation thereof;
 - e. Accepting, soliciting, or charging money or valuable consideration for any service that constitutes dentistry or medicine, dental surgery, dental assistant, dental laboratory, or dental hygienist;
 - f. Using or operating any dental or medical device or instrument on a third party;
 - g. Diagnosing, treating, or offering to treat, a tooth or dental disorder or condition;
 - h. Prescribing any medication;
 - i. Representing, directly or by implication, that Defendants have the skills, qualifications, and knowledge necessary to dispense a service that constitutes dentistry, dental surgery, dental assistant, dental laboratory, or dental hygienist;
 - j. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any medical and/or dental device or equipment, 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

- k. Representing, directly or by implication, that this Court or the Office of the Texas Attorney General has approved any good or service sold or offered for sale by Defendants, or has approved any business practice of Defendants.
3. IT IS FURTHER ORDERED that Defendants and/or the Sheriff post notice at 1901 N. Glasscock Road, Lot 2, Mission, Texas 78572, 1810 Village Square, Mission, Texas 78572, and at any other place in the state of Texas where Defendants may conduct business, which notice shall be conspicuous, red-faced type of a minimum size of 40 points, in both English and Spanish, and shall state:

NOTICE

EDELMIRO ALCOCER AND JESUS GARCIA ARE PROHIBITED FROM PERFORMING ANY DENTAL PROCEDURE OR CONDUCTING BUSINESS AS A DENTIST BY ORDER OF THE DISTRICT COURT OF HIDALGO COUNTY.

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

THIS NOTICE IS PLACED HERE BY ORDER OF THE COURT AND IT IS NOT TO BE REMOVED UNTIL FURTHER ORDER OF THE COURT.

AVISO

EDELMIRO ALCOCER Y JESUS GARCIA ESTAN PROHIBIDO A REALIZAR CUALQUIER PROCEDIMIENTO DENTAL O NEGOCIOS COMO UN DENTISTA POR ORDEN DE LA CORTE DE DISTRITO DE CONDADO DE HIDALGO.

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

ESTE AVISO ES PUESTO EN ESTE EDEFICIO POR ORDEN DE LA CORTE Y NO DEBE SE ELIMINADO PERO POR ORDEN DE LA CORTE.

4. IT IS FURTHER ORDERED that Plaintiff shall be granted leave to take telephonic, video, written, and other depositions (including deposition with a subpoena duces tecum) of

witnesses and parties prior to any scheduled temporary injunction hearing upon reasonable shortened notice to Defendants.

5. The Court orders that Plaintiff's application for temporary injunction be heard on _____, 2013, at _____, ____ .m., in the courtroom of the above-named District Court in the Hidalgo County Courthouse in Edinburg, Texas. The purpose of the hearing shall be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.
6. The Court further orders the clerk to issue notice to Defendants of the hearing on the application for temporary injunction and to forthwith issue a temporary restraining order in conformity with the law and the terms of this order.
7. This order shall be effective without the execution and filing of a bond as Plaintiff STATE OF TEXAS is exempt from such bond under TEX. CIV. PRAC. & REM. CODE ANN. §6.001 and TEX. BUS. & COM. CODE ANN. §17.47(b).
8. This order expires on _____, 2013, or by any other order of the Court.

SIGNED on _____, 2013, at _____, ____ .m.

JUDGE PRESIDING