

N 2013 40321

FILED
Chris Daniel
District Clerk
JUL 10 2013

By _____ Time: _____
Harris County, Texas
127 JUDICIAL DISTRICT

STATE OF TEXAS,
Plaintiff,

IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

JAVIER LUNA aka HARVEY LUNA,
INDIVIDUALLY; SAGEJAX, INC., d/b/a
MATCHMAKER MATCHMAKER, and
MONTEREY FINANCIAL SERVICES, INC.

§
§
§
§
§
§
§
§
§
§
§

127 JUDICIAL DISTRICT

Defendants.

EX PARTE TEMPORARY RESTRAINING ORDER

Plaintiff, the State of Texas, acting by and through Attorney General GREG ABBOTT, has filed its Plaintiff's Original Verified Petition and Application for *Ex Parte* Temporary Restraining Order, Temporary Injunction, and Permanent Injunction ("Original Petition") in this cause seeking a Temporary and Permanent Injunction against **JAVIER LUNA aka HARVEY LUNA, INDIVIDUALLY; SAGEJAX, INC., d/b/a MATCHMAKER MATCHMAKER, AND MONTEREY FINANCIAL SERVICES, INC.** ("Defendants") and in the same Original Petition, Plaintiff has presented its request for a Temporary Restraining Order against the Defendants.

I.

FINDINGS IN SUPPORT OF TEMPORARY RESTRAINING ORDER

This Court FINDS it has jurisdiction over the subject matter of this case and jurisdiction over the parties, and venue in this district is proper.

The Court FINDS that there is good cause to believe Defendants have engaged in and are likely to engage in acts and practices that violate §§17.46(a) and (b) of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), Tex. Bus. & Com. Code § 17.41 *et seq.* The Court

further FINDS that this action is in the public interest and a Temporary Restraining Order should be issued to restrain and prevent the continuing acts and practices of Defendants that may be violating the DTPA. Tex. Bus. & Com. Code §17.47(b).

It appears from the evidence set forth in Plaintiff's Original Petition, the affidavits, and exhibits attached, that unless Defendants are immediately restrained from the acts prohibited below, Defendants will continue to commit such acts before notice can be given and a hearing can be held on Plaintiff's request for a temporary injunction.

Furthermore, the Court finds that unless Defendants are immediately restrained there is good cause to believe (a) Defendants will dissipate funds obtained from unlawful acts or practices that may be in violation of the DTPA before a temporary injunction hearing can be held and before full trial on the merits, and (b) immediate and irreparable damage will occur to the Court's ability to grant effective final relief for consumers—including restoration of money or property acquired by means of unlawful acts or practices, rescission or reformation of contracts, restitution, refund of monies paid and disgorgement of ill-gotten monies. Tex. Bus. & Com. Code §17.47(a), (b), (d). An order freezing certain accounts and assets described herein is necessary to preserve monies and assets that may have been obtained by Defendants by unlawful acts or practices until a temporary injunction hearing and final trial can be held. Tex. Bus. & Com. Code §17.47(a), (b), (d).

Prior notice of Plaintiff's Original Petition is not required before entry of this Order because the Court finds there is good cause to believe irreparable loss or injury would occur and dissipation of assets would occur as a result of such a delay. *Id.*

The Court finds this Temporary Restraining Order may be issued without bond. Tex. Bus. & Com. Code §17.47(b).

II.

DEFINITIONS

“Defendants” means SAGEJAX, INC., d/b/a MATCHMAKER MATCHMAKER, JAVIER LUNA aka HARVEY LUNA, INDIVIDUALLY, AND MONTEREY FINANCIAL SERVICES, INC., individually, collectively, or in any combination.

“Matchmaker Defendants” means SAGEJAX, INC., d/b/a MATCHMAKER MATCHMAKER, and JAVIER LUNA aka HARVEY LUNA, INDIVIDUALLY, collectively, or in any combination.

“Financial institution” means any bank, savings and loan institution, credit union, or any financial depository of any kind and including, but not limited to, any brokerage house, custodian, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

III.

ASSET FREEZE

~~IT IS THEREFORE ORDERED~~ that (a) Defendants SAGEJAX, INC., d/b/a MATCHMAKER MATCHMAKER, JAVIER LUNA aka HARVEY LUNA, INDIVIDUALLY, AND MONTEREY FINANCIAL SERVICES, INC, their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, and (b) all financial institutions holding funds, accounts, or assets of any kind in the name and/or for the benefit of the above-named Defendants, including but not limited to Citizens Bank, who receive actual notice of this Order by personal service, email, facsimile transmission, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices, until further order of this Court:

A. Transferring, withdrawing, liquidating, spending, concealing, encumbering, removing, dissipating, distributing, assigning, granting a lien or security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock, other assets, or any interest therein, or allowing same to occur, wherever located, that are:

1) owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to any Defendant, including but not limited to, any accounts to which any Defendant has signatory authority, and specifically including, but not limited to Citizens Bank Accounts Nos. *****57440, *****64031, and *****58498;

2) in the actual or constructive possession of any Defendant; or

3) in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, or belonging to, any other corporation, partnership, trust, or any other entity directly or indirectly owned, managed, or controlled by, or under common control of, any Defendant;

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant or subject to access, ownership or control by any Defendant, without providing Plaintiff and the Court prior notice by motion seeking such access.

The funds, property, and assets affected by this Section of this Order shall include both existing assets and assets acquired by any Defendant after the effective date of this Order and in violation of this Order.

IV.

MODIFICATION OF ASSET FREEZE

IT IS ORDERED that if any of the parties, persons, or entities referenced in this Order agree in writing, through their authorized representatives or counsel, to specify that certain funds or assets be or remain frozen or that certain funds or assets be released from the asset freeze ordered in

Section III of this Order, then such parties or entities may do so. Any financial institution holding funds or assets subject to the freeze under Section III of this Order shall comply with any written directive relating to the freezing or unfreezing of any bank account or asset referenced in this Order, without further order of this Court, provided such written directive is signed by an Assistant Attorney General representing the State of Texas and an authorized representative or attorney of such Defendant, person or entity with custody or control of the bank account or asset involved. Nothing in this Order shall preclude any party from filing a motion seeking a modification of this Order from the Court.

V.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that Plaintiff shall be granted leave to conduct expedited discovery. Any discovery taken or propounded by the Plaintiff for purposes of the Temporary Injunction hearing is in addition to, and not subject to, any limits on the quantity of permissible discovery provided for in the Texas Rules of Civil Procedure or the rules of this Court. Any ~~limitations and conditions set forth in the Texas Rules of Civil Procedure or the rules of this Court~~ regarding subsequent depositions of an individual shall not apply to depositions pursuant to this section.

A. Plaintiff may take the deposition of any witness upon a one (1) day's notice to the attorneys for all parties, if known, including taking telephonic, video, written, and other depositions with a request for production prior to any scheduled temporary injunction hearing and prior to Defendant's answer date.

B. Defendants shall provide the following information to counsel for the Plaintiff and a statement, signed by Defendants and notarized, certifying that the information is true and accurate

within three (3) business days:

1) Identification and description of all accounts and assets as described in Section III of this Order held or controlled at any time during the two (2) years prior to the effective date of this Order, including the names and locations of the financial institutions holding such accounts or assets, the last three digits of any account numbers, the balance of the accounts on the effective date of this Order, and the nature, description, location and estimated value of any other assets;

2) Identification and location of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access or control by any Defendant or other party subject to Section III of this Order in whole or in part;

3) Identification of any Defendant or other party that has attempted to access any account, safe deposit box, storage facility, or other asset subject to Section III since the effective date of this Order; and,

4) ~~If the account, safe deposit box, storage facility, or other asset subject to~~ Section III of this Order has been closed or removed, the date closed or removed, the balance or value on said date, and the current location of the removed funds or assets, and the identity of any immediate and subsequent transferees of such funds or assets.

C. Defendants shall provide the following information to counsel for the Plaintiff and a statement, signed by Defendants and notarized, certifying that the information is true and accurate within five (5) business days:

- 1) Customer Files;
- 2) Membership Agreements;

- 3) Complaints received by Defendants;
- 4) All Advertising of the Matchmaker Defendants;
- 5) Documents demonstrating the relationship between the Matchmaker Defendants and Monterey Financial Services, Inc. (e.g. contracts, agreements, communications, etc.); and
- 6) Names and last known contact information of all current and former employees.

D. Defendants shall provide representatives of Plaintiff access to inspect and copy, within five (5) business days of a written request by Plaintiff, all records pertaining to each such account or asset subject to Section III of this Order, including but not limited to, account statements, account applications, corporate resolutions, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debt and credit instruments, cashier's check receipts, money orders, wire transfer receipts, 1099 forms and safe deposit box logs.

E. Defendants shall respond to interrogatories, requests for admissions, or requests for production of documents within five (5) business days after service of the discovery request.

VI.

INJUNCTIVE RELIEF

IT IS FURTHER ORDERED that Defendants, their officers, agents, employees, and attorneys, and all persons in active concert or participation with them, are hereby commanded to immediately desist and refrain from the following acts from the date of entry of this Order until the fourteenth day after entry or until further Order of this Court:

A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer generated materials relating to the

business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to discovery or further orders or subpoenas in this cause;

B. Transferring, withdrawing, liquidating, spending, concealing, encumbering, removing, dissipating, distributing, assigning, granting a lien or security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock, other assets, or any interest therein, or allowing same to occur, wherever located, that are:

1) owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to any of the Matchmaker Defendants, including but not limited to, any accounts to which any Matchmaker Defendant has signatory authority and any accounts in which Defendant Monterey Financial owns any interest granted by any Matchmaker Defendants or their affiliates;

2) in the actual or constructive possession of any Matchmaker Defendant; or

3) in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, or belonging to, any other corporation, partnership, trust, or any other entity directly or indirectly owned, managed, or controlled by, or under common control of, any Matchmaker Defendant;

C. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of Defendants or subject to access, ownership or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;

D. Failing to provide to Plaintiff within 3 business days after actual notice of the Temporary Restraining Order by personal service or otherwise a full and complete description of Matchmaker Defendants' assets and their location and all interests in any of Matchmaker Defendants' assets.

E. Advertising via print, billboard, internet, social media, or through any other means any services related to providing dating services or social introductions to consumers without further order of this Court;

F. Offering for sale, or otherwise soliciting consumers to purchase membership agreements for services related to social introductions until further order of the Court;

G. Soliciting consumers through telephone calls, emails, social media, or other means to offer Defendants' services until further order of this Court;

H. Failing to honor any requests by consumers (before and after this Court's order) to cancel their membership agreements with Defendants without further obligation;

I. Engaging in any activity that qualifies as Debt Collection, as that term is defined under Tex. Fin. Code § 392.001, with relation to any obligation or alleged obligation incurred in relation to any service provided by the Matchmaker Defendants, including but not limited to debiting consumer bank accounts, assigning accounts to another party for collection, or submitting a negative credit report to any credit reporting agencies.

VII.

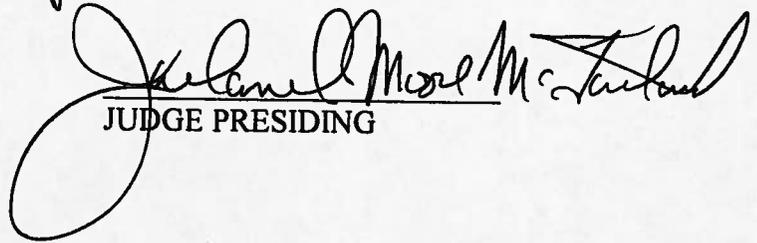
IT IS FURTHER ORDERED that Defendants in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14) day after entry or until further order of this Court, whichever is less.

This Order shall be effective without the execution and filing of a bond because Plaintiff, the State of Texas, is exempt from such bond under Tex. Civ. Prac. & Rem. Code § 6.001 and Tex. Bus. & Com. Code § 17.47(b).

The Clerk of the above-entitled Court shall forthwith issue an *ex parte* temporary restraining order in conformity with the law and the terms of this Order. Tex. Bus. & Com. Code § 17.47(a).

Hearing on Plaintiff, State of Texas' Application for a Temporary Injunction is hereby set for
the 19th day of July, 2013, at 11 o'clock A. M.

SIGNED this 9 day of July, 2013 at 1:45 o'clock, P m.


JEWELENE MOORE MCFARLAND
JUDGE PRESIDING