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Hidalgo County District Clerks
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NO. C-7273-14-D

STATE OF TEXAS, Plaintiff	§	IN THE DISTRICT COURT
v.	§	HIDALGO COUNTY, TEXAS
DENNIS GOMEZ, INDIVIDUALLY AND DBA FLAMINGO POOLS, RGV FLAMINGO POOLS INTERNATIONAL, LTD. DBA FLAMINGO POOLS, and RGV POOL SHARKS, LLC Defendant	§	_____ JUDICIAL DISTRICT

EX PARTE TEMPORARY RESTRAINING ORDER AND ASSET FREEZE

Plaintiff, STATE OF TEXAS, has filed its Original Verified Petition in this cause seeking a Temporary Injunction and Permanent Injunction against Defendants **DENNIS GOMEZ, INDIVIDUALLY AND DBA FLAMINGO POOLS, RGV FLAMINGO POOLS INTERNATIONAL, LTD. DBA FLAMINGO POOLS, and RGV POOL SHARKS, LLC.** (hereinafter, "Defendants"). In the same Petition, Plaintiff has presented its request for an *Ex Parte* Temporary Restraining Order and Asset Freeze. The Court FINDS Defendants appear to be violating §17.46(a) and (b) of the Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code §17.41 *et seq.* ("DTPA"). It appears from facts set forth in Plaintiff's Original Verified Petition, that unless Defendants are immediately restrained from the acts and practices prohibited below, Defendants will continue to commit such acts and practices before notice can be given and a hearing can be held on Plaintiff STATE OF TEXAS' request for a Temporary Injunction. Furthermore, Defendants will not only continue to use deceptive tactics and misrepresentations in the course of trade and commerce, but may well dissipate and secrete their assets before a Temporary Injunction hearing can be held and a final judgment for restitution can be rendered by this Court. Such injury would be irreparable because continued violations of

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the DTPA may well cause more consumers to lose money through deceptive transactions. Given the likelihood of the dissipation of Defendants' assets prior to rendition of a final judgment, the possibility of restitution for consumers will be remote unless an order freezing certain assets is granted.

DEFINITIONS

1. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, as used in this Order, the following terms are defined as follows:

    a. "Consumer" means an individual, person, sole proprietorship, partnership, corporation, firm, or entity of any kind, however organized, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;

    b. "Defendant(s)" means **DENNIS GOMEZ, INDIVIDUALLY AND DBA FLAMINGO POOLS, RGV FLAMINGO POOLS INTERNATIONAL, LTD. DBA FLAMINGO POOLS, and RGV POOL SHARKS, LLC** their successors, assigns, officers, agents, subcontractors, servants, employees, corporations and any other persons in active concert or participation with them;

    c. "Defendant(s)' businesses" means any other sole proprietorship, firm, partnership, corporation, association, joint venture or other group, or business entity of any kind or form, however organized, that sells or offers to sell any type of pool construction or pool related service or product to any consumer; and

    d. "Representing," "selling," "marketing," "promoting," "distributing," "advertising," or "soliciting" means any type of contact with a consumer or entity for the purpose of requesting, persuading, or seeking any type of contribution,

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sponsorship, compensation, or anything of value from said consumer or entity for any reason whatsoever, including use of the Internet.

RESTRAINING ORDER

2. **IT IS FURTHER ORDERED** that Defendants **DENNIS GOMEZ, INDIVIDUALLY AND DBA FLAMINGO POOLS, RGV FLAMINGO POOLS INTERNATIONAL, LTD. DBA FLAMINGO POOLS, and RGV POOL SHARKS, LLC,** their officers, agents servants, employees, attorneys, and any other persons in active concert or participation with them, who receive actual notice of this Order by personal service 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, to wit:

   a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer-generated materials that relate to Defendants' business that are currently or hereafter in Defendants' possession, custody or control, except in response to 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, agreements, shares of stock, or other assets, or any interest therein, wherever located, that are:

      i. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to Defendants;

      ii. in the actual or constructive possession of Defendants; or

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

c. Allowing the transfer or withdrawal of funds or other assets that are:

i. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to Defendants, including but not limited to, any accounts to which Defendants have signatory authority and any accounts in which Defendants own any interest;

ii. in the actual or constructive possession of Defendants; or

iii. 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 Defendants;

d. 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 State and the Court prior notice by motion seeking such access;

e. Failing to provide State within three (3) business days after actual notice of the *ex parte* Temporary Restraining Order with asset freeze by personal service or otherwise, a full and complete description of Defendants' assets and their location as well as all interests in any of Defendants' assets;

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f. Offering for sale, selling, soliciting pool contracts in violation of §17.46 of the Tex. Bus. and Commerce Code;

g. Failing to honor any requests by consumers (before and after this Court's order) to rescind any agreements or contracts with Defendants without further obligation and failing to cease any and all collection efforts until further order of this Court;

h. Harassing or threatening consumers;

i. Accepting money or valuable consideration in exchange for an offer to build a pool without intending to build such pool within the time represented, verbally and written, to the consumer.;

j. Accepting payments to Defendants unless such payments are by check, money order or credit card and made payable to Flamingo Pools or Pool Sharks;

k. Failing to give a receipt for all payments received from consumers;

l. Failing to deposit all payments received from consumers into an account at a financial institution that is in the name of Defendants Flamingo Pools or Pool Sharks;

m. Defendants shall not use funds collected from one consumer to pay for expenses associated with the construction of a pool for another consumer;

n. Defendants shall not cash any checks given to them as payment on a pool;

o. Failing to obtain all necessary permits and inspections for each pool constructed and shall make available to the Attorney General upon request;

p. Failing to abide by all laws in the state of Texas and ordinances of the city where a pool may be built in reference to construction of pools;

q. Defendants shall not remove equipment, such as a pump or filter, at a pool site and install it at another;

r. Failing to contract with licensed electrical and plumbing contractors;

s. Failing to state in each contract the actual amount of time the pool project will take to be completed;

t. Failing to complete building projects within the time stated in each pool construction contract;

u. Defendants shall not enter into any contractual agreement that cannot be completed within the time period stated in the contract;

v. Failing to maintain reasonable communication with all clients;

w. Defendants shall not use the funds of another entity towards the expenditures of another;

x. Defendant Gomez shall not pay for personal expenditures with corporate funds, from either corporation;

y. Failing to maintain proper book keeping practices;

z. Failing to pay for all expenditures by check made payable to the individual or entity providing such service, product or material and maintain an invoice or purchase order for each expense;

aa. Failing to pay for all labor, i.e. employees, contractors, subcontractors, by check made payable to the individual or entity providing such labor;

bb. Defendants shall not withdraw funds by use of a check made payable to "Cash," "Petty Cash," or in the name of a bank for purposes of obtaining cash; and

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cc. Defendants shall not make any money "wire transfers" to another financial institution, domestic and or foreign.

ASSET FREEZE

3. **IT IS THEREFORE ORDERED** that Defendants **DENNIS GOMEZ, INDIVIDUALLY AND DBA FLAMINGO POOLS, RGV FLAMINGO POOLS INTERNATIONAL, LTD. DBA FLAMINGO POOLS, and RGV POOL SHARKS, LLC** and their officers, agents, servants, employees, attorneys, and any other persons or entities in active concert or participation with them, and all financial institutions including, but not limited to, JP Morgan Chase,[1] holding money or assets of any kind in the name and/or for the benefit of the above-named Defendants, who receive actual notice of this Order by personal service 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:

   a. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, dissipating, distributing, or allowing the transfer, removal, withdrawal or encumbering from any financial institution or from any other entity or location or from the jurisdiction of this Court, any money, cash, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in possession or custody of, standing in the name of, claimed by Defendants, or held in a constructive trust for Defendants; and

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1 ***Known*** accounts at Bank subject to this Order include, but are not limited to, account numbers XXXXX2573, XXXXX3225, XXXXX1506 and XXXXX1514.

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

4. **IT IS FURTHER ORDERED** that Defendants **DENNIS GOMEZ, INDIVIDUALLY AND DBA FLAMINGO POOLS, RGV FLAMINGO POOLS INTERNATIONAL, LTD. DBA FLAMINGO POOLS, and RGV POOL SHARKS, LLC**, their officers, agents, servants, employees, attorneys, and any other persons or entities in active concert or participation with them, are prohibited from transferring, spending, encumbering, withdrawing, or removing any sum of money from any accounts, assets or property referenced in Paragraph 3 of this Order, **or** from any and all other such account(s) and assets where monies or proceeds from the operation of Defendants' businesses have been used, placed, deposited, transferred, invested or commingled.

5. **IT IS FURTHER 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 assets be or remain frozen and/or that certain assets be released from the asset freeze ordered herein, pending the completion of any scheduled Temporary Injunction hearing, then such parties or entities may do so.

6. **IT IS ORDERED** that any bank, financial institution, person, or other entity holding funds in the name of or for the benefit of any party, person, or entity referenced in 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

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TEXAS **and** an authorized representative or attorney of such Defendant, person or entity with custody or control of the bank account or asset involved.

7. **IT IS FURTHER ORDERED** that Defendants **DENNIS GOMEZ, INDIVIDUALLY AND DBA FLAMINGO POOLS, RGV FLAMINGO POOLS INTERNATIONAL, LTD. DBA FLAMINGO POOLS, and RGV POOL SHARKS, LLC** advise any financial or brokerage institution, escrow agent, title company, storage facility, commodity trading company, business entity or person maintaining or having custody or control of any account or other asset of Defendants, within five (5) business days of the date of service of this Order, to provide to counsel for Plaintiff STATE OF TEXAS and the Defendant/account-holder a statement or letter setting forth:

    a. The identification of each account or asset titled in the name, individually or jointly, of Defendants, or held on behalf of, or for the benefit of, Defendants;

    b. The balance of each such account, or a description and estimated value of such assets, as of the close of business on the day on which this Order is served, and provide to the Office of the Attorney General a monthly balance on each account;

    c. If the account(s) or other asset(s) has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other assets was transferred or remitted; and

    d. The identification of any safe deposit box or storage facility that is in the name individually or jointly of Defendants, or is otherwise subject to access or control by Defendants.

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8. **IT IS FURTHER ORDERED** that any financial or brokerage institution, escrow agent, title company, storage facility, commodity trading company, business entity or person maintaining or having custody or control of any account or other asset of Defendants, shall hold such funds or assets in Trust for the benefit of the owner of those funds, said owners to be determined by agreement of the parties or by Order of this Court.
9. **IT IS FURTHER ORDERED** that Plaintiff STATE OF TEXAS shall be granted leave to take telephonic, video, written, and other depositions with Requests for Production of any party, person or witness prior to any scheduled Temporary Injunction hearing and prior to Defendants= answer date upon reasonable shortened notice to Defendants or their attorneys, if known, and that Plaintiff STATE OF TEXAS shall be granted leave to file any corresponding Business Records Affidavits with reasonable, shortened notice.
10. **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.
11. 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. This Order shall be effective without the execution and filing of a bond, as Plaintiff STATE OF TEXAS is exempt from such bond pursuant to Tex. Bus. & Com. Code §17.47(b).
12. Hearing on Plaintiff STATE OF TEXAS' Application for Temporary Injunction is hereby set for the 11th day of September, 2014, at 8:00 o'clock a. m.

This order expires on September 19, 2014 or sooner as per order of the court.

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SIGNED this ____ day of _____, 2014, at _____ a.m./p.m.

JUDGE PRESIDING