NO. 2014 70768

P. 15

TRORX

CASO

THE STATE OF TEXAS, ***Plaintiff***	§	**IN THE DISTRICT COURT OF**
v.	§	**HARRIS COUNTY, TEXAS**
Marque Learning Center Partnership; **Guerra Management Group, Inc. fka** **Marque Learning Center;** **Guerra Products Company, Inc.;** **Marque Learning Center** **(a corporation)** ***Entity and Partnership Defendants***	§	80 **JUDICIAL DISTRICT**
Henry Guerra Jr.; **Henry Guerra Sr.;** **Michael Guerra;** **Rebecca Gomez Guerra;** **Esther Gomez Tristan;** **Alfonso Mendoza;** **Linda Ruth Garza; and** **Lauro Garza.** ***Individual and Partner Defendants***	§	
Guerra International (a corporation) **Bianca Estella Guajardo.** ***Relief Defendants***	§	

FILED
Chris Daniel
District Clerk
DEC 05 2014
Time:
Harris County, Texas
By
Deputy

EX PARTE TEMPORARY RESTRAINING ORDER

Plaintiff, State of Texas, has filed 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 Henry Guerra Jr., Individually; Henry Guerra Sr., Individually; Michael Guerra, Individually; Rebecca Gomez Guerra, Individually; Esther Gomez Tristan, Individually; Alfonso Mendoza, Individually; Linda Ruth Garza, Individually; Lauro Garza, Individually; Marque Learning Center Partnership; Guerra Management Group, Inc. fka Marque Learning Center; Guerra

Products Company, Inc.; Marque Learning Center (a corporation); Guerra International (a corporation); and Bianca Estella Guajardo, Individually ("Defendants") and in the Same Original Petition, Plaintiff has requested its request for a Temporary Restraining Order against the Defendants.

I. FINDINGS IN SUPPORT OF TEMPORARY RESTRAINING ORDER

1. 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.

2. This 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 §§ 17.41-17.63. The Court further FINDS that this action in 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. DTPA § 17.47(b).

3. 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.

4. 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. DTPA § 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. DTPA § 17.47(a), (b), (d).

5. Under DTPA § 17.47(b), 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. DTPA § 17.47(b).

6. The Court finds this Temporary Restraining Order may be issued without bond. DTPA § 17.47(b).

II. DEFINITIONS

7. "Defendants" means Henry Guerra Jr., Individually; Henry Guerra Sr., Individually; Michael Guerra, Individually; Rebecca Gomez Guerra, Individually; Esther Gomez Tristan, Individually; Alfonso Mendoza, Individually; Linda Ruth Garza, Individually; Lauro Garza, Individually; Marque Learning Center Partnership; Guerra Management Group, Inc. fka Marque Learning Center; Guerra Products Company, Inc.; Marque Learning Center (a corporation); Guerra International (a corporation); and Bianca Estella Guajardo, Individually. "Defendants" shall mean the foregoing named Defendants individually, collectively, or in any combination.

8. "Affiliate" means Trinity Academy LLC.

9. "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,

precious metal dealer, or payment processing agent or other financial institution or depository of any kind, either within or outside the territorial United States.

III. ASSET FREEZE

10. **IT IS THEREFORE ORDERED** that Defendants Henry Guerra Jr., Individually; Henry Guerra Sr., Individually; Michael Guerra, Individually; Rebecca Gomez Guerra, Individually; Esther Gomez Tristan, Individually; Alfonso Mendoza, Individually; Linda Ruth Garza, Individually; Lauro Garza, Individually; Marque Learning Center Partnership; Guerra Management Group, Inc. fka Marque Learning Center; Guerra Products Company, Inc.; Marque Learning Center (a corporation); Guerra International (a corporation); and Bianca Estella Guajardo, Individually; and their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, including Trinity Academy LLC, 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, in the following accounts: ~~real or personal property, accounts, contracts, shares of stock, other assets, or any interest therein, or allowing same to occur, 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 any Defendant or Affiliate, including but not limited to, any accounts to which any Defendant has signatory authority, and specifically including, but not limited to the following accounts:~~

Bank of America:

XXXXXXXX9335; XXXXXXXX0231; XXXXXXXX6219;
XXXXXXXX8967; XXXXXXXX8355; ~~XXXXXXXX2499;~~
XXXXXXXX9664; XXXXXXXX9877; XXXXXXXX8465;
XXXXXXXX1611; ~~XXXXXXXX0873;~~ ~~XXXXXXXX6884;~~

XXXXXXXX9741; XXXXXXXX3772; XXXXXXXX8510; XXXXXXXX9974; XXXXXXXX3662; ~~XXXXXXXX9411; XXXXXXXX9575;~~ XXXXXXXX3565; XXXXXXXX3617; XXXXXXXX1580; XXXXXXXX1593; XXXXXXXX9864; XXXXXXXX8920; ~~and all other accounts belonging to Defendants and/or to which Defendants have signatory authority;~~

Woodforest National Bank:

XXXXXX1289; ~~and all other accounts belonging to Defendants and/or to which Defendants have signatory authority;~~

~~All accounts belonging to Defendants and/or to which Defendants have signatory authority at J.P. Morgan Chase;~~

~~All accounts belonging to Defendants and/or to which Defendants have signatory authority at Wells Fargo;~~

~~All accounts belonging to Defendants and/or to which Defendants have signatory authority at Space City Credit Union;~~

~~All accounts belonging to Defendants and/or to which Defendants have signatory authority at Shell Federal Credit Union;~~

ii. in the actual or constructive possession of any Defendant or Affiliate; 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, 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 Affiliate or subject to access, ownership or control by any Defendant, without providing Plaintiff and the Court prior notice by motion seeking such access.

11. It is **FURTHER ORDERED** that any financial institution, including but not limited to Bank of America, Woodforest National Bank, JP Morgan Chase, Wells Fargo, Space City Credit

Union, and Shell Federal Credit Union or any business entity or person, maintaining or having custody or control of funds, accounts, or assets of any kind in the name and/or for the benefit of the above-named Defendants and their Affiliate as defined herein, or to which Defendants of Affiliate have access or signatory power, who receive actual notice of this Order by personal service, email, facsimile transmission, or otherwise, shall 1) hold and retain within its control any of the assets, funds, accounts or other property and 2) shall prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of the assets, funds, accounts or other property, except as permitted in accordance with Section IV of this Order.

12. 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

13. **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 <u>and</u> 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

14. **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) days' 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 preserve all data found on, shall not log in to, and shall not otherwise alter in any way all websites maintained or administered by them or their agents including, but not limited to, any of the following websites:

i. Facebook.com (including https://www.facebook.com/marquediploma and www.facebook.com/pages/Marque-learning-center/),

ii. Youtube.com (including the user account https://www.youtube.com/user/MarqueDiplomaGed and the three videos located at : https://www.youtube.com/watch?v=yg0dcRf-vE4&list=UUdnp-0wbpkYWiKlg7FQr9UQ (titled "Andrea J"),

https://www.youtube.com/watch?v=y5Z0fTzDufk&list=UUdnp-0wbpkYWiKlg7FQr9UQ&index=2 (titled "High School Diploma GED"), https://www.youtube.com/watch?v=3gi1SFz4CC4&index=3&list=UUdnp-0wbpkYWiKlg7FQr9UQ) (titled "Marque Learning Center – 'OFFICIAL' Promo Video).

c) Defendants shall preserve all data found on, ~~shall not log in to, and shall disconnect from the internet and electrical power all computers and all other electronic equipment~~ ANY ELECTRONIC EQUIPMENT, on which Defendants have documents and data relating to the business operations of Defendants, except solely for complying with Paragraph VI. 16 (or further order of the Court). This preservation order specifically includes all data related to the Marque Learning Center tests (including previous versions of said tests), and all data related to all of Defendants' websites (including all websites referenced in this Order).

d) 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 of receiving actual notice of this order:

i. Identification and description of all accounts and assets as described in Section III of this Order held or controlled by Defendants or their Affiliate 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;

ii. 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 Affiliate, or is otherwise subject to access or control by any Defendant or Affiliate or other party subject to Section III of this Order in whole or in part;

iii. 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,

iv. 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.

e) Defendants shall provide the following information in electronic form if available 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:

i. Names and last known contact information, including mailing address, physical address, telephone number, Social Security Number, and email address of all customers of any of Defendants,

ii. A copy of the customer list that Defendants use in the ordinary course of business for purposes of running Defendants' business operations.

iii. Names and last known contact information, including mailing address, physical address, telephone number, Social Security Number, and email address of all current and former employees of any of Defendants.

iv. Any and all financial records, including, but not limited to, bank statements, and any and all corresponding canceled checks and deposit items of any Guerra Educational Business.

v. All agreements entered into between (1) any one or more of the Defendants and (2) any one or more of the Defendants, Relief Defendants, or other parties or entities subject to this Order, including, but not limited to, family limited partnership agreements.

f) Defendants shall provide representatives of Plaintiff access to forensically inspect and copy, within five (5) business days of a written request by Plaintiff, all electronic:

i. Documents and data relating to the business operations of Defendants, including all data related to questions appearing on Marque Learning Center tests (including previous versions of said tests), as well as all data related to all of Defendants' websites (including all websites referenced in this Order).

ii. Documents and data from websites maintained or administered by Defendants or their agents.

g) 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.

h) 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

15. **IT IS FURTHER ORDERED** that Defendants, their officers, agents, employees, and attorneys, and all persons in active concert or participation with them, who receive actual notice of this Order by personal service, facsimile, email, or otherwise, whether acting directly or indirectly, are hereby commanded to immediately desist and refrain from the following acts from the date of entry of this Order until final judgment in entered in this case:

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:

i. 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 Defendants or their Affiliate, including but not limited to, any accounts at financial institutions to which any Defendant or their Affiliate has signatory authority and any accounts in which

any of Defendants or their Affiliate own any interest granted by any of Defendants;

ii. in the actual or constructive possession of any Defendant or Affiliate; 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, any 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 their Affiliate or subject to access, ownership or control by Defendants or their Affiliate, without further order of this Court;

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 Defendants' assets and their location and the ownership of all interests in any of Defendants' assets as required by Paragraph V. 14(d);

e) Advertising via print, billboard, internet, websites, text-messaging, instant messaging, email, social media, or through any other media any online educational materials, products, or services without further order of this Court;

f) Continuing to offer any products and services on the websites at www.marquelearningcenter.com, www.marqueco.com, http://highschooldiplomahouston.com/, and http://highschooldiplomasa.com/ (including all related websites with similar domain names) and webpages without further order of the Court;

g) Continuing to offer any products and services at the Marque Learning Center offices located 11811 East Freeway Suite 300 and Suite 130, Houston, TX 77029 and any other location at without further order of the Court;

h) Offering for sale, or otherwise soliciting consumers to purchase any educational materials, products or services without further order of the Court;

i) Engaging in the business of offering educational products or services either directly or through an intermediary;

j) Soliciting consumers through telephone calls, emails, social media, or other means to offer online educational products and services without further order of this Court

k) Selling, transferring, or otherwise disclosing the name, address, telephone number, Social Security number, credit card number, bank account number, email address or other identifying information of any consumers;

l) Depositing any payments from customers of Defendants' products and services.

16. **IT IS FURTHER ORDERED THAT** Defendants, their members, officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order shall immediately take whatever action is necessary to ensure that any websites covered by this Order (including but not limited to www.marquelearningcenter.com and www.marqueco.com) shall prominently display only the following statement:

> **The Consumer Protection Division of the Office of Attorney General of Texas has filed a lawsuit alleging that the owners and operators of this website have engaged in deceptive trade practices in violation of the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.41-17.63, relating to their high school education business. The District Court of Harris County Texas has entered an order prohibiting the alleged acts and**

practices. You may obtain additional information from the Texas Attorney General website at www.texasattorneygeneral.gov/consumer/index.shtml.

VII.

17. **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 final judgment is entered in this case or until further order of this Court, whichever is less.

18. 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 DTPA § 17.47(b).

19. The Clerk of the above-entitled Court shall forthwith issue a writ of temporary injunction in conformity with the law and the terms of this Order. DTPA § 17.47(a).

20. ~~Trial on the merits~~ TEMPORARY INJUNCTION in this cause is hereby set for the 19 day of DECEMBER, 2014, at 1:30 o'clock ~~p~~. M.

SIGNED this 5 day of DECEMBER, 2014 at 1:52 o'clock, p m.

JUDGE PRESIDING