

CAUSE NO. _____

THE STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT OF

v.

HOOD COUNTY, TEXAS

CARLOS CARVAJAL,
Defendant.

355th JUDICIAL DISTRICT

STATE’S ORIGINAL PETITION FOR CIVIL PENALTIES,
RESTITUTION, AND INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT (referred to herein as the “Attorney General”), on behalf of the State of Texas, and on behalf of the interest of the general public of the State of Texas, and complains of Carlos Carvajal. The Attorney General would respectfully show the Court as follows:

DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under a Level 2 discovery control plan pursuant to rule 190.3 of the Texas Rules of Civil Procedure.

JURISDICTION

2. This action is brought by Attorney General Greg Abbott through his Consumer Protection and Public Health Division in the name of the STATE OF TEXAS under the authority granted to him pursuant to section 17.47 of the Texas Deceptive Trade Practices–Consumer Protection Act, TEX. BUS. & COM. CODE §§ 17.41 *et seq.*, (“DTPA”), permitting the Consumer Protection and Public Health Division of the Attorney General’s office to bring an action to restrain, by temporary restraining order, temporary injunction, or permanent injunction, the use of any

method, act or practice declared to be unlawful by DTPA § 17.46, where such proceedings are in the public interest.

3. The Attorney General files this suit against Defendant on the grounds that:

A. Defendant has engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined herein and as declared unlawful pursuant to DTPA §§ 17.41 *et seq.*;

B. This suit is brought against Defendant for injunctive relief, actual damages, restitution, civil fines and penalties, costs, and attorney's fees as a result of the violations of DTPA §§ 17.41 *et seq.*

PARTY DEFENDANT

4. Defendant CARLOS CARVAJAL is an individual currently residing in Grandbury, Hood County, Texas and is doing business in the State of Texas. **Defendant may be served with citation and process at 605 Killough Road, Grandbury, Hood County, Texas 76049, or wherever he may be found.**

VENUE

5. Venue of this suit lies in Hood County, Texas pursuant to DTPA § 17.47(b) because Defendant currently resides in Hood County, Texas.

ACTS OF AGENTS

6. Whenever in this petition it is alleged that Defendant did any act or thing, it is meant that Defendant performed or participated in the act; or that Defendant's officers, trustees, employees, agents, representatives, or successors, performed or participated in the act on behalf of and under the authority of Defendant.

PUBLIC INTEREST

7. Because the State of Texas has reason to believe that Defendant has engaged in, and will continue to engage in the unlawful practices set forth below, the State of Texas has reason to believe Defendant has caused and will cause immediate, irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection and Public Health Division 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

8. Defendant has at all times described herein, engaged in conduct constituting “trade” and “commerce,” as those terms are defined in DTPA §17.45(6).

NOTICE BEFORE SUIT GIVEN

9. Plaintiff informed the Defendant herein at least seven (7) days before instituting this action of the alleged unlawful conduct of which complaint is now made, pursuant to DTPA § 17.47(a).

APPLICABLE IMMIGRATION LAW

10. Aliens may hire either a licensed attorney, an appropriately supervised law student, or a person accredited by the Board of Immigration Appeals, who may charge or accept a fee for representing them in immigration proceedings. 8 C.F.R. § 292.

11. A person commits an offense if the person is a notary public and the person states or implies that they are licensed attorney; solicits or accepts compensation to prepare documents for or otherwise represents the interest of another in an immigration proceedings; or solicits or accepts

compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state of the United States. TEX. GOV'T CODE ANN. § 406.017(a) (Vernon's 1998). Failure to comply with this section is a deceptive trade practice actionable under DTPA §§ 17.41 *et seq.* TEX. GOV'T CODE ANN. § 406.017(f) (Vernon's 1998).

SPECIFIC FACTUAL ALLEGATIONS

12. Defendant CARLOS CARVAJAL primarily provides immigration services out of his home, which was formerly in Plano, Collin County, Texas.

13. Among other things, Defendant CARLOS CARVAJAL provides counseling regarding United States immigration laws and procedures, for a fee. Defendant targets and solicits persons attempting to immigrate and/or obtain residency in the United States as well as the friends and family members of such persons.

14. Defendant CARLOS CARVAJAL represents to consumers that he is qualified to prepare all of their applications, forms, and other pertinent documentation as required by the immigration laws of this country. Specifically, Defendant represents that he is a former immigration judge, when in fact he was not. Defendant further displays to consumers various diplomas and certifications, which represent that he is qualified to provide such immigration services.

15. Defendant CARLOS CARVAJAL prepares various immigration documentation, however fails to disclose himself as the preparer of such documentation.

16. Defendant CARLOS CARVAJAL further represents to consumers that he has connections with the Chicago Bureau of Citizen and Immigration Service ("BCIS").

17. Defendant CARLOS CARVAJAL fails to inform consumers that he is not authorized or qualified to provide such immigration services. Defendant is not an attorney licensed by the State

of Texas, nor is he a law student. Moreover, Defendant is not accredited by the Board of Immigration Appeals to represent persons in proceedings related to immigration to the United States, citizenship, or other related matters. Defendant CARLOS CARVAJAL is not qualified under 8 C.F.R. § 292 to represent consumers because he receives remuneration from consumers on immigration matters while having no preexisting relationship or connection with such persons entitled to the representation. Defendant has failed to obtain permission from the Board of Immigration Appeals to act as the representative of the aforementioned consumers.

18. Defendant CARLOS CARVAJAL further provides legal advice and prepares other legal documentation for consumers for a fee. Defendant is not related to the consumers for which he provides legal advice and prepares other legal documentation for a fee. Defendant does not, and has not possessed the certification, license, or other qualifications necessary to perform such services.

19. Defendant's failure to disclose his lack of authority and accreditation is intended to induce consumers into transactions which they would not have entered if the information had been disclosed to them.

DTPA VIOLATIONS

20. Defendant CARLOS CARVAJAL violated DTPA § 17.46(a) by engaging in false, misleading, or deceptive acts or practices in the conduct of trade or commerce.

21. Defendant CARLOS CARVAJAL violated DTPA § 17.46(b)(2) by causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

22. Defendant CARLOS CARVAJAL violated DTPA § 17.46(b)(3) by causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by, another;

23. Defendant CARLOS CARVAJAL violated DTPA § 17.46(b)(5) by 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 have;

24. Defendant CARLOS CARVAJAL violated DTPA § 17.46(b)(7) by representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

25. Defendant CARLOS CARVAJAL violated DTPA § 17.46(b)(24) by failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

26. The State has reason to believe that Defendant has engaged in, and will continue to engage in false, misleading, and deceptive acts and practices unless restrained by this Court from doing so.

27. Defendant does not possess the certification or qualifications necessary to counsel persons regarding their rights under United States immigration laws or other legal matters. The providing of these services by Defendant violates the DTPA, as follows:

A. Transferring, concealing, destroying or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to Defendant's business which are in Defendant's possession, custody, or control except in response to further orders or subpoenas in this cause;

B. Giving, providing, or offering advice and counsel to any person regarding United

States immigration laws, as well as any rights, privileges, or documents relating thereto, until such time as Defendant either becomes a licensed attorney, or is accredited by the United States Board of Immigration Appeals pursuant to 8 C.F.R. § 292, with the exception of giving or providing a person his or her own documents;

C. Representing to any person, expressly or by implication, that Defendant can or will represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or any other Immigration related matter (including alien temporary or permanent employment or travel), until Defendant is able to fully comply with the requisites of 8 C.F.R. § 292 by becoming a licensed attorney, a properly supervised law student, or by becoming accredited by the United States Board of Immigration Appeals;

D. Selecting or preparing immigration forms, applications, or legal documents of any type to be completed or filed on behalf of persons seeking to establish residency in the United States or to legally obtain lawful employment in the United States, until such time as Defendant obtains the certification, license, or other qualifications required for such activity pursuant to 8 C.F.R. § 292;

E. Advising persons, expressly or by implication, of the type of form, application or document needed in any type of proceeding relating to immigration to the United States, United States Citizenship, employment in the United States, or any other matter relating to the needs of alien residents or non-residents;

F. Giving persons advice and counsel regarding their rights under the immigration laws of the United States or any other sort of legal matter, until such time as Defendant obtains the

certification, license, or other qualifications required for such activity pursuant to 8 C.F.R. § 292;

G. Soliciting, collecting, or accepting fees or compensation of any type, for providing any type of immigration or legal services to consumers, until such time as Defendant obtains the accreditation, license, or other qualifications required for such, pursuant to 8 C.F.R. § 292;

H. Representing, expressly or by implication, that Defendant is able to provide or obtain counterfeit documents for persons wishing to immigrate to the United States which will aid such person to gain employment, residency, citizenship, or other benefit;

I. Stating or implying that Defendant is an attorney licensed to practice law in this State or that Defendant has an attorney on staff to assist her with immigration related matters;

J. Soliciting or accepting compensation of any type to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;

K. Operating an immigration business or conducting immigration business at 2101 Canyon Valley, Plano, Texas 75023, or at 605 Killough Road, Grandbury, Hood County, Texas 76049;

L. Advertising, offering for sale, selling, or providing an immigration service;

M. Accepting money or valuable consideration for performing an immigration service;

N. Accepting money or valuable consideration from any person seeking assistance to obtain a benefit under United States immigration laws for himself or any other person;

O. Advising any person whether or not to file a petition, application, or other form to obtain a benefit under United States immigration laws for himself or any other person;

P. Preparing for any person a petition, application or other form to obtain a benefit

under United States immigration laws for himself or any other person;

Q. Holding himself out, by any means, to the public as an “immigration specialist,” “immigration counselor,” or “immigration consultant” and by any title or designation incorporating the word “immigration” or an abbreviation thereof;

R. Representing, directly or by implication, that Defendant was a federal immigration judge;

S. Representing, directly or by implication, that Defendant has the skill, expertise, or competence to handle immigration matters;

T. 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 his services;

INJURY TO CONSUMERS

28. By means of the foregoing unlawful acts and practices, Defendant CARLOS CARVAL has acquired 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.

DISGORGEMENT

29. All of Defendant’s assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendant to retain, including all ill-gotten gains and benefits or profits that result from Defendant putting fraudulently converted property to a profitable use. The State asks the Court to order Defendant to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. The State further asks that such disgorgement be for the benefit of

victimized consumers and the State of Texas.

REPATRIATION OF ASSETS

30. After due notice and a hearing, the State asks the Court to order that all of the Defendant's assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

REQUEST FOR FINDINGS OF ACTUAL FRAUD AND FALSE REPRESENTATION

31. The State asks the Court to find that Defendant CARLOS CARVAJAL engaged in actual fraud and false representations in that Defendant has made repeated and materially false representations to the public concerning the issues of immigration and the ability of Defendant to represent and/or assist consumers in immigration documentation and proceedings, which were known to be false when made. Such false representations were made with the intention that they be acted upon by the parties to whom the misrepresentations were made. Reliance upon these false representations has resulted in injury to multiple consumers across the United States as well as in the State of Texas, and violates laws enacted by the State of Texas to protect the legal profession and citizens from non-licensed individuals practicing law.

REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

32. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled injunction hearing. Some of these witnesses live outside of Hood County and/or are scheduled for deportation from this country, pursuant to voluntary departure, and

thus cannot appear at any scheduled Temporary Injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendant and their attorneys, if known.

PRAYER

33. WHEREFORE, Plaintiff prays that Defendant CARLOS CARVAJAL be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, Defendant's successors, assigns, 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. Transferring, concealing, destroying or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to Defendant's business which are in Defendant's possession, custody, or control except in response to further orders or subpoenas in this cause, with the exception of transferring to a person his or her own documents books, records, documents, invoices, or other written materials relating to Defendant's business which are in Defendant's possession, custody, or control;
- B. Transferring, spending, hypothecating, concealing, encumbering, depleting, modifying, dissipating, distributing, or removing from the jurisdiction of this Court any money, 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 of, or claimed by

Defendant;

- C. Giving, providing, or offering advice and counsel to any person regarding United States immigration laws, rights, privileges, or documents, until such time as Defendant either becomes a licensed attorney, or is accredited by the United States Board of Immigration Appeals pursuant to 8 C.F.R. § 292;
- D. Representing to any person, expressly or by implication, that Defendant can or will represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or any other Immigration related matter (including alien temporary or permanent employment or travel), until Defendant is able to fully comply with the requisites of 8 C.F.R. § 292 by becoming a licensed attorney, a properly supervised law student, or by becoming accredited by the United States Board of Immigration Appeals;
- E. Selecting or preparing immigration forms, applications, or legal documents of any type to be completed or filed on behalf of persons seeking to legalize their residency status or to obtain lawful employment in the United States, until such time as Defendant obtains the certification, license, or other qualifications required for such activity pursuant to 8 C.F.R. § 292;
- F. Advising persons, expressly or by implication, of the type of form, application or document needed in any type of proceeding relating to immigration to the United States, United States citizenship, employment in the United States, or any other matter relating to the needs of alien residents or non-residents;
- G. Giving persons advice and counsel regarding their rights under the immigration laws

of the United States or any other sort of legal matter, until such time as Defendant obtains the certification, license, or other qualifications required for such activity pursuant to 8 C.F.R. § 292;

H. Soliciting, collecting, or accepting fees or compensation of any type, for providing any type of immigration or legal services to consumers, until such time as Defendant obtains the accreditation, license, or other qualifications required for such, pursuant to 8 C.F.R. § 292;

I. Representing, expressly or by implication, that Defendant is able to provide or obtain counterfeit documents for persons wishing to immigrate to the United States which will aid such person to gain employment, residency, citizenship, or other benefit;

J. Stating or implying that Defendant is an attorney licensed to practice law in this State or that Defendant has an attorney on staff to assist her with immigration related matters;

K. Stating or implying that Defendant was a federal immigration judge;

L. Soliciting or accepting compensation of any type to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;

34. Because Defendant has engaged in the unlawful acts and practices described herein, Defendant has violated and continues to violate the laws as herein alleged. Defendant, unless enjoined by this Court, will continue in violation of the laws of the State of Texas and loss and damage will result to the State of Texas and to the general public.

35. The State further prays that upon final hearing this Court order Defendant to pay civil

penalties of \$20,000.00 per violation to the State of Texas for violations of the DTPA as well as a \$250,000 fine and penalty for actions 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;

36. The State further prays for the Court to 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.

37. The State further prays for attorney's fees and costs pursuant to TEX GOV'T CODE § 402.006(c);

38. The State further prays for pre-judgment interest on all awards of restitution, damages, and civil penalties as provided by law;

39. The State further prays that Defendant's assets be repatriated into the jurisdiction of this Court, that Defendant's assets be subject to disgorgement, and that an equitable lien be placed upon Defendant's property for the benefit of consumer victims;

40. The State further prays for any other relief to which the State may be justly entitled under the law.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY McBEE
First Assistant Attorney General

EDWARD BURBACH
Deputy Attorney for Litigation

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Chief, Consumer Protection Division

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ATTORNEYS FOR STATE OF TEXAS

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned Notary Public, on this day personally appeared Candace Collins, who, after being duly sworn, stated under oath that she has read the above petition, and that every statement contained in the petition is true and correct and within her personal knowledge.

CANDACE COLLINS

SUBSCRIBED AND SWORN TO before me, on the _____ day of December, 2004, to certify which witness my hand and official seal.

Notary Public
State of Texas

FIAT

This matter is hereby set for a **temporary injunction hearing** on **January 20, 2005 at 1:30 p.m.** in the 355th Judicial District of Hood County at the Hood County Courthouse located at 100 East Pearl Street, Granbury, Texas 76048.

Signed this _____ day of _____, 200__.

PRESIDING JUDGE