

CAUSE NO. _____

STATE OF TEXAS, Plaintiff	§	IN THE DISTRICT COURT OF
	§	
v.	§	BEXAR COUNTY, TEXAS
	§	
ISIDRO MANJARRES, Defendant	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF THE COURT:

THE STATE OF TEXAS, Plaintiff, acting through Attorney General of Texas, GREG ABBOTT, complains of Defendant ISIDRO MANJARRES and for cause of action respectfully shows:

1. Discovery Control Plan

The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.2(b)(3).

2. Nature of this Suit

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 Defendant for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (“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.

3. Defendant

Defendant is an individual who regularly conducts business in Bexar County, Texas, and **may be served with process at his place of business at 266 Wayside, San Antonio, Bexar County, Texas.**

4. Authority

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

5. Venue

Venue of this suit lies in Bexar County, Texas, for the following reasons:

- A. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and
- B. Under DTPA § 17.47(b), venue is proper because Defendant has done business in the county of suit.

6. Public Interest

Plaintiff has reason to believe that Defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that Defendant has, by means of these unlawful acts and practices, caused damage to and acquired money or property from persons, and that Defendant adversely affects the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes these proceedings are in the public interest.

7. Trade and Commerce

Defendant has 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.

8. Acts of Agents

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

9. Nature of Defendant’s Operation

Defendant owns and operates a business that purports to provide dental services to persons who purchase his services.

10. Specific Factual Allegations

10.1. Defendant has been engaged in the business of providing dental services to those persons who purchase his services (“customers”). During all relevant times, he held himself out to the public as provider of dental services and solicited customers by representing that he has the skill or knowledge necessary to provide those services.

10.2. Defendant’s customers are persons who sought to obtain dental services. Defendant provided the following services, without limitation, for his customers at his residence:

- A. Extraction of molars; and
- B. Measuring for, fabricating, fitting and installation of dentures.

10.3. Defendant provided these services at his residence which was not equipped as a dental office. Defendant did not have the necessary skill or equipment to properly respond to any emergency or problem which might have arisen while he performed dental services on his customers. Defendant had neither the proper equipment nor training or education to properly provide these services. Defendant's sole training in the dental field consisted of fabricating dentures in a dental laboratory under someone else's supervision. Defendant's business card states that he is a "dental technician."

10.4. Defendant agreed to perform the dental services described above in exchange for compensation and did in fact accept compensation from his customers for these services.

10.5. Defendant is not now nor has in the past two years been licensed by the State of Texas or any other state to engage in acts, practices and/or conduct which constitute the practice of dentistry.

10.6. These activities of Defendant constitute the unauthorized practice of dentistry.

11. DTPA Violations

Defendant, as alleged above, has 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 as follows:

- A. By advertising, offering for sale, selling or providing a service that constitutes the unauthorized practice of dentistry, Defendant is engaging in or has engaged in an act or practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA;
- B. By representing that he has the skill or knowledge necessary to dental services, Defendant is representing, by implication, that he has the status of a licensed dentist, which he does not, in violation of §17.46(b)(5) of the DTPA; and
- C. By agreeing to perform a service which constitutes the unauthorized practice of law, Defendant is representing that his agreement with customers confers or involves an obligation which is prohibited by law, in violation of §17.46(b)(12) of the DTPA.

12. Equitable Rescission

All agreements between Defendant and his customers should be subject to the equitable remedy of rescission.

13. Injury to Consumers

13.1. Defendant has, 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.

13.2. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendant will continue to violate the laws of the State of Texas and cause damage to the general public.

14. Application for Temporary Injunction

It is essential that the Court temporarily enjoin Defendant from continuing with the conduct described in this petition, namely the unauthorized practice of dentistry. Defendant will continue to solicit customers and will continue to give dental services and/or advice to his customers though he is not licensed to practice dentistry in the State of Texas. Defendant's customers will continue being harmed by services defendant is not qualified to perform and by their payment for those services.

15. Application for Permanent Injunction

It is essential that the Court permanently enjoin Defendant from continuing with the conduct described in this petition, namely the unauthorized practice of dentistry. Defendant will continue to solicit customers and will continue to give dental services and/or advice to his customers though he is not licensed to practice dentistry in the State of Texas. Defendant's customers will continue being harmed by services defendant is not qualified to perform and by their payment for those services.

16. Request for Disclosure

Plaintiff, pursuant to Rule 194 of the Texas Rules of Civil Procedure, requests that defendant disclose, within 30 days of service of this request, the information or material described in Rule 194.2 (a), (b), (c), (d), (e), (I), (g), (h), and (i).

17. Prayer

17.1. For these reasons, the State requests that upon notice and hearing the Court issue a temporary injunction and upon final trial the Court issue a permanent injunction enjoining Defendant, his officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant from engaging, directly or indirectly, in the following acts or practices:

- A. Practicing dentistry, as defined in TEX. OCCUPATIONS CODE §251.003, anywhere in the State of Texas;
- B. Advertising, offering for sale, or selling any service constituting the practice of dentistry;
- C. Accepting money or valuable consideration for performing any service constituting the practice of dentistry;
- D. Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause; and

17.2. In addition, Plaintiff requests that this Court:

- A. 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; and
- B. Rescind all fee agreements entered into by and between Defendant and his customers.

17.3. In addition, Plaintiff requests that this Court award the State:

- A. civil penalties against the Defendant in an amount of not more than \$20,000.00 per violation of the DTPA;
- B. reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006;
- C. prejudgment and postjudgment interest at the highest lawful rate; and

D. all other relief to which the State may show itself justly entitled.

Respectfully submitted,

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