

CAUSE NO. _____

THE STATE OF TEXAS AND
TEXAS DEPARTMENT OF
LICENSING AND REGULATION,
Plaintiffs,

v.

FRANKLIN SERVICE STATIONS, INC.
d/b/a J & J TOWING,
Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

COME NOW, the State of Texas (State) and Texas Department of Licensing and Regulation (the Department), by and through Greg Abbott, Attorney General of the State of Texas, and the undersigned Assistant Attorney General, and file this Original Petition and Application for Injunctive Relief (Petition), and for cause of action respectfully show the Court the following:

1. Discovery

1.1 Pursuant to the Texas Rules of Civil Procedure, discovery will be conducted under a Level 2 Discovery Control Plan. Tex. R. Civ. P. 190.3.

2. Parties

2.1 This suit is brought in the name of the State of Texas by its Attorney General and by the Texas Department of Licensing and Regulation, Plaintiffs.

2.2 Defendant Franklin Service Stations, Inc. d/b/a J & J Towing (Defendant) is a corporation organized under the laws of Texas with its principal place of business at P.O.

Box 93124, Austin, Travis County, Texas 78709. Defendant may be served with process by serving its registered agent Franklin Sapp, 814 Linger Lane, Austin, Texas 78721, or wherever he may be found.

3. Nature of Suit

3.1 This is a suit to enforce the Texas statutes and rules regulating the public policy that certain public and commercial facilities be accessible and functional for persons with disabilities. *See* Tex. Gov't Code Ann. § 469.001. Defendant has failed to comply with the rules and requirements of the Elimination of Architectural Barriers Act (the Act), and has failed to make its facility accessible to persons with disabilities. In addition, Defendant has failed to comply with laws requiring Defendant to permit persons seeking to reclaim vehicles stored in its facility to have access to its facility. Tex. Occ. Code Ann. §§ 2303.001-.305 (the Vehicle Storage Facility Act); 16 Tex. Admin. Code § 85.708.

4. Jurisdiction and Venue

4.1 This Court has jurisdiction over this case, and venue is proper in Travis County pursuant to Texas Occupations Code § 51.352, which provides that the Attorney General or the Executive Director of the Department may institute an action for injunctive relief to restrain a violation by and to collect a civil penalty from a person that appears to be in violation of or threatening to violate a law establishing a regulatory program administered by the Department or a rule or order of the Department or the executive director. The Act

and the Vehicle Storage Facility Act are both laws administered by the Department. An action filed under § 51.352 must be filed in Travis County.

4.2 In addition, jurisdiction is proper pursuant to Texas Government Code § 2001.202 which provides that the attorney general, on request of a state agency, may bring an action in district court to enjoin or restrain the continuance of a violation and to compel compliance with a rule of the agency.

4.3 No filing fee or other security for costs is required of the State pursuant to Texas Civil Practice and Remedies Code § 6.001.

5. Applicable Law

5.1 The Department is the administrative agency in Texas that is vested with the regulatory responsibility of the elimination of architectural barriers to persons with disabilities in this state, including those present in commercial facilities such as Defendant's. *See generally* Tex. Gov't Code Ann. §§ 469.001-.208. The purpose of this law is to ensure that each facility and building subject to regulation is accessible to persons with disabilities. Tex. Gov't Code Ann. § 469.001; 42 U.S.C. § 12181.

5.2 The Department has adopted rules that further implement the requirements and restrictions of these statutes, particularly those rules codified at 16 Tex. Admin. Code ch. 68, requiring commercial facilities "intended for non-residential use and if their operations will affect commerce" to comply with the Texas Accessibility Standards (TAS). 16 Tex. Admin. Code § 68.20(d).

5.3 Further, the law requires persons seeking to reclaim vehicles stored in a vehicle storage facility to have access to the facility. Tex. Occ. Code Ann. §§ 2303.158-.160; 16 Tex. Admin. Code § 85.708.

5.4 The Attorney General may bring suit in district court for civil penalties and injunctive relief to enforce these statutes and the Department's rules and orders. Tex. Occ. Code Ann. § 51.352; Tex. Gov't Code Ann. § 2001.202. Further, in enforcing the Act, the Office of the Attorney General is authorized to lend assistance to the Department. Tex. Gov't Code Ann. § 469.051(b).

6. Facts

6.1 Defendant's commercial facility at 814 Linger Lane, Austin, Texas, has several architectural barriers that have prevented members of the public access to the facility who are mobility impaired.

6.2 Defendant is a public vehicle storage facility, regulated by the Department under Texas Occupations Code chapter 2303.

6.3 Defendant is subject to regulation by the Department under chapter 469 of the Texas Government Code and chapter 2303 of the Texas Occupations Code.

6.4 Defendant is required by law to permit persons seeking to reclaim vehicles stored in its facility to have access to its facility. Tex. Gov't. Code Ann. §§ 2303.158-.160; 16 Tex. Admin. Code § 85.708.

6.5 Defendant's facility has large concrete blocks near the entrance that prevent access to its offices by persons who are mobility impaired, in violation of the TAS and preventing access to the facility and vehicles stored at the facility. Further, the offices have a pay window that was installed as part of an architectural modification to the facility that occurred after the effective date of the Act, in violation of the TAS.

6.6 The pay window was installed too high to permit access by persons who are mobility impaired. This prevents these persons from conducting business with the Defendant, and reclaiming their vehicles.

6.7 Upon information and belief, at least one member of the general public encountered difficulty in accessing the payment window because of a mobility impairment, when he sought to retrieve his vehicle from Defendant's facility. The individual whose car was towed to Defendant's facility on March 23, 2010, was reportedly unable to obtain access to the office because of the concrete blocks and could not reach the window to pay for the release of his vehicle because of the mobility impairment. Consequently, he was unable to exercise his statutory right to access and retrieve the vehicle, because of Defendant's failure to comply with the Act and the Vehicle Storage Facility Act, and associated regulations, as cited herein.

6.8 The Department subsequently conducted an inspection and determined that Defendant's facility failed to comply with the Act and the Vehicle Storage Facility Act and

associated rules, as more specifically described herein. During the inspection, Defendant acknowledged that the conditions of noncompliance continue to exist.

7. Claims for Civil Penalties and Injunctive Relief - Tex. Occ. Code Ann. § 51.352 and Tex. Gov't Code Ann. § 2001.202

7.1 All of the facts and allegations set out in paragraphs 1.1-6.8 are incorporated herein by reference.

7.2 This action is brought under Texas Occupations Code § 51.352 for injunctive relief and to collect a civil penalty from Defendant because Defendant appears to be in violation of, or threatening to violate Texas Government Code chapter 469 and 16 Texas Administrative Code § 68.20, relating to the elimination of architectural barriers, and Texas Occupations Code chapter 2303 and associated rules, relating to the storage of vehicles, and pursuant to Texas Government Code § 2001.202.

7.3 As of the date of last inspection, Defendant had not removed the concrete blocks that prevented access to the facility by individuals who are mobility impaired, or modified the payment window to make it accessible to persons who are mobility impaired. Consequently, the failure to comply with statutes and regulations is ongoing.

8. Injunctive Relief

8.1 All of the facts and allegations set out in paragraphs 1.1-7.3 are incorporated herein by reference.

8.2 Pursuant to Texas Occupations Code § 51.352 and Texas Government Code § 2001.202, Plaintiffs may obtain injunctive relief, without bond, to enjoin violations of the Government and Occupations Codes and associated regulations described above.

8.3 Plaintiffs request that the Court issue appropriate injunctive relief to require Defendant to maintain compliance with the Act and associated rules, as they apply to permitting access to the facility offices, both regarding removal of the concrete blocks, and relocation of the payment window, and to provide appropriate access to the vehicles and facility pursuant to the Vehicle Storage Facility Act and associated rules.

9. Civil Penalties

9.1 All of the facts and allegations set out in paragraphs 1.1-8.3 are incorporated herein by reference.

9.2 Pursuant to Texas Occupations Code § 51.352, the Court may assess a civil penalty for each day of each violation of a statute, rule, order or permit relating to Texas Government Code chapter 469 and Texas Occupations Code chapter 2303 and related rules. Each of the violations alleged in this petition relates to these statutes and rules and accordingly each violation is subject to this penalty range. Each day of a continuing violation is a separate violation. Tex. Occ. Code Ann. § 51.352.

9.3 Plaintiffs seek civil penalties within the statutory range, not to exceed \$5,000 per day, for each day and each act of violation.

10. Attorneys' Fees

10.1 Plaintiffs request attorneys' fees, investigative costs, and court costs incurred in this cause. Tex. Occ. Code Ann. § 51.352. In the event of an appeal to the Court of Appeals or the Supreme Court, Plaintiffs would be entitled to recover additional attorneys' fees and court costs.

Prayer

WHEREFORE, Plaintiffs, the State of Texas and the Texas Department of Licensing and Regulation, request:

1. Defendant be cited to appear and answer herein;
2. An injunction against Defendant be issued providing for the injunctive relief described above;
3. The Court grant judgment for appropriate civil penalties against Defendant for violations alleged herein, within the range allowed by law, including post-judgment interest;
4. The Court award Plaintiffs reasonable attorneys' fees, court costs, and investigative costs; and
5. For such other and further relief, at law and in equity, to which Plaintiffs may show themselves justly entitled.

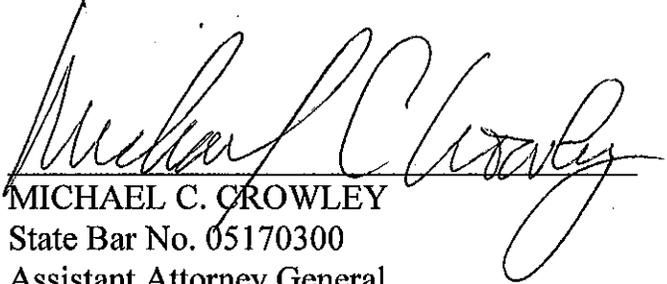
Respectfully submitted,

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