

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

v.

HAPPY FOOT SPA; 702 W. SAM
HOUSTON LLC; THE REAL
PROPERTY KNOWN AS 702 W. SAM
HOUSTON PARKWAY S., HOUSTON,
TEXAS (aka THE REAL PROPERTY
KNOWN AS 704 W. SAM HOUSTON
PARKWAY S., HOUSTON, TEXAS),
Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY,

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION
AND PERMANENT INJUNCTION**

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Ken Paxton, files this petition complaining of Defendants HAPPY FOOT SPA; 702 W. SAM HOUSTON LLC; and THE REAL PROPERTY KNOWN AS 702 W. SAM HOUSTON PARKWAY S., HOUSTON, TEXAS also known as THE REAL PROPERTY KNOWN AS 704 W. SAM HOUSTON PARKWAY S., HOUSTON, TEXAS, and seeks temporary and permanent injunctive relief to stop the operation of an illicit massage establishment in order to protect the public as follows:

I. DISCOVERY CONTROL PLAN

1. The State intends to conduct discovery under Level 2 of Texas Rules of Civil Procedure 190.3 and affirmatively plead that this case is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 for the following reasons:

- (a) The relief sought includes non-monetary injunctive relief.

- (b) The claims for monetary relief—including penalties, costs, expenses, consumer redress, and attorney fees— are in excess of \$100,000.

II. JURISDICTION AND STATUTORY AUTHORITY

2. This enforcement action is brought by Attorney General Ken Paxton, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted by § 17.47 of the Texas Deceptive Trade Practices—Consumer Protection Act (DTPA), Tex. Bus. & Com. Code §§ 17.41–17.63, upon the ground that Defendants Happy Foot Spa and 702 W. Sam Houston LLC have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, § 17.46(a) and (b) of the DTPA. In enforcement suits filed pursuant to DTPA § 17.47, the Attorney General is authorized to seek civil penalties, redress for consumers, and injunctive relief.

3. In addition, the Attorney General brings this suit against Defendant Happy Foot Spa pursuant to the authority granted by Texas Occupations Code § 455.351, upon the ground that Defendant Happy Foot Spa is in violation of Chapter 455 of Texas Occupations Code and/or are the owner or operator of an establishment that offers massage therapy or other massage services regulated by Chapter 455 and is not licensed under that chapter. In enforcement suits filed pursuant to Texas Occupations Code § 455.351, the Attorney General may seek civil penalties and injunctive relief.

4. Finally, the Attorney General brings this suit against all Defendants to enjoin and abate a common nuisance pursuant to Texas Civil Practice & Remedies Code §§ 125.001–125.047. Verification of the petition or proof of personal injury need not be shown by the State. Tex. Civ. Prac. & Rem. Code § 125.002(a).

III. PUBLIC INTEREST AND NOTICE

5. The State believes that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth in this petition.

6. The State has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas by owning, operating, maintaining, or advertising an illicit massage establishment that fails to comply with applicable licensing and other requirements of state and local law. *See* Tex. Civ. Prac. & Rem. Code § 125.002; Tex. Occ. Code § 455.351. Therefore, these proceedings are in the public interest. *See* Tex. Bus. & Comm. Code § 17.47(a).

7. The State has reason to believe Defendants maintain an illicit massage establishment where persons habitually go for massage therapy or other massage services in violation of Texas Occupations Code Chapter 455, and constitutes a common nuisance as defined by Texas Civil Practice and Remedies Code § 125.0015(a)(18). Therefore, Defendants' conduct is subject to abatement under Texas Civil Practice and Remedies Code § 125.002.

8. Pre-suit notice is not required under DTPA § 17.47(a) because, in the opinion of the Consumer Protection Division, there is good cause to believe that Defendants would evade service of process if prior contact were made, Defendants would destroy relevant records if prior contact were made, and/or that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order, including danger to public health and the likelihood that Defendants would attempt to secrete assets.

IV. VENUE

9. Venue of this suit lies in Harris County, Texas, under the DTPA § 17.47(b), for the following reasons:

- (a) The transactions forming the basis of this suit occurred in Harris County, Texas.

- (b) Defendants have done business in Harris County, Texas.
- (c) Defendants' principal places of business are in Harris County, Texas.

10. In addition, venue is mandatory in Harris County under CPRC § 125.002 because the nuisance to be enjoined is maintained by Defendants in Harris County, Texas.

V. TRADE AND COMMERCE

11. At all times described below, Defendants and their agents have engaged in conduct constituting “trade” and “commerce,” defined in § 17.45(6) of the DTPA, as follows:

“Trade” and “commerce” mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

VI. CLAIM FOR RELIEF

12. Plaintiff seeks monetary relief—including penalties, costs, expenses, consumer redress, and attorney fees—in excess of \$100,000 and could exceed \$1,000,000. Plaintiff also seeks nonmonetary, injunctive relief.

VII. DEFENDANTS

13. Defendant Happy Foot Spa is a business located in Harris County at 702 W. Sam Houston Parkway S., Houston, Texas 77042-1594. Happy Foot Spa owns and operates an unlicensed massage parlor in Harris County at 704 W. Sam Houston Parkway S., Suite 300, Houston, Texas 77042. Happy Foot Spa may be served with process at 704 W. Sam Houston Parkway S., Suite 300, Houston, Texas 77042, or wherever it may be found.

14. Defendant 702 W. Sam Houston, LLC is a Texas corporation which regularly conducts business in Harris County. Defendant also has a principal place of business located at 11319 Piney

Point Cir., Houston, Texas 77024. Defendant may be served with process by serving its registered agent and president, Allen Almassi at 11319 Piney Point Cir., Houston, Texas 77024.

15. Defendant The Real Property Known as 702 W. Sam Houston Parkway S., Houston, Texas also known as The Real Property Known as 704 W. Sam Houston Parkway S., Houston, Texas is sued *in rem*. Defendant The Real Property Known as 702 W. Sam Houston Parkway S., Houston, Texas contains a strip mall with suites leased to various businesses, including Happy Foot Spa. Suites at the south end of the strip mall have the mailing address of 704 W. Sam Houston Parkway S., while suites at the north end have the mailing address of 702 W. Sam Houston Parkway S. At all times relevant to this suit, The Real Property Known as 702 W. Sam Houston Parkway S., Houston, Texas is owned by 702 W. Sam Houston LLC and may be served by serving 702 W. Sam Houston LLC's registered agent and president, Allen Almassi, at 11319 Piney Point Cir., Houston, Texas 77024.

16. For purposes of this petition, the following definitions apply:

- (a) **“Landlord Defendant”** means 702 W. Sam Houston, LLC.
- (b) **“In Rem Defendant”** and/or **“The Real Property”** means The Real Property Known as 702 W. Sam Houston Parkway S., Houston, Texas also known as The Real Property Known as 704 W. Sam Houston Parkway S., Houston, Texas.
- (c) **“Defendants”** means all defendants named in this petition.

VIII. ACTS OF AGENTS

17. Whenever in this petition it is alleged that Defendants did any act, it is meant that
- (a) the named Defendants performed or participated in the act, or
 - (b) the named Defendants' officers, successors in interest, agents, partners, trustees or employees performed or participated in the act on behalf of and under the authority of one or more of the Defendants.

IX. FACTUAL BACKGROUND

A. *A Brief Overview of Illicit Massage Businesses.*

18. An estimated 9,000 illicit massage parlors currently operate throughout the country, with 300 estimated to operate in the Houston area.¹ These businesses generate an average revenue of over \$100 million per year, much of it laundered to countries outside of the United States.²

19. Illicit massage businesses sell commercial sex under the guise of legitimate massage therapy services.³ Many of the women employed at illicit massage businesses are victims of human trafficking.⁴ Recruiters often direct victims to job leads within their communities through fake advertisements promising high wages for work as legal massage therapist, housing, transportation, and assistance with immigration and licensing.⁵ Women take out loans to pay for these services,

¹ POLARIS, HUMAN TRAFFICKING IN ILLICIT MASSAGE BUSINESSES 10 (2018), *available at* <https://polarisproject.org/wp-content/uploads/2019/09/Human-Trafficking-in-Illicit-Massage-Businesses.pdf>; Samantha Lopez, *How Illicit Massage Businesses are Shut Down in Houston*, HOUSTON CHRONICLE (July 1, 2019), <https://www.chron.com/houston/article/How-illicit-massage-businesses-are-shut-down-in-14059133.php> (last visited Dec. 23, 2019).

² POLARIS, pg. 4.

³ *Id.* at 50.

⁴ *Id.* at 19–26.

⁵ *Id.*

often between \$5,000 and \$40,000.⁶ Upon arrival in the United States, they find that the promised jobs do not exist, and traffickers force them into prostitution to pay off debt.⁷ However, instead of earning money to pay down debt or to send home to family, the victims' debt continues to accrue, with wages withheld for room and board, fees for breaking "rules," future bail money, and potential attorneys' fees.⁸ Traffickers will also hold victims' identification and immigration documents at separate locations, using the threat of deportation as additional leverage, and monitor them on CCTV cameras inside the establishment to "creat[e] the feeling that they are always watched."⁹

20. Illicit massage businesses are often part of larger organized crime networks.¹⁰ Traffickers use intricate networks of legitimate and illegitimate businesses and shell corporations to launder money, obscure their identities, and avoid law enforcement.¹¹ Often, victims themselves appear as the owner or manager of the business, which can make it difficult for law enforcement to distinguish between victims and perpetrators.¹² Traffickers also cycle victims between massage parlors and across state lines, sometimes as often as every two to six weeks, further fostering dependence on traffickers.¹³ The victims of trafficking end up disoriented, indebted, and afraid

⁶ *Id.* at 19.

⁷ *Id.*

⁸ *Id.* at 29–30. In one case in Waco, Texas, victims interviewed as part of a raid reported receiving only 20 percent of their earnings, having their first week's pay withheld as a "deposit," and paying room and board to sleep in the back of the business. *Id.* at 12.

⁹ *Id.* at 30, 33.

¹⁰ *Id.* at 35–38.

¹¹ *Id.* at 36; Lise Olse, *Illicit Massage Parlors Prolific and Lucrative, Study Finds*, HOUSTON CHRONICLE (October 11, 2017), <https://www.chron.com/news/houston-texas/houston/article/Illicit-massage-parlors-prolific-and-lucrative-12256818.php> (last accessed Dec. 23, 2019).

¹² Olse, *supra* note 12.

¹³ POLARIS, pg. 25.

that any cooperation with law enforcement could result in deportation, prosecution, or retaliatory violence.¹⁴

B. *The Texas Legislature's Response to Human Trafficking.*

21. In 2017, the Texas Legislature passed House Bill 2552, aimed at combatting human trafficking, sexual offenses, prostitution, and other activity that may constitute a public nuisance.¹⁵

Among other amendments, H.B. 2552 added § 17.46(b)(33) to the DTPA laundry list, making it a false, misleading, or deceptive act to own, operate, maintain, or advertise a massage establishment that violates Chapter 455 of the Texas Occupations Code. Tex. H.B. 2552, 85th Leg., R.S. (2017), § 1 (codified at DTPA § 17.46(b)(33)). To own, operate, or advertise massage therapy, a massage establishment must comply Texas Occupations Code Chapter 455, among other requirements, by obtaining a massage establishment license, employing licensed massage therapists, and maintaining client records.¹⁶ Under DTPA § 17.46(b)(33), it is a false, misleading or deceptive act to own, operate, maintain or advertise an unlicensed massage establishment, one that does not employ licensed therapists, and/or one that does not maintain records or meet other criteria required by Chapter 455.¹⁷

22. In conjunction with amending the DTPA, H.B. 2552 also amended several provisions of the common nuisance statute (Chapter 125 of the Civil Practices and Remedies Code) pertaining to prostitution and unlicensed massage therapy establishments. Under the nuisance statute, any

¹⁴ Rachel Axon, Cara Kelly, & Michael Braun, *Sex Trafficking is Behind the Lucrative Illicit Massage Business. Why Police Can't Stop It*, USA TODAY (July 30, 2019) <https://www.usatoday.com/in-depth/news/investigations/2019/07/29/sex-trafficking-illicit-massage-parlors-cases-fail/1206517001/> (last visited Dec. 23, 2019).

¹⁵ Tex. H.B. 2552, 85th Leg., R.S. (2017).

¹⁶ Tex. Occ. Code §§ 455.151–455.207 (relating to licensing requirements under Chapter 455).

¹⁷ DTPA § 17.46(b)(33)(A).

“person who maintains a place to which persons habitually go for [massage therapy or other massage services in violation of Chapter 455, Occupations Code] . . . and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.”¹⁸ The Legislature expanded the types of evidence to be considered as prima facie evidence of common nuisance under CRPC § 125.004 for cases of prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, and massage therapy or other massage services in violation of Chapter 455. Tex. H.B. 2552, 85th Leg., R.S. (2017), § 8 (codified at Tex. Civ. Prac. & Rem. Code § 125.004(a-1)–(a-3), (d), (e)).

23. In amending these two statutes concurrently, along with several others, the Texas Legislature made clear its intent to hold all parties involved in illicit massage businesses accountable. As the statement of intent for H.B. 2552 explains:

H.B. 2552 strengthens Texas’ response to the ongoing problems of human and sex trafficking by building upon current nuisance and abatement law. This helps local governments shut down illicit massage parlors. The bill also . . . provides a means for property owners to evict businesses that are engaging in human trafficking.¹⁹

C. Chapter 455 of the Texas Occupations Code.

24. As previously stated, illicit massage businesses purport to operate as legitimate ones and advertise as offering legitimate massage therapy services. In Texas, the offering of massage therapy services is governed by Chapter 455 of the Texas Occupations Code.²⁰

25. Under Chapter 455, a “massage establishment” is “a place of business that advertises or offers massage therapy or other massage services[,] . . . includ[ing] a place of business that advertises or offers any service described by a derivation of the terms ‘massage therapy’ or ‘other

¹⁸ Tex. Civ. Prac. & Rem. Code § 125.0015(a)(18).

¹⁹ Sen. Res. Ctr., Bill Analysis, Tex. H.B. 2552, 85th Leg., R.S. (2017).

²⁰ Tex. Occ. Code § 455.0511(b)(1).

massage services.”²¹ “Massage therapy” is defined as “the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage and includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics.”²² “Other massage services” are “any services offered or performed for compensation at a massage establishment that involve physical contact with a client, and may include the use of oil, lubricant, salt glow, a heat lamp, a hot and cold pack, or a tub, shower, jacuzzi, sauna, steam, or cabinet bath.”²³ A “massage therapist” means “a person who practices or administers massage therapy or other massage services to a client for compensation.”²⁴

26. Chapter 455 states that “[a] massage establishment may employ only licensed massage therapists to perform massage therapy or other massage services.”²⁵ Several requirements concerning practices are directly aimed at combating illicit massage businesses’ practices: a massage establishment’s employees must be able to work legally in the United States, they may not engage in sexual contact in the establishment, and they may not reside on the premises of the establishment.²⁶ Further, a massage establishment “shall properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records” to be provided to the Texas Department of Licensing and Regulation (TDLR) upon request.²⁷ A massage

²¹ Tex. Occ. Code § 455.001(5).

²² Tex. Occ. Code § 455.001(8).

²³ Tex. Occ. Code § 455.001(11).

²⁴ Tex. Occ. Code § 455.001(7).

²⁵ Tex. Occ. Code § 455.202(a).

²⁶ Tex. Occ. Code § 455.202(b)(1)–(6).

²⁷ Tex. Occ. Code § 455.202(c)(1),(2).

establishment also “may not change the location of the establishment without obtaining a new massage establishment license.”²⁸

D. Illicit Massage Activity at 704 W. Sam Houston Parkway S., Suite 300.

27. Happy Foot Spa is the current massage establishment located at 704 W. Sam Houston Parkway S., Suite 300 (a.k.a. 702 W. Sam Houston Parkway S.), Houston, TX 77042.²⁹ Prior to Happy Foot Spa operating at 704 W. Sam Houston Parkway S., the space was occupied by The One Spa (aka Red Spa).³⁰ The Landlord Defendant and the Real Property Defendant have a long history of leasing to illicit massage parlors. Over the last four years, the Houston Police Department (HPD) has made multiple arrests for prostitution at this shopping center.³¹ In addition, HPD and TDLR have issued multiple citations related to operating a massage establishment without a license to operators at this location.³² These establishments have never had a license under Chapter 455 of the Texas Occupations Code and no licensed massage therapists are associated with this location.³³

28. The establishment currently operating as Happy Foot Spa advertises its massage services by a temporary sign hung on the shopping center building façade and on the joint-tenant sign

²⁸ Tex. Occ. Code § 455.206.

²⁹ Ex. 2, Certified Houston Police Department Offense Report #1284318-19

³⁰ Ex. 3, Certified Harris County Assumed Named Record, The One Spa

³¹ See *infra* Part IX.D.i–v.

³² *Id.*; see also Ex. 4, Texas Department of Licensing and Regulation, Massage Therapy Establishment—Proof of Inspection

³³ Ex. 5, Texas Department of Licensing and Regulation, Certification of the Absence of Public Records.

located at the edge of the parking lot near the feeder road.³⁴ The windows and door are completely covered.³⁵



³⁴ Ex. 1, Aff. of Charlene Gale.

³⁵ *Id.*

29. Inside the front door of Happy Foot Spa is a small lobby with an ATM machine and an interior metal door barring further entry beyond the lobby.³⁶ Behind the metal interior door, the massage parlor has a long central hallway that forks off from the entryway in a “U” shape with several massage rooms, restrooms, shower rooms, a kitchen and a bedroom.³⁷ The hallway and the massage rooms are lit with red lighting and the walls decorated with erotic photography. Several cameras monitor the lobby and the exterior of the building.³⁸

30. Happy Foot Spa also advertises online using websites like www.bedpage.com.³⁹ These advertisements appear to be for illicit massage services.⁴⁰ For example, advertisements listed at www.bedpage.com have explicit photos of women and made statements such as: “6 girls available,” “Naked Massage Body to Body,” and “OPEN 24/7.”⁴¹ These advertisements state the “Happy Foot Spa” and/or “Happy Spa” and list the address of 704 W. Sam Houston Pkwy S., Suite 300, Houston, TX 77042.⁴²

31. As registered owner of 702 W. Sam Houston Parkway S., the Landlord Defendant profits as landlord/lessor to Happy Foot Spa and all previous iterations thereof.⁴³ The Landlord Defendant has owned The Real Property since 2011, has advertised each of the illicit massage parlors at this location through its multi-tenant sign and building-mounted signs, and has maintained the premises

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ex. 6, Harris County Appraisal District, Real Property Account Information, Tax Year 2019

for use by its massage establishment tenants, despite the numerous arrests for prostitution and multiple citations related to operating a massage establishment without a license that have been issued to operators here.⁴⁴ In 2016, the City of Houston filed suit against the Landlord Defendant and The Real Property Defendant for nuisance violations related to the operation of The One Spa.⁴⁵ The parties resolved the litigation by Rule 11 agreement wherein the Landlord Defendant agreed that it would “not lease to an unlicensed massage establishment as long as it maintained ownership interest in the property.”⁴⁶ The current signage at the location advertises both Happy Foot Spa and a leftover sign from The One Spa:

⁴⁴ Ex. 7, 702 W. Sam Houston Pkwy S. Joint-Tenant Sign Photograph

⁴⁵ Ex. 8, Original Petition, *City of Houston v. 702 Sam Houston, LLC and The Real Property Known As 702 West Sam Houston Parkway South, Houston, Texas*, No. 2016-64301 (164th Dist. Ct., Harris County, Tex. Sept. 22, 2016).

⁴⁶ *Id.*; Ex. 9, Rule 11 Agreement, *City of Houston v. 702 Sam Houston, LLC and The Real Property Known As 702 West Sam Houston Parkway South, Houston, Texas*, No. 2016-64301 (164th Dist. Ct., Harris County, Tex. Sept. 22, 2016) (filed Sept. 5, 2017).



32. Since 2015, HPD has made six prostitution arrests at 704 W. Sam Houston Parkway S., Suite 300 a/k/a 702 W. Sam Houston Parkway S. and issued multiple citations for code violations related to illicit massage businesses operating in that space. Despite this, the Landlord Defendant continues to lease to operators of illicit massage businesses, including Happy Foot Spa, the current occupant of 704 W. Sam Houston Parkway S., Suite 300.

i. Arrest and Citation Activity in 2015.

33. In 2015, HPD made four arrests, including two for prostitution, and issued two citations at the massage business for operators allowing an unlicensed massage therapist to perform a massage at 704 W. Sam Houston Parkway S., Suite 300, at this time known as The One Spa.

34. The first arrest took place on February 11, 2015, as a result of an undercover operation conducted by the HPD Vice Division (HPD Vice) at The One Spa.⁴⁷ On that day, an undercover officer entered and waited in the lobby area until a woman, later identified as Guiping Xia, appeared behind a mesh metal door wearing lingerie.⁴⁸ After she opened the door, she led the undercover officer to a private room and asked him if she was okay for him.⁴⁹ After the officer told her yes, they negotiated \$150 for sex.⁵⁰ Once the officer gave her the money, the woman left the room and returned with two condoms, a washcloth, a spray bottle, and lubricant.⁵¹ While the woman was gone, the undercover officer alerted the raid team outside.⁵² When the woman returned, the undercover officer requested a massage first.⁵³ The woman directed the undercover officer to disrobe.⁵⁴ She also disrobed and began to give the officer a massage.⁵⁵ HPD officers then entered the establishment, arrested Guiping Xia for prostitution, and cited two additional people—James

⁴⁷ Ex. 10, Certified Houston Police Department Offense Report #183351-15.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

Dong and Yong Padgett—who were at The One Spa as operators allowing an unlicensed massage therapist to perform a massage.⁵⁶

35. Four days later, on February 15, 2015, HPD Vice sent another officer to conduct an undercover investigation of The One Spa in response to a citizen complaint.⁵⁷ The undercover officer was let inside the business by a woman, later identified as Yong Padgett, who asked if he was a police officer.⁵⁸ When he said no, she took him to a room inside.⁵⁹ A woman, later identified as Lixia Feng, entered to provide his massage.⁶⁰ He paid \$60, disrobed, and lay down on the massage table.⁶¹ After starting the massage, she started a conversation about sexual services, agreeing to a price of \$140.⁶² The woman disrobed and laid down on the table.⁶³ At that point, HPD officers entered and arrested Lixia Feng for prostitution.⁶⁴ HPD again arrested Yong Padgett for allowing an unlicensed person to perform a massage.⁶⁵ James Dong was also at the scene—he claimed to have taken Feng from a “friend’s house” to The One Spa—and HPD arrested Dong for

⁵⁶ *Id.* at 5.

⁵⁷ Ex. 11, Certified Houston Police Department Offense Report #200029-15 at 3.

⁵⁸ *Id.* at 4.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

transporting another person for an illegal purpose.⁶⁶ HPD officers observed that Dong and Padgett appeared to actually be living at The One Spa.⁶⁷

ii. Arrest and Complaint Activity in 2016.

36. In 2016, HPD received one complaint regarding prostitution and made one arrest for prostitution at the massage business located at 704 W. Sam Houston Parkway S., Suite 300, at this time known as The One Spa and/or the Red Spa.

37. On April 11, 2016, HPD responded to a call at the Red Spa and interviewed a man who was trying to obtain legitimate massage services at this location but was offered sex instead.⁶⁸ HPD also interviewed the workers, one of whom stated she had just arrived in Houston from New York an hour ago; HPD made no arrests.⁶⁹

38. On June 2, 2016, HPD Vice again conducted an undercover investigation of The One Spa that lead to a third arrest for prostitution at 704 W. Sam Houston Parkway S., Suite 300.⁷⁰ An undercover officer was led to a room by a woman, later identified as Fei Hou, who asked him for money.⁷¹ The officer gave the woman \$100.⁷² The officer then disrobed, lay on a massage table, and the woman began the massage.⁷³ The woman then offered to provide oral sex.⁷⁴ The officer

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Ex. 12, Certified Houston Police Department Offense Report #463130-16 at 3.

⁶⁹ *Id.* at 4.

⁷⁰ Ex. 13, Certified Houston Police Department Offense Report #707952-16 at 5.

⁷¹ *Id.* at 6.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

broke contact and called in the arrest team.⁷⁵ HPD arrested Fei Hou for prostitution.⁷⁶ HPD also found in the business a bedroom area, ledgers, and suitcases.⁷⁷

iii. Arrest and Citation Activity in 2017.

39. In 2017, HPD made two arrests for prostitution and found at least two instances of women operating as unlicensed massage therapists at the massage business located at 704 W. Sam Houston Parkway S., Suite 300, still known as The One Spa.

40. On June 12, 2017, HPD Vice conducted another set of undercover operations leading to two arrests at The One Spa, which was still in operation at 704 W. Sam Houston Parkway S., Suite 300.⁷⁸ Upon entry, the first undercover officer was led to a room by a woman, later identified as Junhong Zhu, and paid \$60 for a massage.⁷⁹ After beginning the massage, the woman engaged the officer in a conversation regarding sexual services.⁸⁰ They agreed on \$120.⁸¹ When the woman left the room with the money to get a condom, the officer contacted the arrest team, and Junhong Zhu taken into custody for prostitution.⁸²

41. A few minutes after the first undercover officer entered the One Spa on June 12, 2017, another HPD undercover officer went inside.⁸³ This officer was greeted by a woman named

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 3–4.

⁷⁸ Ex. 14, Certified Houston Police Department Offense Report #741975-17; Ex. 15, Certified Houston Police Department Offense Report #741972-17.

⁷⁹ Ex. 14, Certified Houston Police Department Offense Report #741975-17 at 4.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Ex. 15, Certified Houston Police Department Offense Report #741972-17.

“Cindy” (later identified as Liqin Song) who led him to a room and stated that a one-hour massage cost \$60 plus tip.⁸⁴ After starting the massage, she asked if he wanted sexual services.⁸⁵ After agreeing to a price of \$140, the officer identified himself as a police officer and arrested Liqin Song for prostitution.⁸⁶

42. A few days later, on June 19, 2017, HPD officers working with the Westside Differential Response Team (DRT) inspected 704 W. Sam Houston Parkway S., Suite 300 for compliance with state and local codes.⁸⁷ During their inspection, officers encountered two women, Liqin Song and Junhong Zhu, working at the facility and a naked man laying down in one of the massage rooms.⁸⁸ The officers learned that the man paid \$60 for a massage.⁸⁹ DRT found neither woman had a massage therapist license and issued 21 citations for violations of city ordinances.⁹⁰

iv. Arrest and Citation Activity in 2019.

43. In 2019, HPD made two arrests for prostitution and found multiple violations of Chapter 455 of the Texas Occupations Code, including failure to maintain client records, failure to post a massage therapist license, acting as a massage therapist without a license, and operating as a massage establishment without a license for Happy Foot Spa located at 704 W. Sam Houston Parkway S., Suite 300.

⁸⁴ *Id.* at 3.

⁸⁵ *Id.* at 3–4.

⁸⁶ *Id.* at 4.

⁸⁷ Ex. 16, Certified Houston Police Department Offense Report #774762-17.

⁸⁸ *Id.* at 4.

⁸⁹ *Id.*

⁹⁰ *Id.* at 4–5.

44. On September 12, 2019, HPD officers working with the DRT inspected the establishment, now operating under the name Happy Foot Spa, for compliance with state and local codes.⁹¹ Upon arrival, the officers knocked on the interior doorway and were greeted by a woman that identified herself as an employee, Honglan Chen.⁹² The woman stated that she charged \$30 plus tips for foot massage services; however, she was not a licensed massage therapist with the State of Texas.⁹³ DRT issued eight citations for municipal violations and found multiple Chapter 455 violations, including for acting as a massage therapist without a license and operating as a massage establishment without a license.⁹⁴

45. On October 1, 2019, HPD officers working with the DRT inspected Happy Foot Spa starting at 11:25 A.M.⁹⁵ There were no valid massage licenses displayed in the lobby or anywhere else in the building.⁹⁶ After pressing the doorbell next to the metal interior-door, the investigators were greeted by a woman (who identified herself as Hongtao Tan).⁹⁷ Ms. Tan told investigators that it was her first day at Happy Foot Spa, that she was not the owner, and that she gave massages.⁹⁸ She denied having sex with customers.⁹⁹ HPD issued her a citation for acting as a

⁹¹ Ex. 17, Certified Houston Police Department Offense Report #1192779-19.

⁹² *Id.* at 4.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Ex. 2, Certified Houston Police Department Offense Report #1284318-19.

⁹⁶ *Id.* at 4, 7.

⁹⁷ *Id.* at 3–4.

⁹⁸ *Id.* at 7.

⁹⁹ *Id.*

massage therapist without a license.¹⁰⁰ HPD also observed multiple other violations, including that the establishment was unlicensed and employing unlicensed massaged therapists.¹⁰¹

46. Following the inspection, at around noon, an undercover HPD officer entered Happy Foot Spa.¹⁰² A woman (identified as Hongtao Tan) unlocked the metal door in the interior of the lobby and led the officer to a massage room.¹⁰³ The woman stated the massage was \$60, prepared the massage table, and left the room with the money.¹⁰⁴ The officer disrobed and laid face down on the table for the massage.¹⁰⁵ After massaging him, she pointed to his genitals and made a gesture with her hand.¹⁰⁶ They then discussed her providing sexual services and agreed on a price of \$160.¹⁰⁷ The officer contacted the arrest team when she left to the room, and Hongtao Tan was arrested, the sixth and most recent arrest for prostitution at 704 W. Sam Houston Parkway S., Suite 300.¹⁰⁸ Hongtao Tan also did not have a massage license issued by the State of Texas.¹⁰⁹

47. On October 8, 2019, investigators from TDLR, along with an investigator from the Office of the Attorney General, conducted another inspection of Happy Foot Spa starting at 3:30 p.m.¹¹⁰

¹⁰⁰ *Id.* at 4.

¹⁰¹ *Id.* at 7.

¹⁰² Ex. 18, Certified Houston Police Department Offense Report #1283955-19.

¹⁰³ *Id.* at 3.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 4.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Ex. 1, Aff. of Charlene Gale.

There were no valid massage licenses displayed in the lobby or anywhere else in the building.¹¹¹ After pressing the doorbell next to the metal interior-door, the investigators were greeted by a woman in lingerie (who identified herself as Xiaomei Li).¹¹² The woman immediately turned around and walked to a nearby bedroom to put on a robe.¹¹³ Inside the bedroom, they found the woman conversing with another female.¹¹⁴ Using Google Translate, the investigators interviewed the women and asked them to demonstrate what kind of massages they performed.¹¹⁵ One of the women demonstrated on herself that she massaged people's calves and responded affirmatively when asked if she massaged people's necks and shoulders.¹¹⁶ The investigators then conducted a walkthrough of the establishment.¹¹⁷ They observed a bedroom, several massage rooms, a shower room, bathrooms, and a kitchen area.¹¹⁸ The bedroom contained two beds, food, clothing, a dresser, luggage, cosmetics, toiletries, and other signs that the individuals were residing there.¹¹⁹ The kitchen area at the rear of the establishment contained a microwave, stove, refrigerator/freezer full of food, dishes, washing machine, and a dryer.¹²⁰ The shower room consisted of a large tiled room with a sink, a shower, and simple wooden table with a vinyl cover used to give wet massages.¹²¹

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

The inspectors noted numerous violations of Texas Occupations Code, Ch. 455, including failure to maintain client records, failure to post therapist's license, acting as a massage therapist without a license, and operating as a massage establishment without a license.

v. Citation Activity in 2020.

48. On February 24, 2020, investigators from TDLR conducted another inspection of Happy Foot Spa located at 704 W. Sam Houston Parkway S., Suite 300. TDLR again found multiple violations of Chapter 455 of the Texas Occupations Code, including operating as a massage establishment without a license.

E. Defendants Have Violated the Texas Occupations Code, Engaged In False, Misleading and Deceptive Trade Practices, and Maintain a Common Nuisance.

49. By operating an unlicensed massage establishment and representing itself as a massage establishment, Defendant Happy Foot Spa is in violation of Chapter 455 of the Texas Occupations Code. Tex. Occ. Code § 455.151(a)(b). Happy Foot Spa has further violated Chapter 455 by employing unlicensed massage therapists, employing persons who are not United States or legal permanent residents with valid work permits, allowing individuals to engage in sexual contact in Happy Foot Spa, allowing individuals to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of an individual in Happy Foot Spa, allowing individuals to reside on the premises of Happy Foot Spa, and by failing to maintain client records. Tex. Occ. Code § 455.202(a), (b)(1), (b)(4)–(6), (c)(1).

50. By owning, operating, maintaining, and/or advertising an unlicensed massage establishment, Defendant Happy Foot Spa and Defendant 702 Sam Houston LLC and their agents have, in the conduct of trade and commerce in the State of Texas, engaged in false, misleading and deceptive acts and practices declared unlawful under the DTPA. *See* DTPA § 17.46(a).

51. As outlined above, Defendant Happy Foot Spa owns, operates, maintains, and advertises an unlicensed massage establishment that is also not in compliance with the other requirements of Chapter 455 or applicable local ordinances. *See* DTPA § 17.46(b)(33)(A)–(B).

52. Since at least 2015, Defendant 702 Sam Houston LLC has maintained and advertised unlicensed massage establishments that are also not in compliance with the other requirements of Chapter 455 or applicable local ordinances at The Real Property, including Defendant Happy Foot Spa. *Id.* Defendant 702 Sam Houston LLC leases to each of these unlicensed massage establishments, advertises their businesses through its joint-tenant and building signs, and maintains the premises for use by its massage establishment tenants. *Id.* Further, even after promising to not lease to an unlicensed massage establishment in its settlement with the City of Houston for maintaining a common nuisance in 2018, Defendant 702 Sam Houston LLC continues to maintain and advertise an unlicensed massage establishment with Happy Foot Spa. The suspicious activity of the massage establishment tenants, including the multiple arrests for prostitution, citations for operating of an unlicensed massage establishment and employing unlicensed therapists, the covered windows, the fact that multiple employees have at various times been living in the massage establishment premises, the ATM machine and metal door inside the suite as well as the erotic photography on the walls, and the lawsuit brought by the City of Houston, confirms that Defendant 702 Sam Houston LLC knew or should have known that it was maintaining and advertising unlicensed massage establishments. By continuing to maintain and advertise the unlicensed massage establishment Happy Foot Spa, Defendant 702 Sam Houston LLC is engaging in false, misleading and deceptive acts and practices declared unlawful under the DTPA.

53. Finally, Defendants maintain a common nuisance by maintaining a place to which persons habitually go for the purpose of prostitution and/or massage therapy or other massage services in violation of Chapter 455 of the Texas Occupations Code, knowingly tolerated the activity and furthermore failed to make reasonable attempts to abate the activity. Tex. Civ. Prac. & Rem. Code § 125.0015(a)(6), (18). As outlined above, The Real Property is frequently used for the purpose of prostitution and/or massage therapy or other massage services in violation of Chapter 455 of the Texas Occupations Code, which is prima facie evidence that Defendants knowingly tolerated that activity. Tex. Civ. Prac. & Rem. Code § 125.004(a).

X. VIOLATIONS OF THE TEXAS OCCUPATIONS CODE

54. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

55. Under the Texas Occupations Code, Chapter 455, a person may not act as, or represent that the person is, “a massage therapist . . . or massage establishment unless the person holds an appropriate license issued under this chapter.” Tex. Occ. Code § 455.151(a), (b).

56. Defendant Happy Foot Spa, as alleged and detailed above, has violated Texas Occupations Code § 455.151(a) and (b) by acting and representing itself as a massage establishment without holding the appropriate license. *See* Tex. Occ. Code § 455.151(a), (b).

57. In addition, as a massage establishment, Defendant Happy Foot Spa has engaged in the following conduct prohibited by the Texas Occupations Code:

- (a) Employing an unlicensed massage therapist to perform massage therapy or other massage services (Tex. Occ. Code § 455.202(a));
- (b) Employing an individual who is not a United States citizen or a legal permanent resident with a valid work permit (Tex. Occ. Code § 455.202(b)(1));

- (c) Allowing any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment (Tex. Occ. Code § 455.202(b)(4));
- (d) Allow any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual (Tex. Occ. Code § 455.202(b)(5));
- (e) Allowing any individual, including a student, license holder, or employee, to reside on the premises of the massage establishment (Tex. Occ. Code § 455.202(b)(6));
- (f) Failing to properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records (Tex. Occ. Code § 455.202(c)(1)); and
- (g) Failing to post in plain sight the license for each massage therapist who practices in the massage establishment (Tex. Occ. Code § 455.204(b)).

58. Under Chapter 455, the Attorney General may institute an action for civil penalties and injunctive relief against a person who “appears to be in violation of or threatening to violate this chapter or a rule adopted under this chapter; or is the owner or operator of an establishment that offers massage therapy or other massage services regulated by this chapter and is not licensed under this chapter.” Tex. Occ. Code § 455.351(a). The amount of a civil penalty for a violation of Chapter 455 “shall be not less than 1,000 or more than \$10,000 for each violation” and “[e]ach day a violation occurs or continues to occur is a separate violation.” *Id.* at § 455.351(b), (c).

XI. VIOLATIONS OF THE TEXAS BUSINESS & COMMERCE CODE

59. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

60. Defendants Happy Foot Spa and 702 Sam Houston LLC, as alleged and detailed above, have in the conduct of trade and commerce, engaged in false, misleading, or deceptive acts or practices in violation of § 17.46(a) of the Texas Business and Commerce Code.

61. The State has reason to believe that Defendants Happy Foot Spa and 702 Sam Houston LLC, in the course and conduct of trade and commerce, have directly or indirectly engaged in false, misleading, and deceptive acts and practices declared to be unlawful by the DTPA by owning, operating, maintaining, or advertising a massage establishment, as defined by Section 455.001, Occupations Code, that:

(A) is not appropriately licensed under Chapter 455, Occupations Code, or is not in compliance with the applicable licensing and other requirements of that chapter; or

(B) is not in compliance with an applicable local ordinance relating to the licensing or regulation of massage establishments.

DTPA § 17.46(b)(33).

62. In addition, the State has reason to believe in the course and conduct of trade and commerce, have directly or indirectly engaged in false, misleading, and deceptive acts and practices declared to be unlawful by the DTPA by:

(a) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services (§ 17.46(b)(2));

(b) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another (§ 17.46(b)(3));

(c) representing that goods or services have sponsorship, approval, characteristics, or benefits which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not (§ 17.46(b)(5));

(d) representing that the goods or services are of a particular standard, quality, or grade, if they are of another (§ 17.46(b)(7));

(e) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law (§ 17.46(b)(12));
and

(f) failing to disclose information concerning goods or services which was known at the time of the transaction if 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 (§ 17.46(b)(24)).

63. Whenever the Consumer Protection Division has reason to believe that a person is engaging in, has engaged in, or is about to engage in any act or practice declared unlawful by the DTPA, and that proceedings would be in the public interest, the Consumer Protection Division may bring an action against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction, the use of such method, act, or practice. DTPA § 17.47(a). Cessation of unlawful conduct shall not render such court action moot under any circumstances. *Id*

64. Under the DTPA, in addition to a temporary restraining order or permanent injunction, the Consumer Protection Division may request, and the trier of fact may award, a civil penalty to be paid to the State in an amount of not more than \$10,000 per violation. DTPA § 17.47(c).

XII. VIOLATIONS OF THE CIVIL PRACTICE & REMEDIES CODE: COMMON NUISANCE

65. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

66. Chapter 125 of the Texas Civil Practice & Remedies Code defines a common nuisance. Section 125.0015(a) states “[a] person who maintains a place to which persons habitually go for [certain] purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.” The purposes that give rise to a common nuisance include: “prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;” and “massage therapy or other massage services in violation of Chapter 455, [Texas] Occupations Code.” Tex. Civ. Prac. & Rem. Code § 125.0015(a)(6), (18).

67. Happy Foot Spa, located at 702 W. Sam Houston Parkway S., Houston, Texas, constitutes a common nuisance under Texas Civil Practice and Remedies Code § 125.0015(a)(18) because persons habitually go to this location for massage therapy or other massage services in violation

of Chapter 455 of the Texas Occupations Code. Further, this location constitutes a common nuisance under Texas Civil Practice and Remedies Code § 125.0015(a)(6) because persons habitually go to this location for prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the penal code.

68. Defendants own, operate, or maintain the location and knowingly tolerate the nuisance activity and further, fail to make reasonable attempts to abate the nuisance activity. Tex. Civ. Prac. & Rem. Code §§ 125.002(b), 125.0015(a)(18). This action is brought by the State to request injunctive relief to abate this nuisance and enjoin Defendants from maintaining or participating in the nuisance and for any other reasonable requirements to prevent the use of The Real Property as a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(e). Plaintiff requests that upon issuance of injunctive relief each of the Defendants be ordered to post a bond in the name of the State to be forfeited to the State in the event of a violation by Defendants of the injunction. Tex. Civ. Prac. & Rem. Code § 125.003(a). The bond must be payable to the State of Texas, be in the amount set by the Court, but no less than \$5,000 nor more than \$10,000, have sufficient sureties approved by the Court, and be conditioned that the Defendants will not knowingly allow a common nuisance to exist at 702 W. Sam Houston Parkway S., Houston, Texas. Tex. Civ. Prac. & Rem. Code § 125.045(a-1).

69. Based upon § 125.002(e) of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the Plaintiff, the Court shall grant an injunction ordering Defendants to abate the nuisance and be enjoined from maintaining or participating in the common nuisance. The Court may include in the order reasonable requirements to prevent the use or maintenance of the place as a nuisance. Under § 125.002(e) of the Texas Civil Practice & Remedies Code, the judgment

must order that the location where the nuisance was found is closed for one year after the date of the judgment.

70. Pursuant to § 125.003(a) of the Texas Civil Practice & Remedies Code, should any condition of the bond or any injunctive order by this Court be violated, the Plaintiff may sue upon the bond and upon showing a violation of any condition of the bond or injunctive order, the whole sum of the bond should be ordered forfeited to the Plaintiff and the location where the nuisance was found should be closed for one year. In addition, in accordance with § 125.002(d) of the Texas Civil Practice and Remedies Code, a person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt: a) a fine of not less than \$1,000 or more than \$10,000; b) confinement in jail for a term of not less than 10 or more than 30 days; or c) both a fine and confinement. If a Defendant violates the temporary or permanent injunction, under § 125.045(b), the Court may make additional orders to abate the nuisance.

71. On violation of the bond or injunction, the place where the nuisance exists shall be ordered closed for one year from the date of the order of bond forfeiture. *Id.*

XIII. DISGORGEMENT/CONSTRUCTIVE TRUST/UNJUST ENRICHMENT

72. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

73. The State requests the Court impose a constructive trust over the assets and funds Defendants derived from providing illegal massage therapy or other illegal massage services. Defendants would be unjustly enriched if allowed to retain the proceeds and assets from their criminal activities in providing illegal massage services. Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that have

resulted from Defendants' advertising and sale of illegal massage services. Plaintiff prays that Defendants be ordered to disgorge all monies taken from consumers as a result of Defendants' deceptive practices, together with all the proceeds, profits, income, interest, and assets acquired with the proceeds of Defendants' deceptive practices. Plaintiff further prays that the Court enjoin Defendants from transferring, moving, concealing, spending, or withdrawing funds derived from providing illegal massage therapy or other illegal massage services to the public.

XIV. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

74. Plaintiff, the State of Texas, has reason to believe that the Defendants are engaging in, have engaged in, or are about to engage in acts and practices declared to be unlawful under the DTPA and believes these proceedings to be in the public interest. Therefore, pursuant to DTPA § 17.47(a), Plaintiff, the State of Texas, requests relief by way of a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction as set forth in the Prayer. Cessation of unlawful conduct shall not render such court action moot under any circumstances. *Id*

75. Further, pursuant to Chapter 125 of the Texas Civil Practice & Remedies Code, Plaintiff, the State of Texas, requests the Court enjoin Defendants Happy Foot Spa, 702 W. Sam Houston LLC, and The Real Property Known As 702 W. Sam Houston Parkway S., Houston, Texas, from maintaining or participating in the common nuisance described herein, *i.e.*, prostitution, promotion of prostitution, or aggravated promotion of prostitution and massage therapy or other massage services in violation of Chapter 455 of the Texas Occupations Code at the massage establishment located at 704 W. Sam Houston Parkway S., Suite 300, Houston, Texas, and order such requirements as to prevent the ongoing nuisance activity in Harris County, Texas. Tex. Civ. Prac. & Rem. Code § 125.002(b), (e). Under § 125.002(a) of the Texas Civil Practice and Remedies

Code, Plaintiff is not required to verify facts in support of the requested injunctive relief to abate the nuisance activity or to prove personal injury.

76. The State additionally requests injunctive relief to restrain a violation of Texas Occupations Code, Chapter 455 by Defendant Happy Foot Spa because they (a) appear to be in violation of or threatening to violate this chapter or a rule adopted under this chapter; or (b) are the owner or operator of an establishment that offers massage therapy or other massage services regulated by this chapter and are not licensed under this chapter. Tex. Occ. Code § 455.351(a).

77. Plaintiff believes immediate injunctive relief by way of Temporary Restraining Order and Temporary Injunction is necessary to prevent continuing harm prior to trial.

78. The State further asks the Court to find that Plaintiff is likely to succeed on the merits on its claim for common nuisance and include in the Court's temporary injunction order (i) reasonable requirements to prevent the use or maintenance of the Happy Foot Spa as a nuisance, and (ii) require that Defendants execute a bond of not less than \$5,000 nor more than \$10,000, payable to the State, with sufficient sureties and conditioned that Defendants will not maintain a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.045(a).

79. The Court shall issue such injunctive relief without requiring a bond from the Plaintiff. DTPA § 17.47(b); Tex. Civ. Prac. & Rem. Code § 6.001(a).

XV. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

80. The State requests leave of this Court to conduct depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of witnesses who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys. The State also requests that the filing requirements for business

records and the associated custodial affidavits be waived for purposes of all temporary injunction hearings. In addition, the State requests that the Court order Defendants to produce any agreements between the Defendants or their agents, including but not limited to lease agreements and maintenance agreements, within 5 days of receiving the courts order.

XVI. CONDITIONS PRECEDENT

81. All conditions precedent to the State’s claim for relief have been performed or have occurred.

XVII. TRIAL BY JURY

82. The State demands a jury trial and tenders the appropriate fee with this petition.

XVIII. PRAYER

83. The State respectfully requests that this Court issue citation for Defendants to appear and answer.

84. Plaintiff prays that the TEMPORARY RESTRAINING ORDER be issued, and that after due notice and hearing, a TEMPORARY INJUNCTION be issued, and upon final hearing a PERMANENT INJUNCTION be issued, restraining, and enjoining Defendants, Defendants’ officers, agents, servants, employees, attorneys—and any other person in active concert or participation with any or all Defendants—from engaging in the following acts or practices without further order of the Court:

- (a) Deleting any data or communications relating to owning, operating, maintaining or advertising a massage establishment, or the provision of massage therapy or other massage services on any phones or electronic devices used by any Defendants;
- (b) Transferring, concealing, destroying, or removing from the jurisdiction of this

Court any books, records, documents, invoices or other written materials—including electronic documents—relating to owning, operating, maintaining, or advertising a massage establishment, or the provision of massage therapy or other massage services, that are currently or hereafter in any of the Defendants’ possession, custody or control except in response to further orders or subpoenas in this cause;

(c) Transferring, spending, hypothecating, concealing, encumbering 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 any of the Defendants, insofar as such property relates to, arises out of or is derived from the business operations of Defendants except in response to further orders by the Court; or

(d) Owning, operating, maintaining, or advertising a massage establishment that fails to comply with the licensing or other requirements of Texas Occupations Code, Chapter 455.

(e) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of services by owning, operating, maintaining, or advertising an unlicensed massage establishment or having persons on the premises who provide massage services without a license;

(f) Representing that massage services have sponsorship, approval, characteristics, or benefits which they do not have by owning, operating, maintaining, or advertising an unlicensed massage establishment or that a person has a sponsorship, approval, status,

affiliation, or connection which the person does not, specifically, a license under Texas Occupations Code, Chapter 455;

(g) Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law including, but not limited to, allowing any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment;

(h) Failing to publicly and appropriately display, within sight of the main entrance of the establishment, the license of the establishment and the license of any individual on the premises who provides massage therapy or other massage services;

(i) Denying any agent of the Texas Department of Licensing and Regulation, the Texas Attorney General's Office, a peace officer, or any other agent of the State access to any massage establishment owned, operated or maintained by Defendants;

(j) Interfering with an inspection of a massage establishment by any agent of the Texas Department of Licensing and Regulation, the Texas Attorney General's Office, a peace officer, or any other agent of the State, including the failure to maintain and make available to the inspector the initial consultation documents, session notes, and related billing records for each client;

(k) Failing to preserve video surveillance of the Defendants' store premises and to maintain and operate video surveillance of the premises and provide copies of the video surveillance to Plaintiff's counsel upon request;

(l) Employing an individual who is not a United States citizen or a legal permanent resident with a valid work permit at a massage establishment;

(m) Allowing a nude or partially nude employee to provide massage therapy or other

massage services to a customer;

(n) Allowing any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment;

(o) Allowing any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual, including wearing lingerie; and,

(p) Allowing any individual, including a student, license holder, or employee, to reside on the premises of the massage establishment.

85. In addition, the State prays that the Court grant the following monetary relief:

(a) Order Defendants to pay civil penalties to the State of Texas of not less than \$1,000 or more than \$10,000 for each day of violation of Chapter 455 of the Texas Occupations Code, pursuant to Texas Occupations Code § 455.351(b) and (c);

(b) Order Defendants to pay civil penalties to the State of Texas of not more than \$10,000 for each violation of the DTPA, and for each violation calculated to deprive money or property from a consumer who was 65 years of age or older; an additional amount of not more than \$250,000, pursuant to DTPA § 17.47(c) and (g);

(c) Order Defendants to restore all money or other property obtained from consumers by means of unlawful acts or practices or, in the alternative, order disgorgement of all sums, monies, and value taken from consumers by means of deceptive trade practices, together with all proceeds, interest, income, profits, and accessions thereto; making such disgorgement for the benefit of victimized consumers and the State of Texas, pursuant to DTPA § 17.47(d);

(d) Order Defendants to pay attorneys' fees, court costs, witness fees, deposition fees and investigative costs, as appropriate, under Texas Government Code § 402.006(c), Texas Occupations Code § 455.351(e), and Texas Civil Practice and Remedies Code § 125.003(b) and (d);

(e) Pre-judgment and post-judgment interest;

(f) Place an equitable lien and constructive trust on all of Defendants' assets, personal property, and real property, and grant the State an interest in said assets and property; and

(g) Order Defendants' assets be repatriated into the jurisdiction of the Court.

86. Plaintiff further prays that this Court grant all other relief to which the Plaintiff, the State of Texas, is entitled.

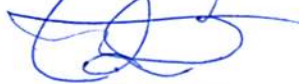
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