

NO. 2022-42148

**THE STATE OF TEXAS,
Plaintiff,**

v.

**SERGIO HERNANDEZ,
ROXANNE RODRIGUEZ,
Individually and
d/b/a Southwest Forklift,
Defendants.**

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IN THE DISTRICT COURT

26th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

EX PARTE TEMPORARY RESTRAINING ORDER

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Ken Paxton, have filed an Original Petition and Application for Ex Parte Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. The named Defendants are Sergio Hernandez and Roxanne Rodriguez, individually and d/b/a Southwest Forklift. Based on the findings below, the Application for Temporary Restraining Order against the Defendants is GRANTED.

I. FINDINGS IN SUPPORT OF TEMPORARY RESTRAINING ORDER

1. This Court FINDS that there is reason to believe Defendants Sergio Hernandez and Roxanne Rodriguez are engaging in, have engaged in, or are about to engage in acts and practices that violate §§ 17.46(a) and (b) of the Texas Deceptive Trade Practices—Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 (“DTPA”), and that issuance of this Temporary Restraining Order is in the public interest. As such, this Court FINDS that this Temporary Restraining Order is statutorily authorized pursuant to § 17.47 of the DTPA.

2. This Court FINDS it has jurisdiction over the subject matter of this case and jurisdiction over the parties, and venue in this district is proper pursuant to § 17.47 of the DTPA.

3. Pursuant to DTPA § 17.47(a), the Court FINDS that prior notice of Plaintiff's Original Petition and Application for Ex Parte Temporary Restraining Order is not required before entry of this Order because the Court finds there is good cause to believe Defendants would evade service of process if prior contact were made or Defendants would destroy relevant records if prior contact were made, or that such an emergency exists that immediate and irreparable injury, loss, damage—including but not limited to dissipation of assets—would occur as a result of such delay in obtaining a temporary restraining order.

4. The Court FINDS this Temporary Restraining Order shall be issued without bond posted by the State of Texas pursuant to DTPA § 17.47(b).

II. PROHIBITED BUSINESS CONDUCT

5. IT IS ORDERED that the Defendants and their officers, agents, servants, employees, and any other person or entity in active concert or participation with them—whether acting directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device—who receive actual notice of this order by personal service or otherwise, are hereby restrained from engaging in the following conduct until further order of this Court:

- a. Posting false job opportunity listings online or in any media;
- b. Advertising that they provide OSHA-certified forklift operator training;
- c. Operating any business that provides or advertises any ^{OSHA qualified} forklift operator training;
- d. Accepting payment for any forklift operator training ^{that is not OSHA qualified.}
- e. Using or displaying the OSHA seal without express written permission from OSHA;
- f. Representing that Defendants' goods or services are affiliated with, connected with, or associated with, or certified by OSHA ^{when they are not;}

~~g. Failing to provide notice to consumers that Defendants' goods or services are NOT affiliated with, connected with, or associated with, or certified by OSHA;~~

h. Representing that Defendants' goods or services are affiliated with, connected with, or associated with, or certified by any third party without having documentation proving that Defendants are affiliated with, connected with, or associated with, or certified by the third party;

i. Providing forklift operator training of any kind unless Defendants have documentation proving that they are authorized to do so from a qualified third party;

j. Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of their services including but not limited to their training or certification businesses;

~~k. Failing to disclose information concerning their training or certification services or affiliations which was known at the time of the transaction with the consumer 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;~~

~~l. Using the names "Southwest Forklift," "South West Forklift," "Southwest Forklift LLC," or other names substantially similar to another business registered in Texas;~~

m. Conducting any business in Texas without first registering the business with the Texas Secretary of State or filing the necessary Assumed Name records with the appropriate county clerk or the Texas Secretary of State.

n. Deleting any data or communications relating to owning, operating, maintaining, or advertising for the forklift operator training business located at 16613 W. Hardy Rd., Houston, TX 77060 in Harris County, Texas.; and

o. 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 for the forklift operator training business located at 16613 W. Hardy Rd., Houston, TX 77060 in Harris County, Texas.

III. ASSET FREEZE

6. IT IS ORDERED that Defendants and their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, shall be restrained from engaging in the following acts or practices until further order of this Court:

a. 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 in this state, except in response to further orders by the Court.

b. Opening or causing to be opened any safe deposit boxes, commercial mailboxes, or storage facilities held in the name of any Defendant or subject to access, ownership or control by any Defendant, without providing Plaintiff and the Court prior notice by motion seeking such access.

~~7. IT IS ORDERED that any financial institution—including, but not limited to JPMorgan Chase—or any business entity or person who receive actual notice of this Temporary Restraining Order, and who maintain^{has} or have custody or control of funds, accounts, or assets of any kind in~~

~~the name of or held for the benefit of the above named Defendants, or to which Defendants have access or signatory power, shall (1) hold and retain within its control any of the assets, funds, accounts or other property and (2) shall prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of the assets, funds, accounts or other property, except as permitted in accordance with Section IV of this Temporary Restraining Order. The funds, property, and assets affected by this Section of this Temporary Restraining Order shall include both existing assets and assets acquired by any Defendant after the effective date of this Temporary Restraining Order and in violation of this Temporary Restraining Order.~~

8. IT IS SPECIFICALLY ORDERED that ^{\$ 350,000.00 of} funds in Chase bank account Acct. No. XXXXXXXXXXX6082, a business account under the name, "Sergio Hernandez DBA Hernandez South West Forklift," be held and retained until further order from this Court.

~~IV. MODIFICATION OF ASSET FREEZE~~

~~9. IT IS ORDERED that if any of the parties, persons, or entities referenced in this Order agree in writing, through their authorized representatives or counsel, to specify that certain funds or assets be or remain frozen, or that certain funds or assets be released from the asset freeze ordered in Section III of this Order, then such parties or entities may do so. Any financial institution holding funds or assets subject to the freeze under Section III of this Temporary Restraining Order shall comply with any written directive relating to the freezing or unfreezing of any bank account or asset referenced in this Temporary Restraining Order, without further order of this Court, provided such written directive is signed by an Assistant Attorney General representing the State of Texas and verified orally by contacting the Texas Attorney General's Office at 713.223.5886.~~

~~Nothing in this Temporary Restraining Order shall preclude any party from filing a motion seeking a modification of this Temporary Restraining Order from the Court.~~

~~V. EXPEDITED DISCOVERY~~

~~1. IT IS ORDERED that Plaintiff shall be granted leave to conduct expedited discovery. Plaintiff may obtain written discovery and depositions of witnesses and parties prior to the temporary injunction hearing. Any discovery taken or propounded by the Plaintiff for purposes of the temporary injunction hearing is in addition to, and not subject to, any limits on the quantity of permissible discovery provided for in the Texas Rules of Civil Procedure or the rules of this Court.~~

~~2. IT IS ORDERED that Plaintiff may take the deposition of any witness upon a three (3) days' notice to the attorneys for all parties, if known, including taking telephonic, video, written, and other depositions with a request for production of documents prior to any scheduled temporary injunction hearing and prior to Defendant's answer date. Any limitations and conditions set forth in the Texas Rules of Civil Procedure or the rules of this Court regarding subsequent depositions of an individual shall not apply to depositions pursuant to this section.~~

~~3. IT IS ORDERED that Defendants shall provide the following information to Plaintiff at least five (5) business days prior to the Temporary Injunction hearing:~~

~~a. Names and last known contact information, including mailing address, physical address, telephone number, Social Security Number, and email address of all current and former employees related to Defendants' forklift operator training business located at 16613 W. Hardy Rd., Houston, TX 77060 in Harris County, Texas.~~

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

- ~~c. Account numbers and identity of all financial institutions to which the Defendants deposited funds or assets related to Defendants' forklift operator training business located at 16613 W. Hardy Rd., Houston, TX 77060 in Harris County, Texas.~~
4. Defendants shall provide Plaintiff access to inspect and copy the following at least five (5) business days prior to the Temporary Injunction hearing:
- a. All business records related to Defendants' forklift operator training business located at 16613 W. Hardy Rd., Houston, TX 77060 in Harris County, Texas, including but not limited to financial records, customer receipts, customer information, training certificates, identification cards, and communications.
5. Defendants shall respond to interrogatories, requests for admissions, or requests for ~~production of documents within five (5) business days after service of the discovery request.~~

VI. SCHEDULING OF TEMPORARY INJUNCTION HEARING

10. IT IS ORDERED that Defendants in this cause be and hereby are ordered to comply with this Temporary Restraining Order from the date of entry until and to the fourteenth (14th) day after entry or until further order of this Court.
11. The Clerk of the above-entitled Court shall forthwith issue a Temporary Restraining Order in conformity with the law and the terms of this Order.
12. This Temporary Restraining Order shall be effective without the execution and filing of a bond because Plaintiff are exempt from such bond under Tex. Civ. Prac. & Rem. Code § 6.001 and DTPA § 17.47(b).

A temporary injunction hearing is set for July 22, 2022 at 1:30 pm.

D. Roth

SIGNATURE OF PRESIDING JUDGE

D. Roth

PRINT NAME

07/14/2022 at 1:00p.m.
DATE