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2020-46504 / Court: 164

CAUSE NO. _____

STATE OF TEXAS, *Plaintiff,*	§	**IN THE DISTRICT COURT OF**
v.	§	**HARRIS COUNTY,**
CLINICA HISPANA LA PORTE, and LUIS ALBERTO CUAN a/k/a LUIS ALBERTO CUAN LIO individually, and d/b/a CLINICA HISPANA LA PORTE, *Defendants.*	§	**____ JUDICIAL DISTRICT**

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TEMPORARY RESTRAINING ORDER AND ORDER SETTING HEARING FOR TEMPORARY INJUNCTION

Plaintiff, STATE OF TEXAS, acting by and through its Attorney General, Ken Paxton, has filed an Original Petition and Application for ~~Ex Parte~~ Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. The Defendants are Clinica Hispana La Porte and Luis Alberto Cuan a/k/a Luis Alberto Cuan Lio individually, and d/b/a Clinica Hispana La Porte. Based on the findings below, the Application for ~~Ex Parte~~ Temporary Restraining Order against the Defendants is GRANTED.

The Applicant provided notice to the Defendants and the Defendants failed to appear for the hearing.

I. FINDINGS IN SUPPORT OF TEMPORARY RESTRAINING ORDER

1. 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.

2. ~~With respect to the Plaintiff's claims under the Texas Deceptive Trade Practices—~~ The Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 ("DTPA"), this Court FINDS that the applicant has plead for permanent relief, the applicant has a probable right to relief, and that if the temporary restraining order ~~that there is good cause to believe Defendants (as defined in this Order) have engaged in and are~~ is not granted that imminent, irreparable injury will occur. ~~likely to engage in acts and practices that violate §§ 17.46(a) and (b) of the DTPA~~.

3. With respect to the Plaintiff's claims under the Texas Identity Theft Enforcement and Protection Act, Tex. Bus. & Com. Code §§ 521.001–521.152 ("ITEPA"), this court FINDS that there is good cause to believe Defendants have engaged in and are likely to engage in acts and practices that violate §§ 521.052(a) and (b) of the ITEPA.

4. The Court FINDS that this action is in the public interest and a Temporary Restraining Order should be issued to restrain and prevent the continuing acts and practices of Defendants that may be violating the DTPA and ITEPA. DTPA § 17.47(b) and ITEPA § 521.151(b).

5. The Court FINDS from the evidence set forth in Plaintiff's Original Petition, the affidavits, and attached exhibits that unless Defendants are immediately restrained from the acts prohibited below, Defendants will continue to commit such acts before notice can be given and a hearing can be held on Plaintiff's request for a temporary injunction. The State will suffer the following immediate and irreparable injury, loss, or damage: interference with the public health, safety, peace, comfort, and convenience of its citizens caused by the Defendants continuing false, misleading, and deceptive acts and practices in the course of offering, selling, and administering COVID-19 tests, as well as the Defendant's failure to implement and maintain reasonable procedures to protect consumers' sensitive personal and protected health information from unlawful use or disclosure and failure to destroy or arrange for the destruction of customer records containing sensitive personal and protected health information. This injury is irreparable because misleading diagnoses related to transmissible diseases are harmful to the individual, the public, and the public health; because Defendant will continue to collect monies from consumers by use of false, misleading, and deceptive trade practices, and Defendants will continue to illegally dump patient records without shredding, erasing, or otherwise modifying the sensitive personal and protected health information in the records to make the information unreadable or indecipherable

through any means. The Court FINDS that there is good cause to believe irreparable loss or injury would occur unless Defendants are immediately enjoined. DTPA § 17.47(a). Issuance of this Temporary Restraining Order is in the public interest.

6. The Court FINDS that ~~prior notice of Plaintiff's Original Petition and Application for Temporary Restraining Order is not required before entry of this Order because the Court finds~~ notice of the hearing on temporary restraining order was provided to Defendant. that 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, or damage would occur as a result of such delay in obtaining a temporary restraining order. *Id.*

7. The Court FINDS this Temporary Restraining Order may be issued without bond posted by the State. DTPA § 17.47(b) and ITEPA § 521.151(d).

II. DEFINITIONS

8. For purposes of this Temporary Restraining Order, the following definitions shall apply:

   a. "Defendants" shall mean CLINICA HISPANA LA PORTE and LUIS ALBERTO CUAN a/k/a LUIS ALBERTO CUAN LIO individually, and d/b/a CLINICA HISPANA LA PORTE.

   b. "Medical License" shall mean any licensure, registration, certificate, or permit that allows an individual or business to offer and provide medical care in the State of Texas.

   c. "COVID-19" shall mean Coronavirus Disease 2019 ("COVID-19"), the disease caused by the SARS-CoV-2 virus.

   d. "COVID-19 test" shall mean any type of tests available for COVID-19, whether diagnostic or antibody.

e. "Diagnostic COVID-19 test" shall mean one of two types of COVID-19 Tests intended to show whether a patient has an active coronavirus infection and includes (1) molecular (RT-PCR) tests that detect a virus' genetic material and (2) antigen tests that detect specific proteins on the surface of the virus.

f. "Antibody COVID-19 test" shall mean the type of COVID-19 Tests designed to show whether a patient has antibodies made by the human immune system in response to a threat, such as the SARS-CoV-2 virus. Antibody tests are also known as serological tests.

g. "CLIA certification" shall mean certification pursuant to the Clinical Laboratory Improvement Amendments of 1988 ("CLIA"), 42 U.S.C. 263a.

h. "Personal identifying information" shall mean information that alone or in conjunction with other information identifies an individual, including an individual's:

    i. name, social security number, date of birth, or government-issued identification number;

    ii. mother's maiden name;

    iii. unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

    iv. unique electronic identification number, address, or routing code; and

    v. telecommunication access device as defined by Section 32.51, Penal Code.

i. "Sensitive personal and protected health information" shall mean

    i. an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:

        1) social security number;

2) driver's license number or government-issued identification number; or

3) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or

ii. information that identifies an individual and relates to:

1) the physical or mental health or condition of the individual;

2) the provision of health care to the individual; or

3) payment for the provision of health care to the individual.

III. PRESERVATION OF EVIDENCE

9. **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 Temporary Restraining Order by personal service or otherwise, shall not fail to preserve all records related to this litigation, including all business records related to Clinica Hispana.

IV. PROHIBITED BUSINESS CONDUCT

10. **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 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. Offering, selling, administering, and/or providing any medical care related to COVID-19, unless Defendants provide proof of medical licensure with the State of Texas to the State's undersigned attorneys;

b. Offering, selling, or administering any COVID-19 tests;

c. Offering, selling, or administering antibody COVID-19 tests as diagnostic COVID-19 tests;

d. Failing to disclose to any consumer the meaning of the results of their COVID-19 testing;

e. Failing to implement reasonable procedures including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal and protected health information collected or maintained by the business in the regular course of business;

f. 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 Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause; and

g. 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.

11. **IT IS ORDERED** that, Defendants shall immediately secure the dumpster behind Clinica Hispana La Porte and the contents of the dumpster by:

a. Locking and/or otherwise securing the dumpster so that no unauthorized person has access to the dumpster and its contents, whether such contents are inside the dumpster or in the immediate area around the dumpster;

b. Securing the fence around the dumpster that encloses the dumpster so that no unauthorized person has access to the dumpster and its contents; and

c. Contacting the company that picks up the contents of the dumpster and placing a hold on pick up until such time as the Court has heard and decided the Temporary Injunction in this matter.

If the dumpster is used by other businesses in this same location, Defendants must immediately (1) remove and secure any documents or other materials in the dumpster which include sensitive personal or protected health information of individuals, and (2) remove and properly dispose of any medical waste.

12. **IT IS ORDERED** that, Defendants, within 24 hours of securing the dumpster and its contents as provided by paragraph 11 of this Order, shall provide written notice to the State's undersigned attorneys notifying the State as to whether the dumpster and its contents have been secured as required by paragraph 11.

13. **IT IS FURTHER ORDERED** that Defendants shall not:

a. Place any additional items in and/or around the dumpster until the Court has heard and decided the Temporary Injunction; and

b. Improperly dispose of medical waste materials.

IV. EXPEDITED DISCOVERY REQUIRED

14. At least five days prior to the Temporary Injunction Hearing, Defendants shall produce to the State the following:

a. Documents reflecting all orders and deliveries of any diagnostic or antibody COVID-19 test kits produced by any manufacturer;

b. Documents evidencing any manufacturers or suppliers that sold Defendants COVID-19 diagnostic or antibody test kits;

c. Copies of any documentation provided by Defendants to any seller or manufacturer of any COVID-19 diagnostic or antibody test kits;

d. Documents identifying all licensed medical providers who have worked with Clinica Hispana La Porte since March 1, 2020, in any capacity;

e. Documents identifying all employees of Clinica Hispana La Porte;

f. Documents identifying all COVID-19 tests results provided to consumers who have purchased COVID-19 testing services (of any kind) from Clinica Hispana La Porte;

g. Documents reflecting any reporting of any COVID-19 test results (of any type) to state and federal public health authorities;

h. Documents reflecting the ownership and/or formation of Clinica Hispana La Porte;

i. Documents reflecting any policies and procedures related to the safeguarding of sensitive personal and protected health information, including documents relating to the disposal of documents with sensitive personal and protected health information;

j. Documents reflecting any CLIA certifications and/or affiliations with any CLIA-certified labs; and

k. Documents identifying any bank accounts in which consumer monies used to pay for COVID-19 tests from Clinica Hispana were deposited.

V. SCHEDULING OF TEMPORARY INJUNCTION HEARING

15. IT IS ORDERED that Defendants in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14^{th}) day after entry or until further Order of this Court.

16. 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.

17. This Order shall be effective without the execution and filing of a bond because Plaintiff is exempt from such bond under Tex. Civ. Prac. & Rem. Code § 6.001, DTPA § 17.47(b), and ITEPA § 521.151(d).

A temporary injunction is hearing is set for August 24, 2020, at 1:00 ~~a.m./~~p.m.

SIGNED on _____, 2020, at _____ a.m./p.m.

Signed:
8/5/2020
12:11 PM

Rebeca Sutton Cutler

PRESIDING JUDGE

ENTRY REQUESTED BY:

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Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

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