

CAUSE NO. 2016CI16201

THE STATE OF TEXAS,
Plaintiff,

v.

WALDEMAR JOHN LUGO,
Defendant.

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IN THE DISTRICT COURT

166 JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

NOW COMES Plaintiff, THE STATE OF TEXAS (hereinafter, "State"), acting by and through the Attorney General KEN PAXTON and on behalf of the public interest, complaining of Defendant WALDEMAR JOHN LUGO (hereinafter, "Lugo"). The State alleges that Lugo engaged in false, misleading, and deceptive acts and practices in violation of § 17.46 of the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code (hereinafter, "DTPA"). Plaintiff further alleges that Lugo engaged in unlawful practices in violation of § 406.017 (unlawful solicitation of compensation and preparation of immigration forms) of the Texas Government Code. In support hereof, Plaintiff will respectfully show the Court the following:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3(a).
2. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the relief sought by the State includes non-monetary injunctive relief.

JURISDICTION

3. This enforcement action is brought by the Attorney General of Texas, Ken Paxton, through his Consumer Protection Division, in the name of the State and in the public interest,

pursuant to the authority granted to him by § 17.47 of the DTPA – Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41 *et seq.* upon the grounds that Defendants 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.¹

4. In enforcement suits filed pursuant to § 17.47 of the DTPA, the Attorney General is authorized to seek civil penalties, redress for consumers, and injunctive relief.

DEFENDANTS

5. Waldemar John Lugo is an individual who has done business in Texas as alleged specifically below and may be served with process at his residence located at 670 SW College Park Road, Port Saint Lucie, Florida 34953 or wherever he may be found.

VENUE

6. Venue of this suit lies in BEXAR County, Texas pursuant to § 17.47(b) of the DTPA because transactions made part of this suit occurred in Bexar County, Texas.

PUBLIC INTEREST

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

¹ Pursuant to the Tex. Gov't Code § 406.017(f), a violation of this section of the code is also a deceptive trade practice actionable under the DTPA.

NOTICE BEFORE SUIT

8. The Consumer Protection Division informed Defendant in general of the alleged unlawful conduct described below at least seven (7) days before filing suit as may be required by § 17.47(a) of the DTPA.

TRADE AND COMMERCE

9. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

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

SPECIFIC FACTUAL ALLEGATIONS

11. Lugo worked for a company that provided security services for an immigration detention facility in Florida; yet he represents on Facebook, a social media website, that he worked as an “Immigration Officer” for the Immigration and Nationality Service (hereinafter, “INS”), a former agency of the U.S. Department of Justice, and that, after leaving his job at INS, he graduated from Florida International University with a law degree when such was never the case. Rather, Lugo left his employment at the facility to “start to do like a freelance...and start to help people to fill out [immigration] paperwork” even though he is not licensed to practice law in any jurisdiction of the United States and possesses no certification or accreditation that would otherwise allow him to offer or provide such services.²

² Title 8, Part 292, of the Code of Federal Regulations explains who may represent applicants before the Department of Homeland Security and its immigration officers. Section 1292 of Title 8 provides identical regulations for who may appear before the Executive Office of Immigration Review.

12. Lugo also offered consumers assistance with legal matters involving “marriage paperwork” and “tax preparation.” He operated from his residence in San Antonio, Texas, and represented himself as an attorney to consumers. One consumer claims that once she paid Lugo for legal services, he stopped communicating with her.

13. Lugo promoted, marketed, and advertised himself to the general public as a provider of legal services when he was never authorized to do so by law.

14. Lugo is not now and at all times relevant has not been an attorney at law duly licensed by the State of Texas or another jurisdiction in the United States to engage in acts, practices, or conduct which constitute the practice of law. In addition, Lugo is not now and at all relevant times has not been an accredited representative of an organization recognized by the Board of Immigration Appeals (hereinafter, “BIA”), as able to represent individuals in immigration matters or in proceedings before the immigration courts.³

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

15. Defendant has in the course of trade and commerce as alleged above and detailed below, engaged in false, misleading, and deceptive acts and practices declared unlawful in § 17.46(a) and (b) of the DTPA. Such acts include:

- a. Providing assistance to consumers in exchange for compensation in matters regarding immigration benefits in violation of § 17.46(b)(2), (5), (12), and (24);
- b. Offering to complete immigration forms in exchange for compensation on behalf of individuals seeking immigration benefits in violation of § 17.46(b)(2), (5), (9), and (24);

³ See Footnote 2.

- c. Representing himself to the public as a provider of immigration services by stating and implying that he has the skill or knowledge necessary to handle immigration cases and matters in violation of § 17.46(b)(2), (5), (7), (9) and (24);
- d. Accepting compensation from consumers for the performance of the immigration services described above in violation of § 17.46(b)(2), (5), (7), (9), and (24); and
- e. In addition, pursuant to § 406.017(f) of the Texas Government Code (Representation as Attorney), a violation of this section is presumed to be a violation of the DTPA.⁴

VIOLATIONS OF THE TEXAS GOVERNMENT CODE

16. Lugo, as alleged and detailed above, has violated and will continue to violate § 406.017(a) of the Texas Government Code because he is a notary public and solicits and accepts compensation in exchange for legal services that he is not authorized by law to provide.⁵

DISGORGEMENT AND RESCISSION

17. Defendant's assets are subject to the equitable remedy of disgorgement, which is the court-ordered relinquishment of all benefits that would be unjust for Defendant to retain, including all ill-gotten gains and benefits or profits resulting from Defendant's violations of Texas law. Defendant should be ordered to disgorge all illegally obtained monies from consumers, together with all proceeds, profits, income, interest, and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State.

⁴ Pursuant to the Tex. Gov't Code § 406.017(f), a violation of this section of the code is also a deceptive trade practice actionable under the DTPA.

⁵ See Footnote 4.

18. Any contracts or agreements between consumers and Defendant for services secured in violation of the DTPA, the Texas Government Code, or otherwise obtained from consumers in violation of Texas law should be rescinded by order of this Court. All ill-gotten gains, benefits, or profits that Defendant has obtained from any such contracts or agreements should be returned to the State and consumers.

PRAYER

19. WHEREFORE, Plaintiff prays that this court will award judgment for the Plaintiff and against Defendant as follows:

- a. Order Defendant to pay civil penalties to the State up to \$20,000 per each violation of the DTPA; and
- b. Order Defendant to pay the State its attorneys' fees and costs of court pursuant to § 402.006(c) of the Texas Government Code.

20. Plaintiff further prays that Defendant be cited according to law to appear and answer herein, and that a PERMANENT INJUNCTION be issued enjoining Defendant, Defendant's officers, agents, servants, employees, and any other person in active concert or participation with Defendant from engaging in the following acts or practices:

- a. Advertising via print, billboard, Internet, social media, or through any other means immigration or other legal services unless Defendant is a duly licensed attorney or properly accredited by the BIA;
- b. Offering for sale, selling, soliciting, or providing immigration or other legal services unless Defendant is a duly licensed attorney or properly accredited by the BIA;

- c. Failing to honor any requests by consumers of immigration or other legal services to rescind any agreements or contracts with Defendant without further obligation and failing to cease any and all collection efforts;
- d. Harassing or threatening consumers with deportation or other legal action;
- e. Accepting money or valuable consideration in exchange for providing immigration or other legal services unless Defendant is a duly licensed attorney or properly accredited by the BIA;
- f. Holding himself out to the public as an “attorney,” “immigration specialist,” “immigration counselor,” “immigration consultant,” “notario,”⁶ or the like, and by any title or designation incorporating the word “immigration” or an abbreviation thereof unless Defendant is a duly licensed attorney or properly accredited by the BIA;
- g. Representing, directly or by implication, that Defendant has the skill, expertise, or competence to handle immigration or other legal matters unless Defendant is a duly licensed attorney or properly accredited by the BIA;
- h. Showing, directly or by implication, any affiliation, connection, or association of an address or telephone number in the United States with an immigration or other legal service in another country;
- i. Charging fees in excess of the amount allowed by law for performing notarial services;

⁶ Pursuant to Texas Government Code § 406.017, if Defendant advertises the services of a notary public in a language other than English, Defendant must post or otherwise include with the advertisement a notice in English and in the language of the advertisement and in letters of a conspicuous size that the notary public is not an attorney. The notice must include the fees that a notary public may charge and the following statement: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

- j. Advertising the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, without posting or otherwise including with the advertisement a notice that complies with § 406.017 of the Texas Government Code; and
- k. Representing, directly or by implication, that this Court or the Office of the Attorney General have approved any good or service sold or offered for sale by Defendant, or approved of any of Defendant's business practices.
- l. Receiving any funds (principal and/or interest) for any immigration bonds currently pending with federal immigration authorities⁷;
- m. Accepting money or valuable consideration for performing immigration bond services⁸;
- n. Representing, directly or by implication, that legal services will be provided under the direct supervision of an attorney when such is not the case;
- o. Serving as an immigration sponsor unless Defendant, in good faith and in accordance with all state and federal law, intends to receive, maintain, and support an immigrant with housing, food, and money as represented in documents submitted to federal immigration authorities;

⁷ If Defendant is an obligor on any pending immigration bonds, he shall comply with the terms of the bond. Defendant is authorized to receive funds only to the extent that a bond for which he is an obligor has been cancelled or breached and federal authorities return the principal and/or interest on that principal to him in his capacity as obligor. Defendant immediately upon receipt of said funds shall return the full amount of payment made to him by federal authorities to consumers who provided the cash bond funds to him.

⁸ Defendant may accept money or valuable consideration if he is authorized to practice federal or state law within the State of Texas or is an employee or subcontractor of a law firm owned and operated by an attorney authorized to practice federal or state law within the State of Texas and Defendant accepts it on behalf of said firm and under the direction of an attorney.

- p. Aiding another person in the unauthorized practice of law; and
- q. Sharing fees with duly licensed attorneys for legal services.

21. IT IS FURTHER ORDERED that the above-referenced injunctive terms are intended to effectively prevent such activity by Defendant and any attempt to conduct such activity through another person or entity in circumvention of this injunction shall be deemed a violation of the injunction.

22. Plaintiff further prays that Defendant be cited according to law to appear and answer herein and that this Court grant all other relief to which the Plaintiff may show itself entitled.

Respectfully submitted,

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