

CAUSE NO. 16-04-00133

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	
	§	218TH JUDICIAL DISTRICT
UNITED IMMIGRATION	§	
CONSULTING, LLC AND EDWIN	§	
ZAVALA, JR., INDIVIDUALLY,	§	
Defendants.	§	FRIO COUNTY, TEXAS

**PLAINTIFF'S FIRST AMENDED PETITION AND APPLICATION FOR
TEMPORARY AND PERMANENT INJUNCTIONS**

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 Defendants, UNITED IMMIGRATION CONSULTING, LLC (hereinafter, "UIC") and EDWIN ZAVALA, JR., INDIVIDUALLY (hereinafter, "Zavala"). The State alleges that Defendants violated section 9.001 of the Texas Business Organizations Code by failing to comply with registration requirements to transact business in Texas and engaged in false, misleading, and deceptive acts and practices in violation of section 17.46 of the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code (hereinafter, "DTPA"). In support hereof, Plaintiff will respectfully show the Court the following:

I. 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:
 - a. The relief sought by the State includes non-monetary injunctive relief; and

- b. The State's claims for monetary relief including penalties, consumer redress, and attorney's fees and costs are in excess of \$100,000.00 and could exceed \$1,000,000.00.

II. 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 section 17.47 of the DTPA – Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41 *et seq.* upon the ground 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, sections 17.46 (a) and (b) of the DTPA.

4. In enforcement suits filed pursuant to section 17.47 of the DTPA, the Attorney General is authorized to seek civil penalties, redress for consumers, and injunctive relief. Additionally, pursuant to section 9.051 of the Texas Organizations Code, the Attorney General may seek to enjoin a foreign filing entity or the entity's agent from transacting business in this state if (1) the entity is not registered in this state; or (2) the entity's registration is obtained on the basis of a false or misleading representation.

III. DEFENDANTS

5. Defendant United Immigration Consulting, LLC is a Louisiana company that has conducted business in Texas as alleged specifically below, and this proceeding arises out of such business done in this state. UIC does not maintain a regular place of business in this state and has not designated or maintained a registered agent for service of process in Texas and therefore may be served with process by serving the Secretary of State of the State of Texas pursuant to section 17.044(b) of the Texas Civil Practice and Remedies Code. The Secretary of State is hereby

requested to serve Defendant by certified or registered mail addressed to said defendant's home office at 2700 Ambassador Caffery Parkway, Apartment No. 278, Lafayette, LA 70506.

6. Defendant Edwin Zavala, Jr. is an individual who is doing business in Texas as alleged specifically below, and this proceeding arises out of such business done in this state. Zavala does not maintain a regular place of business in this state and has not designated or maintained a registered agent for service of process in Texas and therefore may be served with process by serving the Secretary of State of the State of Texas pursuant to section 17.044(b) of the Texas Civil Practice and Remedies Code. The Secretary of State is hereby requested to serve Defendant by certified or registered mail addressed to said defendant's home address located at 2700 Ambassador Caffery Parkway, Apartment No. 278, Lafayette, LA 70506.

IV. VENUE

7. Venue of this suit lies in Frio County, Texas under section 17.47(b) of the DTPA because transactions made part of this suit occurred in Frio County, Texas.

V. PUBLIC INTEREST

8. Plaintiff, the State of Texas, has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that Defendants have, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons, and that Defendants 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.

VI. NOTICE BEFORE SUIT

9. On March 22, 2016, a letter to Defendants was sent via certified mail advising them at least seven days before filing suit of the alleged unlawful conduct as required by section 17.47 of the DPTA.

VII. TRADE AND COMMERCE

10. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by section 17.45(6) of the DTPA.

VIII. ACTS OF AGENTS

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

IX. SPECIFIC FACTUAL ALLEGATIONS

Deceptive Acts and Practices on the Internet

12. Zavala owns and operates UIC, a Louisiana-based company that “proudly offer[s] nationwide immigration consultation and immigration bond financing” to “immigrants and their families across the entire United States” even though Zavala is not an accredited representative of an organization recognized as a provider of immigration services by the Board of Immigration Appeals (hereinafter, “BIA”) or licensed to practice law in Texas or any other jurisdiction of the United States.¹ See Exhibit 1. Zavala represents on his website, <http://unitedimmigration.wix.com>, that UIC can “help clients understand the steps they should take for legal US immigration

¹ 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.

and...explain the immigration laws in plain language, so [clients] will know what steps to take next,...make the right choices, prevent deportation[,] and post bond.” *See* Exhibit 2.

13. UIC’s “areas of practice” include “asylum” and “help with applications for different visas.” UIC claims that one of its goals is to “help [consumers] understand the laws, so [consumers] can remain [in the United States] legally and make [consumers’] dream of permanent residence a reality.” Consumers may schedule “immigration consultations” by phone or in person at one of UIC’s offices to determine how to “legally achieve [their] goals.” Defendants also advertise translation, transportation, and job placement services to “new immigrants” on their website and use the United Nations emblem as their logo. *See Id.*

Deceptive Acts and Practices at Immigration Detention Facilities

14. Defendants solicit business from consumers detained at Immigration and Customs Enforcement (hereinafter, “ICE”) facilities throughout Texas and nationwide. Defendants distribute business cards and letters in envelopes under the name of “National Immigration Services” to ICE facilities including the South Texas Detention Facility located in Pearsall, Frio County, Texas, wherein they promise to “fight” for consumers’ cases, speed up consumers’ immigration process, and protect consumers’ legal rights. Zavala and UIC are not registered with the Texas Secretary of State to transact business in this state as required by law. *See* Exhibits 3, 4, and 5.

15. Zavala represents himself as an attorney to detainees and their friends and relatives who pay for legal services. As recently as June 2015, Zavala “identified himself as an attorney [to Texas consumer Z [REDACTED] R [REDACTED]] and said he was part of an organization that helped immigrants and low-income families.” R [REDACTED] contacted Zavala after her brother, who was detained at an ICE immigration detention facility in Louisiana, received a letter from Zavala

“offering immigration legal services.” R [REDACTED] paid Zavala \$800.00 to secure her brother’s release from the facility; however, after she made the payment, Zavala “stopped calling [R [REDACTED]] and would rarely answer...calls.” R [REDACTED]’s brother was deported the following month. *See* Exhibit 6.

16. Texas consumer A [REDACTED] B [REDACTED] contacted Zavala to obtain legal services for a friend who was detained at an ICE immigration detention facility in Texas and “set for deportation.” B [REDACTED] believed Zavala was an attorney after he assured her that “he would stop deportation and get [B [REDACTED]’s friend] released with a work permit...and help [B [REDACTED]’s friend] find employment.” Zavala charged B [REDACTED] \$600.00, but “reduced the price to \$525.00 after [B [REDACTED] and her husband] told him that [they] only had that much money to pay. Edwin said [B [REDACTED] and her husband] could pay him the remaining \$75.00 when [B [REDACTED]’s friend] was released.” After B [REDACTED] paid Zavala in March 2015, Zavala stopped answering calls. B [REDACTED]’s friend was deported. *See* Exhibit 7.

17. Zavala represents to consumers in Texas that he “ha[s] many years of experience in [immigration] cases, that he ha[s] many immigration clients and that he represent[s] them anywhere in the United States.” Zavala further claims that he “can argue [immigration cases] before a judge” and “help people...with any type of case relating to immigration from political asylum to work permits...and give [consumers] a discount...if [consumers] referred people.” Consumer O [REDACTED] L [REDACTED] paid Zavala \$800.00 to represent his brother in immigration court based on Zavala’s claim that he was an attorney with extensive experience in immigration matters; however, on the day of the hearing, Zavala did not show up. L [REDACTED] realized then that “Edwin had defrauded us.” *See* Exhibit 8.

X. ZAVALA IS INDIVIDUALLY LIABLE

18. It has long been the law in Texas that corporate agents are individually liable under the DTPA for fraudulent or tortious acts committed while in the service of their corporation. *Gilbeau v. Anderson*, 841 S.W.2d 517, 519 (Tex. App.—Houston [14th Dist.] 1992, no writ), *citing Light v. Wilson*, 663 S.W.2d 813, 815 (Tex. 1983); *see also Barclay v. Johnson*, 686 S.W.2d 334, 336 (Tex. App.—Houston [1st Dist.] 1985, no writ). It is not necessary that the “corporate veil” be pierced in order to impose personal liability, as long as the corporate officer knowingly participated in the wrongdoing. *Barclay*, 686 S.W.2d at 337, *citing Permian Petroleum Co. v. Barrow*, 484 S.W.2d 631 (Tex. App.—El Paso 1972, no writ). The Texas Supreme Court has specifically affirmed the principle that DTPA misrepresentations made by a corporate agent can subject the agent to individual liability. *Weitzel v. Barnes*, 691 S.W.2d 598, 601 (Tex. 1985); *see Miller v. Keyser*, 90 S.W.3d 712 (Tex. 2002).

19. Zavala directly engaged in and knowingly participated in the deceptive acts and practices alleged herein. As an officer of UIC, Zavala is individually liable for the fraudulent and deceptive acts he committed while in the service of his company.

XI. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

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

21. Defendants, as alleged above and detailed below, have in the conduct of trade and commerce engaged in false, misleading, and deceptive acts and practices in violation of sections 17.46(a) and (b) of the DTPA. Such acts include:

- a. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, as alleged more specifically in paragraphs 12 through 17 above, in violation of section 17.46(b)(2) of the DTPA.
- b. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, as alleged more specifically in paragraphs 12 through 17 above, in violation of section 17.46(b)(3) of the DTPA.
- c. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have, as alleged more specifically in paragraphs 12 through 17 above, in violation of section 17.46(b)(5) of the DTPA.
- d. Representing that goods or services are of a particular standard, quality, or grade when they are of another, as alleged more specifically in paragraphs 12 through 17 above, in violation of section 17.46(b)(7) of the DTPA.
- e. Advertising goods or services with intent not to sell them as advertised, as alleged more specifically in paragraphs 12 through 14 above, in violation of section 17.46(b)(9) of the DTPA.
- f. Representing that an agreement confers or involves rights, remedies, or obligations that it does not have or involve, or which are prohibited by law, as alleged more specifically in paragraphs 12 through 17 above, in violation of section 17.46(b)(12) of the DTPA.
- g. Failing to disclose information concerning goods or services that was known at the time of the transaction and 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, as alleged more specifically in paragraphs 12 through 17 above, in violation of section 17.46(b)(24) of the DTPA.

XII. VIOLATIONS OF THE TEXAS BUSINESS ORGANIZATIONS CODE

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

23. Defendants, as alleged and detailed above, have failed to register UIC, a foreign entity, with the Texas Secretary of State to transact business in this state as required by law. Tex. Bus. Org. Code § 9.001.²

XIII. DISGORGEMENT AND RESCISSION

24. Defendants' assets are subject to the equitable remedy of disgorgement, which is the court-ordered relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits resulting from Defendants' violations of Texas law. Defendants 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.

25. Any contracts or agreements between consumers and Defendants for services secured in violation of the DTPA 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 Defendants have obtained from any such contracts or agreements should be returned to the State and consumers.

² On application by the attorney general, a court may enjoin a foreign filing entity or the entity's agent from transacting business in this state if: (1) the entity is not registered in this state; or (2) the entity's registration is obtained on the basis of a false or misleading representation. Tex. Bus. Org. Code § 9.051.

XIV. TRIAL BY JURY

26. The State herein requests a trial by jury and tenders the jury fee to the Frio County District Clerk's office pursuant to Rule 216 of the Texas Rules of Civil Procedure and section 51.604 of the Texas Government Code.

XV. PRAYER

27. Because Defendants have engaged, will continue to engage, or are about to engage in the unlawful acts and practices described above, the State believes that proceedings against Defendants are in the public interest. Unless restrained and enjoined by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause harm to the State of Texas and the general public.

28. Therefore, the State requests Temporary and Permanent Injunctions as indicated below. Pursuant to section 17.47(b) of the DTPA, a court may issue temporary restraining orders, temporary injunctions, and permanent injunctions to prevent continuing violations of the DTPA. A court shall issue such injunctive relief without requiring a bond. Tex. Bus. & Com. Code § 17.47(b) (West 2003). Furthermore, pursuant to section 9.051 of the Texas Organizations Code, the State may seek to enjoin a foreign filing entity or the entity's agent from transacting business in this state if the entity is not registered in this state or the entity's registration is obtained on the basis of a false or misleading representation.

29. The State prays that this Court, after trial, finds that Defendants deceived and misrepresented themselves to consumers and received monies from consumers under fraudulent and false pretenses.

30. The State further prays that, after notice and hearing, a TEMPORARY INJUNCTION be issued as to the Defendants and, upon final hearing, a PERMANENT INJUNCTION be issued to

restrain and enjoin Defendants (including any business entities established by Defendants) and any officers, agents, servants, employees, or other person in active concert or participation with them from engaging, directly or indirectly, in the following acts or practices:

- a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer-generated materials that relate to Defendants' business that are currently or hereafter in Defendants' possession, custody or control, except in response to further orders or subpoenas in this cause;
- b. Transferring, withdrawing, liquidating, spending, concealing, encumbering, removing, dissipating, distributing, assigning, granting a lien or security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, agreements, shares of stock, or other assets, or any interest therein, wherever located, that are:
 - i. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to Defendants;
 - ii. in the actual or constructive possession of Defendants; or
 - iii. in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, or belonging to, any other corporation, trust, or other entity directly or indirectly owned, managed, controlled by, or under the common control of Defendants;

- c. Allowing the transfer or withdrawal of funds or other assets that are:
 - i. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to Defendants, including but not limited to, any accounts to which Defendants have signatory authority and any accounts in which Defendants own any interest;
 - ii. in the actual or constructive possession of Defendants; or
 - iii. in the actual or constructive possession of, or owned, controlled or held by, or subject to access by, or belonging to, any other corporation, partnership, trust, or any other entity directly or indirectly owned, managed, or controlled by, or under common control of Defendants;
- d. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of Defendants or subject to access, ownership, or control by Defendants, without providing the State and the Court prior notice by motion seeking such access;
- e. Advertising via print, billboard, Internet, social media, or through any other means immigration bond services;
- f. Offering for sale, selling, soliciting, or providing immigration services unless Defendants are duly licensed to practice law or properly accredited by the BIA;
- g. Failing to honor any requests by consumers (before and after this Court's order) to rescind any agreements or contracts with Defendants without further obligation and failing to cease any and all collection efforts until further order of this Court;
- h. Harassing or threatening consumers with deportation or other legal action;

- i. Operating a notary public business until further order of this Court;
- j. Requesting/obtaining a notary public commission until further order of this Court;
- k. Accepting money or valuable consideration in exchange for providing immigration services unless Defendants are duly licensed to practice law or properly accredited by the BIA;
- l. Accepting money or valuable consideration from any person seeking assistance to obtain a benefit under U.S. immigration laws for himself/herself or any other person unless Defendants are duly licensed to practice law or properly accredited by the BIA;
- m. Advising any person whether to file a petition, application, or seek any form of relief to obtain a benefit under U.S. immigration laws for himself/herself or any other person unless Defendants are duly licensed to practice law or properly accredited by the BIA;
- n. Preparing for any person a petition, application, or other form(s) to obtain a benefit under U.S. immigration laws for himself/herself or any other person unless Defendants are duly licensed to practice law or properly accredited by the BIA;
- o. Holding himself/itself out to the public as an “attorney,” “immigration specialist,” “immigration counselor,” “immigration consultant,” or the like, and by any title or designation incorporating the word “immigration” or an abbreviation thereof unless Defendants are duly licensed to practice law or properly accredited by the BIA;
- p. Representing, directly or by implication, that Defendants have the skill, expertise, or competence to handle immigration matters unless Defendants are duly licensed to practice law or properly accredited by the BIA;

- q. Showing, directly or by implication, any affiliation, connection, or association of an address or telephone number in the United States with an immigration service in another country;
 - r. Advertising, offering for sale, selling, or performing notarial services until further notice of this Court;
 - s. Sharing fees with attorneys for legal services;
 - t. Accepting money or valuable consideration for performing notarial services until further notice of this Court; and
 - u. Representing, directly or by implication, that this Court or the Office of the Attorney General of Texas have approved any good or service sold or offered for sale by Defendants, or approved of any of Defendants' business practices.
31. In addition, Plaintiff respectfully prays that this Court ORDER:
- a. Defendants to notify any agents and assignees to cease debiting or collecting monies from former and current clients' banking or checking accounts and to cease any and all collection efforts until further order of this Court;
 - b. Defendants to produce the contact information for all consumers Defendants solicited for immigration bond services;
 - c. Defendants to pay civil penalties in favor of the State in the amount not to exceed \$20,000.00 per each violation of the DTPA;
 - d. The disgorgement of Defendant's assets, as provided by law and rescission of any contracts or agreements illegally obtained;
 - e. Defendants to restore all money or other property acquired by means of unlawful acts or practices;

- f. Defendants to pay all court costs, costs of investigation, and reasonable attorney's fees pursuant to Texas Government Code section 402.006(c) and section 521.151(f) of the Texas Business & Commerce Code;
- g. Defendants to pay pre-judgment and post-judgment interest at the highest lawful rate on awards of restitution or civil penalties as provided by law; and
- h. Defendants to rescind all agreements entered into by and between Defendants and consumers.

32. Plaintiff also respectfully prays that this Court adjudge that all fines, penalties, or forfeitures payable to and for the benefit of the State, are not dischargeable under bankruptcy pursuant to 11 U.S.C. section 523(a)(7).

33. The State further respectfully prays for all other relief to which the State may be justly entitled.

Respectfully submitted,

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