

CAUSE NO. _____

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiffs	§	
	§	
VS.	§	
	§	HARRIS COUNTY, TEXAS
XIAO F. LI AND LU JOANNE TIEN	§	
D/B/A DIAMOND SPA,	§	
WESTCO PROPERTY,	§	
KUYKENDAHL CENTERS, LLC;	§	
AND THE PREMISES LOCATED AT	§	
16300 KUYKENDAHL RD, SUITE 200	§	
HOUSTON, HARRIS COUNTY, TEXAS	§	
IN REM	§	_____ JUDICIAL DISTRICT
Defendants	§	

**PLAINTIFF’S ORIGINAL PETITION FOR ABATEMENT OF COMMON AND PUBLIC NUISANCES,
APPLICATION FOR A TEMPORARY INJUNCTION, PERMANENT INJUNCTION,
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Harris County Attorney Vince Ryan brings this suit on behalf of the State of Texas (State), plaintiff-petitioner (plaintiff), to enjoin and abate common and public nuisances.¹ The State complains that the defendant business known as “Diamond Spa,” is operating an unlicensed massage parlor for the purpose of prostitution, the promotion of prostitution, and organized criminal activity in the retail space located at 16300 Kuykendahl Road, Suite 200. Diamond Spa is owned by defendant Xiao F. Li and Lu Joanne Tien et al.

The strip center located at 16300 Kuykendahl Road, Houston, Texas 77388 is owned by Kuykendahl Centers, LLC.

¹ Tex. Civ. Prac. & Rem. Code § 125.002(a) & § 125.064.

PARTIES

1. The **State of Texas** is the plaintiff, represented by Harris County Vince Ryan. The State is exempt from bond and court costs.²

2. The defendant, **Xiao F. Li**, doing business as an unlicensed massage establishment known as “Diamond Spa,” may be served with process at, 15818 Youpon Valley Dr., Houston, Harris County, Texas, 77073.

3. The defendant, **Lu Joanne Tien**, doing business as an unlicensed massage establishment known as “Diamond Spa,” may be served with process at 12423 Sharp View Drive, Houston, Harris County, Texas 77072.

4. The defendant **Kuykendahl Centers, LLC**, property owner of the premise located at 16300 Kuykendahl Road, Houston, Texas 77388, may be served with process at 365 Sawdust Road, Spring, Texas 77380, C/O Westco Property Management Co.

5. The defendant **Westco Property Management Co**, Management Company of the premise located at 16300 Kuykendahl Road, Houston, Texas 77388, may be served with process at 365 Sawdust Road, Spring, Texas 77380.

DISCOVERY CONTROL PLAN

6. The State moves the Court to issue an Order under Tex. R. Civ. P 190.4, setting the temporary injunction hearing as soon as possible after the defendants have been served. And the State asks the Court to issue a docket control order under Tex. Civ. Prac. & Rem. Code § 125.045 – to prevent the continued use or maintenance of the place as a nuisance.

² Tex. Civ. Prac. & Rem. Code § 6.001.

JURISDICTION AND VENUE

7. This Court has subject matter and personal jurisdiction under Tex. Civ. Prac. & Rem. Code § 125.002(a). The defendants are maintaining the property as a common and public nuisance.

8. Venue is proper.³ The real property at issue is located in Harris County, Texas.

STATEMENT OF FACTS

9. “Diamond Spa,” holds itself out as a massage establishment – as defined under the Texas Occupations Code § 455.001(5). “Other massage services” is defined in § 455.001(11) – and includes any services offered for compensation that involves physical contact with a client.

10. Harris County Precinct 4 Constable Ron Hickman’s Office has cited this unlawful massage establishment at least seven times since January, 2011, under at least three separate investigations – for violations of Chapter, 455 Occupations Code – involving unlicensed massage services, and at least nine other charges are pending. The last investigation occurred on June 19, 2012. Such violations constitute a common nuisance under Civ. Prac. & Rem. Code § 125.0015(a) (18).

11. Harris County Sheriff Adrian Garcia’s Office – Vice Division – has conducted undercover operations at Diamond Spa, resulting in three arrests for prostitution at this location. Such violations constitute a common nuisance under Civ. Prac. & Rem. Code § 125.0015(a) (6).

12. The general reputation of this place will also show the existence of this common nuisance.⁴

³ Tex. Civ. Prac. & Rem. Code § 15.016 & § 125.002(a).

⁴ Tex. Civ. Prac. & Rem. Code § 125.004(c).

13. The frequency of the violations described above is prima facie evidence that the defendant business and Kuykendahl Centers, LLC collectively and knowingly tolerated an unlicensed massage establishment, the prostitution, and promotion of prostitution.⁵

14. “[A] person who maintains a place to which persons habitually go . . . and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.”⁶ Diamond Spa constitutes a common nuisance within the meaning of Tex. Civ. Prac. & Rem. Code § 125.001 et seq.

15. Further, persons who use a place for purposes constituting a nuisance violate the nuisance statute, and may be added as defendants. Customers are as liable as the business owner. Tex. Civ. Prac. & Rem. Code § 125.002(b). Therefore, customers of unlicensed spas and other nuisance businesses may be named as defendants in nuisance abatement suits.

16. Diamond Spa knowingly maintains a place where human trafficking regularly occurs, in violation of Tex. Civ. Prac. & Rem. Code § 125.0015(20). “Trafficking” means to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means. Tex. Penal Code § 20A.01(4). Diamond Spa allows pimps to traffic their women inside Diamond Spa. And, through force, fraud, or coercion pimps cause these women to engage in prostitution. Diamond Spa knowingly receives a benefit from participating in the prostitution trafficking venture. In addition, a person (customer) who knowingly engages in sexual conduct with a trafficked person commits a second-degree felony. Tex. Penal Code § 20A.02(a)(4).

REQUEST FOR TEMPORARY INJUNCTIVE RELIEF

17. Diamond Spa is knowingly maintained as an unlicensed massage establishment where prostitution, promotion of prostitution, engaging in organized criminal activity, and other

⁵ *Id* at subsection (a).

⁶ Tex. Civ. Prac. & Rem. Code § 125.0015(a).

crimes under Chapter 125 of the Texas Civil Practice & Remedies Code are committed. As such the property constitutes a common nuisance as defined by Section 125.0015(a) of the Texas Civil Practice & Remedies Code.

18. Diamond Spa has failed or refused to abate the nuisance. Defendant is likely to continue to maintain the property as a common nuisance unless restrained by an injunctive order of the Court.

19. Unless the defendant is enjoined from maintaining the property as a common nuisance, the citizens of Harris County, Texas will suffer irreparable harm. The State of Texas has no other adequate remedy at law to prevent the continued maintenance of the property as a common nuisance.

20. The consequences of the above-described unlawful activities at the property, as well as the foreseeable resulting criminal activity associated with these acts, would proximately cause a person of ordinary sensibilities to be substantially frightened, discomforted, annoyed, and inconvenienced in the use of any premises surrounding the property.

21. The State requests a temporary injunction. And if, after notice and a hearing, the Court determines that the State is likely to succeed on this suit to abate a common nuisance, the Court shall order reasonable requirements to prevent the use and maintenance of the place as a nuisance and require the defendants to execute a bond. Tex. Civ. Prac. & Rem. Code Ann. § 125.045(a). The bond must be payable to the STATE OF TEXAS at Harris County; 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 that place.

22. If the defendants violate any condition of the bond or any injunctive order by this Court, the Harris County Attorney Vince Ryan shall sue on the bond in the name of the State; and upon a showing of a violation of any condition of the bond or injunctive order, the whole sum of the bond, plus cost and attorney fees, should be ordered forfeited to Harris County, Texas, the originating entity. Subsequent to the bond forfeiture, the Court shall order the place where the nuisance exists closed for one year from the date of the order of bond forfeiture.⁷ In addition, the Court may impose the laundry list of sanctions under § 125.045(b); including cutting off utilities to the place, revoking the occupancy permit, prohibit access through public streets or alleys, limit hours of operation, order termination of the tenant's lease, or any other legal remedy available under the laws of Texas.

23. If final judgment favors the State, the Court shall grant a permanent injunction ordering the defendant, Diamond Spa, 16300 Kuykendahl Road, Suite 200 Houston, Texas 77388, to abate the nuisance and be forever enjoined from maintaining or participating in the common nuisance existing on the property. The Court may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance.

24. A person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt:⁸

- 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;
- c. both a fine and confinement.

REQUEST FOR PERMANENT INJUNCTIVE RELIEF

25. Additionally, the State seeks permanent injunctive relief.

⁷ Tex. Civ. Prac. & Rem. Code § 125.003(a) & (b).

⁸ Tex. Civ. Prac. & Rem. Code § 125.002(d).

VIOLATION OF THE OCCUPATIONS CODE

26. Harris County Attorney Vince Ryan further asks for injunctive relief and a civil penalty of not less than \$1,000.00 or more than \$10,000.00 for each day that Diamond Spa operated without a license – as provided under the Tex. Occ. Code § 455.351.

ATTORNEY'S FEES

27. To litigate this case, it was necessary for the State of Texas to secure the services of Harris County Attorney Vince Ryan's Office. Pursuant to Tex. Civ. Prac. & Rem. Code Ann. §125.003, the State requests that defendants be adjudged jointly and severally liable for the Harris County Attorney's reasonable attorney fees, investigative costs, witness fees, court costs, and any other reasonable expenses incurred in bringing this lawsuit.

VERIFICATION

28. A plaintiff-petitioner is not required to verify the allegations set forth in this petition, nor show any proof of personal injury by the acts complained herein. Tex. Civ. Prac. & Rem. Code § 125.002(a).

REQUEST FOR DISCLOSURE

29. Plaintiff requests that the defendant disclose, within 50 days of service of this request, the information or material described in Tex. R. Civ. P. 194.2.

PRAYER

The State of Texas, plaintiff-petitioner, respectfully asks that:

30. After notice and a hearing on a request for a temporary injunction, the State asks the Court to order defendants to execute a bond payable to the STATE OF TEXAS at Harris County; be in the amount set by the Court, but not less than \$5,000, nor more than \$10,000; have sufficient sureties approved by the Court; and be conditioned that the defendant will not

knowingly maintain a common nuisance to exist at 16300 Kuykendahl Road, Suite 200 Houston, Texas 77388, Suite 104f.

31. Upon final judgment, the plaintiff asks for court costs, costs of suit, costs of investigation, witness fees, deposition fees, reasonable attorney's fees, and all other relief to which plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN
Harris County Attorney



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I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this July 25, 2012

Certified Document Number: 52826357 Total Pages: 8

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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