

separately, to abate the common and public nuisance activity that abounds at this strip center.

PARTIES

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

2. The defendant, Rebecca McLemore, doing business as an unlicensed massage establishment known as “Empire Foot Reflexology,” may be served with process at 921 W FM 1960 Suite 104f, Houston, Harris County, Texas, which McLemore lists as her residence address with the Office of Beverly B. Kaufman, County Clerk, Harris County, Texas.

DISCOVERY CONTROL PLAN

3. The plaintiff moves the Court to issue a docket control order under Tex. R. Civ. P 190.4, tailored to the circumstances of this specific suit, and setting the permanent injunction hearing as soon as practicable after a reasonable time for discovery. The State also asks the Court to require the defendant to execute a bond – to be conditioned that the defendant will not knowingly allow a common nuisance to exist at the defendant’s place; and issue an order under Tex. Civ. Prac. & Rem. Code § 125.045 – with reasonable requirements to prevent the continued use or maintenance of the place as a nuisance.

JURISDICTION AND VENUE

4. 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.

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

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

STATEMENT OF FACTS

6. “Empire Foot Reflexology,” holds itself out as a massage establishment.

7. Harris County Precinct 4 Constable Ron Hickman’s Office has cited this unlawful massage establishment at least 52 times since February, 2009, under at least 6 separate investigations – for violations of Chapter, 455 Occupations Code – involving unlicensed massage services. The last investigation occurred on Aug 24, 2010. Such violations constitute a common nuisance under Civ. Prac. & Rem. Code § 125.0015(a)(18).

8. Harris County Sheriff Adrian Garcia’s Office – Vice Division – has conducted undercover operations at Empire Foot Reflexology, resulting in 2 arrests for prostitution at this location. Such violations constitute a common nuisance under Civ. Prac. & Rem. Code § 125.0015(a) (6).

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

10. The frequency of the violations described above is prima facie evidence that the defendant business and Mr. Naddour collectively and knowingly tolerated an unlicensed massage establishment, the prostitution, and promotion of prostitution.⁵

11. “[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

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

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

⁵ *Id* at subsection (a).

abate the activity maintains a common nuisance.”⁶ Empire Foot Reflexology constitutes a common nuisance within the meaning of Tex. Civ. Prac. & Rem. Code § 125.001 et seq. 12. Further, persons who use a place for purposes constituting a nuisance – such as prostitution – violate the nuisance statute, and when identified, may be added as defendants to this lawsuit. Customers are as liable as the business owner.

13. Rebecca McLemore knowingly maintains Empire Foot Reflexology as 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). Empire Foot Reflexology allows pimps to traffic their women inside Empire Foot Reflexology. And, through force, fraud, or coercion pimps cause these victims to engage in prostitution. Empire Foot Reflexology 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

14. Empire Foot Reflexology is knowingly maintained as an unlicensed massage establishment where prostitution, promotion of prostitution, engaging in organized criminal activity, and other 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.

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

15. Empire Foot Reflexology 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.

16. Unless the Court enjoins the defendant from maintaining the property as a common nuisance, irreparable harm will be suffered by the citizens of Houston and Harris County, Texas. The State of Texas has no other adequate remedy at law to prevent the continued maintenance of the property as a common nuisance.

17. 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.

18. 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.

19. 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.

REQUEST FOR PERMANENT INJUNCTIVE RELIEF

20. Additionally, the State seeks permanent injunctive relief.

21. If final judgment favors the State, the Court shall grant a permanent injunction ordering the defendant, Empire Foot Reflexology, 921 W. F.M. 1960, Suite 104f, 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.

22. 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.

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

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

VIOLATION OF THE OCCUPATIONS CODE

23. 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 Empire Foot Reflexology operated without a license – as provided under the Tex. Occ. Code § 455.351.

ATTORNEY'S FEES

24. 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

25. 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

26. 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:

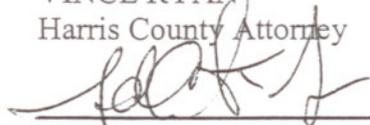
27. After notice and a hearing on a request for a temporary injunction, the State asks the Court to order defendants to execute a bond payable to the STATE OF

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 921 W. F.M. 1960, Suite 104f.

28. 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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