

CAUSE NO.: 24-0289-C395

STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT

VS.

Williamson County - 395th Judicial District Court

THOMAS MCKAY;
KATHLEEN MCKAY;
KAYMAC MANAGEMENT
LLC;
KAYMAC V, LTD;
SPRING RAINBOW LLC d/b/a
ESSENCE MASSAGE;
SHUYAN WANG;
THE REAL PROPERTY
KNOWN AS 13233 POND
SPRINGS ROAD, #322, AUSTIN,
TEXAS
Respondents

 JUDICIAL DISTRICT

WILLIAMSON COUNTY, TEXAS

**STATE OF TEXAS’ ORIGINAL PETITION AND APPLICATION FOR
ABATEMENT OF A COMMON NUISANCE AND REQUEST FOR A
PERMANENT INJUNCTION**

PLAINTIFF, STATE OF TEXAS, hereinafter referred to as “State,” acting by and through Attorney General of Texas, KEN PAXTON, brings this action against Respondents, Thomas McKay, Kathleen McKay, KayMac Management LLC, KayMac V, Ltd.; Spring Rainbow LLC d/b/a Essence Massage, Shuyan Wang, and the Real Property Known as 13233 Pond Springs Road, #322, Austin, Texas, seeking to abate a common nuisance. Respondents own, operate, and maintain a place to which persons habitually go to commit criminal activity, and have knowingly

tolerated such activity. Further, Respondents have failed to make reasonable attempts to abate the habitual criminal activity. Therefore, the State now seeks to abate this common nuisance, and for its cause of action would respectfully show the following:

I. DISCOVERY

1. The State intends to conduct discovery under Level 2 of Texas Rules of Civil Procedure 190.3 and affirmatively plead that this case is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because the relief sought includes non-monetary injunctive relief.

II. JURISDICTION AND STATUTORY AUTHORITY

2. The action to abate and enjoin a common nuisance is brought by Attorney General Ken Paxton, through his Human Trafficking and Transnational Organized Crime Division, in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted by §§ 125.001-125.047 of the Civil Practice & Remedies Code. Verification of the petition or proof of personal injury need not be shown by the State.¹

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

III. NOTICE

3. The State alleges that Respondents have engaged in, and will continue to engage in, the unlawful practices set forth in this petition.

4. The State alleges the Respondents maintain an illicit massage establishment where persons habitually go for prostitution and compelling prostitution as described by Chapter 43 of the Texas Penal Code and in violation of Texas Occupations Code Chapter 455, and constitutes a common nuisance as defined by Texas Civil Practice and Remedies Code §§ 125.0015(a)(6), (7) and (18). Therefore, Respondents' conduct is subject to abatement under Texas Civil Practice and Remedies Code § 125.002.

IV. VENUE

5. Venue of this suit lies in Williamson County, Texas, under Civ. Prac. Rem. Code § 125.002 because the nuisance to be enjoined is maintained by Respondents in Williamson County, Texas.

V. CLAIM FOR RELIEF

6. Plaintiff seeks temporary and permanent injunctive relief, reasonable attorney's fees, and costs incurred to bring the suit.

VI. RESPONDENTS

7. **Respondent Thomas McKay** is an individual residing at 11339 Taylor Draper Lane, Austin, Texas 78759, located in Travis County. Respondent Thomas

McKay is named in his individual capacity as the landlord of the real property located at 13233 Pond Springs Road #322, Austin, Texas. Respondent Thomas McKay is a member and manager of KayMac Management, LLC which is the general partner of KayMac V, Ltd, the real property owner. Respondent Thomas McKay is the landlord of an illicit massage business operated at this location. Respondent Thomas McKay may be served at his place of business at 11700 Bell Avenue, Austin, Texas 78759, his personal residence at 11339 Taylor Draper Lane, Austin, Texas 78759, or wherever else he may be located.

8. **Respondent Kathleen McKay** is an individual residing at 5705 Sierra Madre, Austin, Texas 78759, located in Travis County. Respondent Kathleen McKay is named in her individual capacity as the landlord of the real property located at 13233 Pond Springs Road #322, Austin, Texas. Respondent Kathleen McKay is a member of KayMac Management, LLC which is the general partner of KayMac V, Ltd, the real property owner. Respondent Kathleen McKay is the landlord of an illicit massage business operated at this location. Respondent Kathleen McKay may be served at her personal residence at 5705 Sierra Madre, Austin, Texas 78759 or wherever else she may be located.

9. **Respondent KayMac Management, LLC** is a Texas limited liability company which regularly conducts business in Williamson County. Respondent KayMac Management, LLC is the general partner of KayMac V, Ltd, owner of the

property. Respondent's principal office and principal place of business is located at 11700 Bell Avenue, Austin, Texas 78759. Respondent may be served by serving its registered agent and managing member, Thomas McKay at 11700 Bell Avenue, Austin, Texas 78759 or wherever they may be located.

10. **Respondent KayMac V, Ltd** is a Texas limited partnership which regularly conducts business in Williamson County. Respondent KayMac V, Ltd is the owner of the real property located at 13233 Pond Springs Road, Austin, Texas. Respondent's principal office and principal place of business is located at 11700 Bell Avenue, Austin, Texas 78759. Respondent may be served by serving its registered agent, Thomas McKay at 11700 Bell Avenue, Austin, Texas 78759 or wherever he may be located.

11. **Respondent Spring Rainbow, LLC d/b/a Essence Massage** is a limited liability company with a principal office in Harris County at 3100 Walnut Bend Lane, Suite 313, Houston, Texas 77042. Respondent Spring Rainbow, LLC filed for an assumed name of Essence Massage in 2018 for use in all counties in Texas. Respondent Spring Rainbow, LLC d/b/a Essence Massage holds a massage entity license issued by the Texas Department of Licensing and Regulation to operate and does operate in Williamson County at 13233 Pond Springs Road, Suite 322, Austin, TX 78729. Respondent may be served by serving its registered agent,

Shuyan Wang at 3100 Walnut Bend Lane, Suite 313, Houston, TX 77042 or wherever he may be found.

12. **Respondent Shuyan Wang** is named in his individual capacity and in his capacity as the aforementioned Essence Massage owner and operator. Shuyan Wang is a member of Spring Rainbow, LLC which operates an illicit massage establishment 13233 Pond Springs Road, Suite 322, Austin, TX 78729. Shuyan Wang may be served at 3100 Walnut Bend Lane, Apartment 313, Houston, Texas 77042 or wherever he may be found.

13. **Respondent the Real Property Known as 13233 Pond Springs Road, Austin, Texas** also known as the Real Property Known as 13233 Pond Springs Road #322, Austin, Texas is sued *in rem*. Respondent the Real Property Known as 13233 Pond Springs Road #322, Austin, Texas contains a strip mall with suites leased to various businesses, including Essence Massage. At all times relevant to this suit, the Real Property Known as 13233 Pond Springs Road #322, Austin, Texas is owned by **KayMac V, Ltd** and may be served by serving its registered agent, Thomas McKay at 11700 Bell Avenue, Austin, Texas 78759 or wherever he may be located.

14. For purposes of this petition, the following definitions apply:

(a) **“Landlord Respondents”** mean KayMac V, Ltd, KayMac Management, LLC, Thomas McKay, and Kathleen McKay.

- (b) **“In Rem Respondent” and/or the “Real Property”** means the Real Property Known as 13233 Pond Springs Road, Austin, Texas also known as the Real Property Known as 13233 Pond Springs Road #322, Austin, Texas.
- (c) **“Respondents”** means all Respondents named in this petition.

VII. ACTS OF AGENTS

15. Whenever in this petition it is alleged that a Respondent or Respondents did any act, it is meant:

- (a) the named Respondent or Respondents performed, participated, maintained or knowingly tolerated in the act; or
- (b) the named Respondent’s or Respondents’ officers, successors in interest, agents, partners, trustees or employees performed, participated, maintained or knowingly tolerated in the act on behalf of and under the authority of one or more named Respondents.

VIII. ILLICIT MASSAGE BUSINESS INDUSTRY AND REGULATION

A. *A Brief Overview of Illicit Massage Business*

16. An estimated 9,000 illicit massage businesses operate throughout the country.² The businesses generate an average revenue of over \$100 million per year, much of it laundered to countries outside of the United States.³

17. Illicit massage businesses sell commercial sex under the guise of legitimate massage therapy services.⁴ Many of the women employed at illicit massage businesses are victims of human trafficking.⁵ Recruiters often direct victims to job leads within their communities through fake advertisements promising high wages for work as legal massage therapist, housing, transportation, and assistance with immigration and housing.⁶ Women take out loans to pay for these services, often between \$5,000 and \$40,000.⁷ Upon arrival in the United States, they find that the promised jobs do not exist, and traffickers force them into prostitution to pay off

² POLARIS, HUMAN TRAFFICKING IN ILLICIT MASSAGE BUSINESSES 10 (2018), available at <https://polarisproject.org/wp-content/uploads/2019/09/Human-Trafficking-in-Illicit-Massage-Businesses.pdf> (last visited Feb. 8, 2024); Samantha Lopez, *How Illicit Massage Businesses are Shut Down in Houston*, HOUSTON CHRONICLE (July 1, 2019), <https://www.chron.com/houston/article/How-illicit-massage-businesses-are-shut-down-in-14059133.php> (last visited Feb. 8, 2024).

³ POLARIS, pg. 4.

⁴ *Id.* at 50.

⁵ *Id.* at 19-26.

⁶ *Id.*

⁷ *Id.* at 19.

debt.⁸ However, instead of earning money to pay down debt or to send home to family, the victims' debt continues to accrue, with wages withheld for room and board, fees for "breaking rules," future bail money, and potential attorneys' fees.⁹ Traffickers will also hold victims' identification and immigration documents at separate locations, using the threat of deportation as additional leverage, and monitor them on CCTV cameras inside the business to "creat[e] the feeling that they are always watched."¹⁰

18. Illicit massage businesses are often part of larger organized crime networks.¹¹ Traffickers use intricate networks of legitimate and illegitimate businesses and shell corporations to launder money, obscure their identities, and avoid law enforcement.¹² Often, victims themselves appear as the owner or manager of the business, which can make it difficult for law enforcement to distinguish

⁸ *Id.*

⁹ *Id.* at 29–30. In one case in Waco, Texas, victims interviewed as part of a raid reported receiving only 20 percent of their earnings, having their first week's pay withheld as a "deposit," and paying room and board to sleep in the back of the business. *Id.* at 12.

¹⁰ *Id.* at 30, 33.

¹¹ *Id.* at 35-38.

¹² *Id.* at 36; Lise Olse, *Illicit Massage Parlors Prolific and Lucrative, Study Finds*, HOUSTON CHRONICLE (October 11, 2017), <https://www.chron.com/news/houston-texas/houston/article/Illicit-massage-parlors-prolific-and-lucrative-12256818.php> (last visited Feb. 8, 2024).

between victims and perpetrators.¹³ Traffickers also cycle victims between massage businesses and across state lines, sometimes as often as every two to six weeks, further fostering dependence on traffickers.¹⁴ The victims of trafficking end up disoriented, indebted, and afraid that any cooperation with law enforcement could result in deportation, prosecution, or retaliatory violence.¹⁵

B. The Texas Legislature’s Response to Human Trafficking

19. In 2017, the Texas Legislature passed House Bill 2552, aimed at combatting human trafficking, sexual offenses, prostitution, and other activity that may constitute a public nuisance.¹⁶

H.B. 2552 strengthens Texas’ response to the ongoing problems of human and sex trafficking by building upon current nuisance and abatement law. This helps local governments shut down illicit massage parlors. The bill also . . . provides a means for property owners to evict businesses that are engaging in human trafficking.¹⁷

¹³ Olse, *supra* note 12.

¹⁴ POLARIS, pg. 25.

¹⁵ Rachel Axon, Cara Kelly, & Michael Braun, *Sex Trafficking is Behind the Lucrative Illicit Massage Business. Why Police Can’t Stop It*, USA TODAY (July 30, 2019) <https://www.usatoday.com/in-depth/news/investigations/2019/07/29/sex-trafficking-illicit-massage-parlors-cases-fail/1206517001/> (last visited Nov. 15, 2023).

¹⁶ Tex. H.B. 2552, 85th Leg., R.S. (2017).

¹⁷ Sen. Res. Ctr., Bill Analysis, Tex. H.B. 2552, 85th Leg., R.S. (2017) (codified in Texas CPRC 125.004)

20. House Bill 2552 strengthened the State's nuisance abatement enforcement power with several clarifying provisions. House Bill 2552 provided that the testimony of a law enforcement agent that an act of advertising or engaging in massage therapy services in violation of Chapter 455 of the Occupations Code, or engaging or advertising in an act of prostitution, at a property is *prima facie* evidence that a Respondent knowingly tolerated the activity and did not make a reasonable attempt to abate the activity.¹⁸ Similarly, House Bill 2552 provides that proof of an activity in violation of Chapter 455 of the Occupations Code has occurred at a place maintained by the Respondent, after notice was provided by a law enforcement agency, is *prima facie* evidence that the Respondent knowingly tolerated and did not abate the activity.¹⁹ The provisions, together, allow the State to pursue nuisance abatement actions against both business and property owners that fail to take action preventing illegal activity at places under their control.

C. Chapter 455 of the Occupations Code

21. As previously stated, illicit massage businesses purport to operate as legitimate ones and advertise as offering legitimate massage therapy services. In

¹⁸ *Id.*

¹⁹ *Id.*

Texas, the offering of massage therapy services is governed by the Occupations Code, Chapter 455.²⁰

22. Under Chapter 455, a “massage establishment” is “a place of business that advertises or offers massage therapy or other massage services[,] . . . includ[ing] a place of business that advertises or offers any service described by a derivation of the terms ‘massage therapy’ or ‘other massage services.’”²¹ “Massage therapy” is defined as “the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage and includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics.”²² “Other massage services” are “any services offered or performed for compensation at a massage establishment that involve physical contact with a client, and may include the use of oil, lubricant, salt glow, a heat lamp, a hot and cold pack, or a tub, shower, jacuzzi, sauna, steam, or cabinet bath.”²³ A “massage therapist” means “a person who practices or administers massage therapy or other massage services to a client for compensation.”²⁴

²⁰ Tex. Occ. Code § 455.0511(b)(1).

²¹ Tex. Occ. Code §§ 455.151–455.207 (relating to licensing requirements under Chapter 455).

²² Tex. Occ. Code § 455.001(8).

²³ Tex. Occ. Code § 455.001(11).

²⁴ Tex. Occ. Code § 455.001(7).

23. Chapter 455 states that “[a] massage establishment may employ only licensed massage therapists to perform massage therapy or other massage services.”²⁵ Several requirements concerning practices are directly aimed at combating illicit massage businesses’ practices: a massage establishment’s employees must be able to work legally in the United States, they may not engage in sexual contact in the establishment, and they may not reside on the premises of the establishment.²⁶ Further, a massage establishment “shall properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records” to be provided to the Texas Department of Licensing and Regulation (“TDLR”) upon request.²⁷ A massage establishment also “may not change the location of the establishment without obtaining a new massage establishment license.”²⁸

D. Prostitution as Defined by Chapter 43 of the Penal Code

24. As with violations of Chapter 455 of the Occupations Code, the criminal acts of prostitution, promotion of prostitution, solicitation of prostitution,

²⁵ Tex. Occ. Code § 455.202(a).

²⁶ Tex. Occ. Code § 455.202(b)(1)–(6).

²⁷ Tex. Occ. Code § 455.202(c)(1),(2).

²⁸ Tex. Occ. Code § 455.206.

and the compelling of prostitution, are classified as common nuisances.²⁹ Any person who maintains or owns property that is used as a place for purposes constituting a nuisance are subject to a nuisance abatement suit.³⁰

25. Prostitution means “knowingly offer[ing] or agree[ing] to receive a fee from another to engage in sexual conduct.”³¹ Solicitation of prostitution means “know[ingly] offer[ing] or agree[ing] to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another.”³² Promotion of prostitution means “acting other than as a prostitute...knowingly receiv[ing] money or other property pursuant to an agreement to participate in the proceeds of prostitution; or solicit[ing] another to engage in sexual conduct with another person for compensation.”³³ Compelling prostitution means “knowingly caus[ing] another by force, threat, coercion, or fraud to commit prostitution.”³⁴

26. In past investigations of prostitution and human trafficking, law enforcement practices often resulted in the arrest and potential prosecution of the

²⁹ Tex. Civ. Prac. & Rem. Code § 125.0015(a)6, 7, 18.

³⁰ Tex. Civ. Prac. & Rem. Code § 125.002.

³¹ Tex. Penal Code § 43.02.

³² Tex. Penal Code § 43.021.

³³ Tex. Penal Code § 43.03.

³⁴ Tex. Penal Code § 43.05.

person suspected of engaging in prostitution. Recent social science and criminology research indicates that such arrests can negatively impact potential victims of coerced and/or forced prostitution, or human trafficking, and may foster distrust by victims toward law enforcement.³⁵ Dr. Amy Farrell, *et al.*, writes in *Criminology & Public Policy* that “victims of human trafficking are unlikely to reach out to the police for assistance as a result of significant trauma, feeling negatively about themselves, fear of the police, and in some cases, because they are precontemplative about leaving the trafficking situation.”³⁶ Although the State is not alleging human trafficking in this lawsuit, the State applies the principles espoused in current victim-focused criminology research when investigating cases of prostitution that may be coerced or forced, even if a human trafficking prosecution does not result.

27. The reluctance of victims to report crimes can create issues with investigations by “complicat[ing] both the identification and the investigation of human trafficking because the police rely heavily on victim information to determine whether a situation of commercial sex or labor involves elements of human trafficking, including fraud, force, or coercion.”³⁷ Further, many victims that have

³⁵ Amy Farrell ET AL, *Failing victims? Challenges of the police response to human trafficking*, *Criminology & Pub. Pol’y* 649 (2019).

³⁶ *Id.* at 661.

³⁷ *Id.*

possibly been coerced or forced to commit the crime of prostitution may suffer from complex post-traumatic stress disorder, and an arrest may retraumatize a victim and act as a barrier to recovery.³⁸ For these reasons, rather than arrest persons engaged in potential sex crimes, the State opts instead to focus on providing social services for victims.

IX. FACTUAL BACKGROUND

A. Spring Rainbow LLC Formation

28. Essence Massage is a massage business operating from an address commonly known as 13233 Pond Springs Road #322, Austin, Texas. Essence Massage is owned by Spring Rainbow LLC, which was formed by Shuyan Wang in June 2018. Shuyan Wang serves as the sole member of Spring Rainbow, LLC. In June 2018, Shuyan Wang on behalf of Spring Rainbow, LLC registered Essence Massage as the assumed name of Spring Rainbow, LLC for all counties in the State for a period of 10 years.

³⁸ *Id.* at 668 (“The practice of arresting human trafficking victims, for their own safety or as a mechanism to build a criminal case, threatens the long-term healing and recovery of victims and is in opposition to what victims need. For example, arrest leaves victims with fewer employment opportunities because they have a criminal record.”); Phillips ET AL, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims*, The City University of New York School of Law 18 (2014) (“The experience of being arrested can be particularly traumatic for trafficking victims...The arrest compounds the trauma that a victim of trafficking is already experiencing. Not only is a victim of trafficking being charged for a crime he or she was forced to commit, the individual is also being forced to endure the often-humiliating experiences of arrest and incarceration.”).

29. TDLR granted Essence Massage a massage establishment license in June 2018 under the name “Essence Massage DBA Spring Rainbow LLC.” The license lists Shuyan Wang as the massage business’s “owner,” and the license reflects an address of 13233 Pond Springs Road, Suite #322, Austin, Texas.

30. Essence Massage conducts business in a corner suite farthest from the road within a very large, busy retail strip center, with no significant marquees or other advertisements along public roadways, and it has tinted windows which obscure the suite’s interior. The business advertises “hot stone massage,” “essence oil massage,” and “thai massage” on its windowfront.

31. At all times relevant to this lawsuit, Shuyan Wang participated in the operation of Spring Rainbow, LLC’s massage business. Accordingly, any and all of Spring Rainbow, LLC’s unlawful activities were conducted at the direction of or were ratified by Shuyan Wang or his agents.

B. Office of the Attorney General Human Trafficking Unit’s Investigation

32. In August 2022, The Office of the Attorney General, Law Enforcement Division, Human Trafficking Unit (“HTU”) opened a proactive investigation into Essence Massage due to escort advertisements and reviews on websites describing the exchange of sexual services for money at Essence Massage.

33. During the investigation, HTU used Spotlight, a tool used by law enforcement that congregates reviews and ratings of illicit massage businesses from

public websites such as RubMaps.ch to assist law enforcement in prioritizing leads when addressing sex trafficking. Rubmaps.ch, provides visitors the ability to search for and provide reviews for massage businesses. The majority of the on-line reviews posted on Rubmaps.ch by the patrons contain information and a rating system regarding the exchange of sexual services for a fee. The categories include descriptions of the service providers' breast size, genitals, height, weight, and age.

34. HTU discovered multiple reviews for Essence Massage beginning in 2018 and continuing up to January 2024. Most of the reviews discussed receiving a "hand job" at the end of their massage, common parlance used to reference masturbation of a male by a second party.

35. In August 2022, September 2022, January 2023, and November 2023, HTU conducted surveillance on the parking of 13233 Pond Springs Road, Austin, Texas, to observe pedestrian traffic going in and out of Essence Massage's front door. During these surveillances, HTU observed several males entering and leaving the business. In no instance was a female observed entering the business. Photographs were taken of these individuals for identification purposes and their vehicle information was obtained.

36. In November 2023, HTU contacted four of the individuals observed at Essence Massage earlier in the month for interviews to determine if they received sexual services at the business. Three of the individuals admitted to receiving a

“hand job” during their massage in exchange for sums of money. One of the individuals received a “hand job” in exchange for a \$40.00 tip and a \$65 massage fee, another paid \$50.00 for the massage and left a \$50.00 tip, and third stated he paid \$65.00 for the massage and received a “hand job.”

37. During the admitted instances of sexual contact, the name of the massage therapist was either unknown, or in one instance, went by the name “Abbey.” In all instances, the massage therapist that engaged in sexual activity was described as an Asian female.

C. Real Property Owner’s Management and Ownership Structure

38. The Real Property Known as 13233 Pond Springs Road #322, Austin, Texas, in which Essence Massage operates, is legally owned by KayMac V, Ltd. KayMac V, Ltd. was formed in February 2006 and is governed by KayMac Management, LLC, and lists Landlord Respondent Thomas L. McKay as its registered agent.

39. KayMac Management, LLC, was formed in October 2005, and lists both Landlord Respondents, Thomas L. McKay and Kathleen McKay as its only members. Thomas L. McKay is also listed as the registered agent of KayMac Management, LLC. KayMac Management, LLC owns 100% of KayMac V, Ltd. KayMac V. Ltd., in turn, owns 100% of the The Real Property Known as 13233 Pond Springs Road #322, Austin, Texas.

D. Real Property Owner's Involvement with Essence Massage

40. KayMac V, Ltd., has owned The Real Property Known as 13233 Pond Springs Road #322, Austin, Texas since February 2015, a property designed for standard commercial use. Since October 2023, the landlord Respondents have had knowledge of the illegal sexual activity occurring at Essence Massage. In October 2023, the Human Trafficking Division of the Attorney General's Office sent a letter to the landlord Respondents informing them of the activity and possible connection to human trafficking. In this letter, which was sent by certified mail and was received by landlord Respondents at KayMac V, Ltd.'s listed P.O. Box, the attorneys requested contact by landlord Respondents within ten business days of receipt of the letter to schedule a meeting to discuss the property.

41. The letter additionally informed landlord Respondents of the potential legal consequences of maintaining an unmitigated common nuisance. As of the time of the filing of this petition, landlord Respondents have not contacted the Attorney General's Office, and the letter has been ignored. Further, portions of HTU's investigation that were conducted in November, and which resulted in admissions of sexual activity occurring on the premises, occurred after the Attorney General's Office's letter to landlord Respondents was received. Landlord Respondents failed to mitigate the concerns described by the Attorney General's Office.

X. VIOLATIONS OF OCCUPATIONS CODE, CHAPTER 455, AND RULES ADOPTED UNDER THAT CHAPTER

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

43. Under Occupations Code, Chapter 455, massage establishments and therapists must comply with a range of legal requirements, including § 455.205 (prohibited practices), which prohibits a massage therapist from performing massage therapy at or for a sexually oriented business.³⁹ This section also prohibits a sexually oriented business from using the word “massage” on any form of advertising.⁴⁰ “Sexually oriented business” means a sex parlor... love parlor...or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.”⁴¹

44. The Occupations Code, Chapter 455, also prohibits a massage establishment from allowing an employee that is nude, partially nude, or in clothing designed to arouse or gratify the sexual desire of any individual to provide massage

³⁹ Tex. Occ. Code § 455.205(a).

⁴⁰ Tex. Occ. Code § 455.205(d).

⁴¹ Tex. Loc. Gov’t Code § 243.002.

therapy or other massage services to a customer.⁴² Chapter 455 prohibits a massage establishment from allowing any individual, including a client or employee, from engaging in sexual conduct in the business.⁴³

45. Also under Chapter 455, the Attorney General may institute an action for civil penalties and injunctive relief against a person who “appears to be in violation of or threatening to violate this chapter or a rule adopted under this chapter; or is the owner or operator of an establishment that offers massage therapy or other massage services regulated by this chapter and is not licensed under this chapter.”⁴⁴ Rules adopted under Chapter 455 include rules from Title 16 of the Texas Administrative Code, Chapter 117 (Massage Therapy).⁴⁵

46. Civil penalties for such violations “shall be not less than \$1,000 or more than \$10,000 for each violation” and “[e]ach day a violation occurs or continues to occur is a separate violation.”⁴⁶

⁴² Tex. Occ. Code § 455.202(b)(3), (5).

⁴³ Tex. Occ. Code § 455.202(b)(4).

⁴⁴ Tex. Occ. Code § 455.351(a).

⁴⁵ See 16 Tex. Admin. Code § 117.1 (“[C]hapter [117] is promulgated under the authority of Texas Occupations Code, Chapter 51 and 455”).

⁴⁶ Tex. Occ. Code § 455.351(b), (c).

XI. CONDITIONS PRECEDENT

47. All conditions precedent have been performed or have occurred. *See* Tex. R. Civ. P. 54.

XII. TRIAL BY JURY

48. The State demands a jury trial and tenders the appropriate fee with this petition.

XIII. PRAYER

49. The State respectfully requests that this Court issue citation for Respondents to appear and answer. The State requests Temporary Orders be issued to prohibit the destruction of records and continued use of the property for illicit or illegal purposes until such time as a final hearing on the matter can be heard, and that the Court, after notice and hearing, order reasonable requirements to prevent the use and maintenance of the Respondent's Property as a nuisance and require the Respondent to execute a bond in accordance with Texas Civil Practice and Remedy Code 125.045(a).

50. Plaintiff prays that after due notice and hearing, a PERMANENT INJUNCTION be issued, restraining and enjoining Respondents, Respondents' officers, agents, servants, employees, attorneys—and any other person in active concert or participation with any or all Respondents (including spouses thereof)—from engaging in the following acts or practices without further order of the Court:

- (a) Deleting any data or communications relating to owning, operating, maintaining or advertising a massage establishment, or the provision of massage therapy or other massage services on any phones or electronic devices used by any Respondents;
- (b) Failing to maintain, for each massage client for a period of at least two years, accurate records of the dates of massage therapy services, types of massage therapy and billing information, to the extent required by Title 16 of the Texas Administrative Code, § 117.90(f);
- (c) Failing to maintain documentation of employment or contract relationships with massage therapists, to the extent required by Title 16 of the Texas Administrative Code, § 117.82(a);
- (d) Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials—including electronic documents—relating to owning, operating, maintaining, or advertising a massage establishment, or the provision of massage therapy or other massage services, that are currently or hereafter in any of the Respondents' possession, custody or control except in response to further orders or subpoenas in this cause;

- (e) Transferring, spending, hypothecating, concealing, encumbering, removing or allowing the removal 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 Respondents, insofar as such property relates to, arises out of or is derived from the business operations of Essence Massage except in response to further orders by the Court;
- (f) Making any transfers involving any of the named Respondents which would be either (1) fraudulent as to present and future creditors under Tex. Bus. & Com. Code § 24.005 or (2) fraudulent as to present creditors under Tex. Bus. & Com. Code § 24.006, including making intercompany transfers for which reasonably equivalent value was not received in exchange;
- (g) Incurring any obligations involving any of the named Respondents which would be either (1) fraudulent as to present and future creditors under Tex. Bus. & Com. Code § 24.005 or (2) fraudulent as to present creditors under Tex. Bus. & Com. Code § 24.006, including incurring

obligations for which reasonably equivalent value was not received in exchange;

- (h) Owning, operating, maintaining, or advertising a massage establishment that fails to comply with the licensing or other requirements of Texas Occupations Code, Chapter 455;
- (i) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of services by owning, operating, maintaining, or advertising an unlicensed massage establishment or having persons on the premises who provide massage services without a license;
- (j) Representing that massage services have sponsorship, approval, characteristics, or benefits which they do not have by owning, operating, maintaining, or advertising an unlicensed massage establishment or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not, specifically, a license under Texas Occupations Code, Chapter 455;
- (k) Failing to publicly and appropriately display, within sight of the main entrance of the establishment, the license of the establishment and the license of any individual on the premises who provides massage therapy or other massage services;

- (l) Denying any agent of the Texas Department of Licensing and Regulation, any agent of the Texas Attorney General's Office, any agent of the Williamson County Sheriff's Office, any peace officer, or any other agent of the State access to any massage establishment owned, operated or maintained by Respondents;
- (m) Interfering with an inspection of a massage establishment, including denying access to the location, by any agent of the Texas Department of Licensing and Regulation, any agent of the Texas Attorney General's Office, any agent of the Williamson County Sheriff's Office, any peace officer, or any other agent of the State, including the failure to maintain and make available to the inspector the initial consultation documents, session notes, and related billing records for each client;
- (n) Failing to preserve video surveillance of the Respondents' store premises and to maintain and operate video surveillance of the premises and provide copies of the video surveillance to Plaintiff's counsel upon request;
- (o) Employing an individual who is not a United States citizen or a legal permanent resident with a valid work permit at a massage establishment;

- (p) Allowing a nude or partially nude employee to provide massage therapy or other massage services;
- (q) Allowing any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment;
- (r) Allowing any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual, including wearing lingerie;
- (s) Allowing any individual, including a student, license holder, contractor, or employee, to reside on the premises of the massage establishment;
and
- (t) Failing to display a sign concerning services and assistance available to victims of human trafficking, to the extent required by Tex. Occ. Code § 455.207(a), and maintaining or advertising a massage establishment that is not in compliance with the signage requirements in Tex. Occ. Code § 455.207(a).

51. Plaintiff further prays that upon final hearing that a PERMANENT INJUNCTION be issued, mandating the closure of the massage establishment at 13233 Pond Springs Road, Suite #322, Austin, Texas.

52. Plaintiff further prays that upon final hearing that a PERMANENT INJUNCTION be issued, ordering Respondents Thomas McKay and Kathleen McKay their officers, agents, servants, employees, attorneys—and any other person in active concert or participation with any or all of them (including spouses thereof)—to do the following:

- (a) Ensure all doors and windows providing access to 13233 Pond Springs Road, #322, Austin, Texas, remain locked and take all additional and reasonable measures to prevent Spring Rainbow, LLC and Shuyan Wang, and any agents, employees or contractors associated with from having access to said suite until, and only if, Shuyan Wang physically delivers a paper photocopy of all licenses for every massage therapist who practices massage therapy in said suite (provided, however, entry to the premises by individuals unaffiliated with Shuyan Wang or any massage establishment shall be permitted for performing maintenance);
- (b) Walk into said suite once every week, and photograph all massage therapist licenses posted in the suite, and maintain each of said photographs for a period of at least four years;
- (c) Walk into said suite once every week, and photograph the sign concerning services and assistance available to victims of human

trafficking, and maintain each of said photographs for a period of at least four years; and

- (d) Lock all doors providing access to said suite, regardless of who the tenant is, within 24 hours of discovering the tenant of the suite is not complying with Chapter 455, Texas Occupations Code, and rules adopted under that chapter, and unlock said doors only to provide maintenance services to the suite.

53. Further still, the State prays that the Court ORDER that the constable from the appropriate precinct do the following:

- (a) Instruct any persons in the premises at 13233 Pond Springs Road, #322, Austin, Texas, including the tenant and all persons claiming under said tenant, including employees and contractors, to leave the premises immediately; and
- (b) Post the Temporary Order on the door of 13233 Pond Springs Road, #322, Austin, Texas.

54. In addition, the State prays that the Court grant the following monetary relief:

- (a) Order Respondents to pay attorneys' fees, court costs, witness fees, deposition fees and investigative costs, as appropriate, under Texas

Government Code § 402.006(c) and Texas Occupations Code § 455.351(e);

- (b) Pre-judgement and post-judgment interest; and
- (c) Place an equitable lien and constructive trust on all of Spring Rainbow LLC's assets, personal property, and real property, and grant the State an interest in said assets and property.

55. Plaintiff further prays that this Court grant all other relief to which the Plaintiff, the State of Texas, is entitled.

Respectfully submitted,

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DocuSigned by:

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