

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

STATE OF ARKANSAS, *ex rel.*
TIM GRIFFIN, ATTORNEY GENERAL

PLAINTIFF

v.

CASE NO. 60CV-23-_____

HOURGLASS VIXENS, LLC; and
PHATIFFANY COOK, IN HER
PERSONAL CAPACITY

DEFENDANTS

COMPLAINT

COMES NOW, the State of Arkansas, *ex rel.* Tim Griffin, Attorney General (“the State”), for its Complaint against Hourglass Vixens, LLC (“Defendant Company”) and Phatiffany Cook (“Defendant Cook”) (jointly “Defendants”) and states the following:

I. INTRODUCTION

1. This is a consumer protection action brought to redress and restrain violations of the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. § 4-88-101 *et seq.*, under which the State seeks an order for an injunction, imposing civil penalties, restitution for affected consumers, and other equitable relief the State is entitled to against Defendants.

2. Defendants operate a business that purports to provide cosmetology treatments, body modification therapy, and massage services.

3. Defendants accept consumers’ money for the performance of the services they provide, but fail to complete the contracted-for services in violation of Ark. Code Ann. § 4-88-107(a)(3).

4. Defendants produce fraudulent, deceptive, and misleading advertisements regarding their services, and the benefits of the services stated therein, in violation of Ark. Code Ann. §§ 4-88-107(a)(1) and 108(a)(2).

5. Defendants perform their services without the necessary licenses, and in contravention of a cease and desist notice issued by the Prosecuting Attorney for the Sixth Judicial District on or about December 5, 2022, while advertising that they have said licenses, constituting unconscionable business practices, in violation of Ark. Code Ann. § 4-88-107(a)(1) and (10). See Exhibit A.

6. Defendants train others to perform the same and similar procedures without the necessary licenses for instruction, similarly constituting an unconscionable business practice, in violation of Ark. Code Ann. § 4-88-107(a)(10).

II. PARTIES

7. Plaintiff is the State of Arkansas, *ex rel.* Tim Griffin, Attorney General. Pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113, the State may seek civil enforcement of the ADTPA.

8. Defendant Company, Hourglass Vixens, LLC, is a Limited Liability Company registered with the Arkansas Secretary of State to conduct business in the State of Arkansas, filing status revoked. Defendant Company's address is listed with the Secretary of State as 608 Adams Vineyard Rd, Benton, Arkansas. This is the same address as its registered agent and organizer, Phatiffany Cook.

9. Defendant Cook is the Organizer of Defendant Company and is now the sole member and manager of Defendant Company. Ark. Code Ann. § 4-38-110(c)(2).

III. JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104 and the common law of the State of Arkansas.

11. This Court has personal jurisdiction pursuant to Ark. Code Ann. § 16-4-101.

12. Venue is proper pursuant to Ark. Code Ann. §§ 4-88-104, 4-88-112, and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

13. Defendant Cook is personally liable for her conduct, as well as the conduct of her business and its officers, directors, and employees, pursuant to Ark. Code Ann. § 4-88-113(d)(1).

14. Defendants operate a business that purports to provide cosmetology treatments; body modification therapy; and dental, medical, and massage services, including but not limited to: non-invasive and non-surgical breast enhancements, muscle stimulation, breast lifts, non-surgical butt enhancements, natural butt lifts, needleless lip fillers, non-invasive lip fillers, mini lip plumps, half-to-full syringe lip fillers, teeth whitening, lip enhancements, body sculpting wood therapy, women's shape and body contouring therapy, cavitation liposuction, laser liposuction, skin tightening, fat freeze cool sculpting, and tummy tucks.

15. Many of the services listed above require the penetration of one's skin with needles or blades, despite Defendants' characterization of the services as "non-invasive," or the penetration of one's skin with lasers or ultrasonic waves of varying strength. These include breast lifts, mini lip plumps, half-to-full syringe lip fillers, lip enhancements, cavitation liposuction, laser liposuction, skin tightening, fat freeze cool sculpting, and tummy tucks.

16. The majority of the other services offered do not require the use of needles, blades, lasers, or ultrasonic waves, but rather rely on massaging affected areas, or, most commonly, the application of suction devices to the target areas.

17. Defendants advertise via social media, and state to potential buyers, that they can and will provide the above-listed services, among others.

18. However, after accepting consumers' money for the performance of these services, Defendants fail to complete the contracted-for services.

19. Defendants charge anywhere from \$65 per session for "natural butt lifts" to \$480 per session for "juicy lips, lip enhancements."

20. To date, there have been two consumer complaints filed with the Office of the Attorney General and several complaints filed with the Better Business Bureau, with each complainant asserting that Defendants failed to refund the consumer approximately \$100 to \$200 for therapeutic sessions that had to be rescheduled because of the Defendants' failure to adhere to the appointment schedule. The State expects substantially more consumers who have been harmed by Defendants to be located during discovery.

21. Failing to provide services that were properly paid for by consumers violates Ark. Code Ann. § 4-88-107(a)(3).

22. Defendants advertise that many of these procedures are non-invasive and can achieve permanent physical alterations after only a few treatments.

23. For example, Defendants stated in a Facebook post, dated September 21, 2020, that for a natural butt lift, they "recommend 5 sessions for permanent results." See Exhibit B.

24. However, those advertisements, and the benefits of the services stated therein, are fraudulent, misleading, and deceptive, in violation of Ark. Code Ann. §§ 4-88-107(a)(1) and 108(a)(2).

25. Under Arkansas law, specifically, Ark. Code Ann. § 17-86-301(a)(1)(A), it is unlawful for any person "who does not hold a valid license to use the following titles: massage therapist, massage practitioner, myotherapist, massotherapist, massage technologist, masseur, masseuse,

therapy technologist, master massage therapist, massage therapy instructor, or any derivation of those titles or to advertise such titles.”

26. Defendants advertise via social media, and state to potential buyers that they are massage therapists and that they provide massage services, among other titles and services, despite not being so licensed.

27. Further, under Ark. Code Ann. § 17-86-301(a)(1)(B), it is unlawful for “any person who does not hold the applicable license issued by the Arkansas State Board of Massage Therapy to engage professionally for payment, barter, donation, or exchange in the practice or instruction of massage therapy as defined in this chapter.”

28. Massage therapy is defined as “a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, and stretching the tissue.” Ark. Code Ann. § 17-86-102(3)(B)

29. Many of Defendants’ services constitute massage therapy.

30. Further, Defendants instruct others to perform these services, in violation of Ark. Code Ann. § 17-86-301, despite knowing these individuals are not licensed to perform said services.

31. As a result of Defendants’ business practices, the Massage Therapy Technical Advisory Committee ordered on or about June 10, 2019, that a case against Defendants be turned over to the Pulaski County Prosecuting Attorney for appropriate action. See Exhibit C.

32. Prosecuting Attorney Larry Jegley, for the Sixth Judicial District, issued a cease and desist notice against Defendants’ continued practice of cosmetology and massage therapy services for compensation without a license on or about December 5, 2022.

33. Further, under Ark. Code Ann. § 17-95-401, it is unlawful for any person to practice medicine without a valid license.

34. The practice of medicine is defined under the Arkansas Medical Practices Act, at Ark. Code Ann. § 17-95-202(3)(a) as “[h]olding out oneself to the public within this state as being able to . . . treat. . . any human disease, ailment, injury, deformity, or physical or mental condition. . . by use of. . . surgery, manipulation, electricity, or any physical, mechanical, or other means whatsoever.”

35. The Board’s Rules go on to state that laser “[s]urgery is further defined by [the Arkansas State Medical] Board as any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical means, to include the use of lasers.” Rules of Arkansas Medical Board, Rule No. 22 “Laser Surgery Guidelines.”

36. Defendants hold out to the public that they can perform, and Defendants do perform, surgical procedures including half-to-full syringe lip fillers, laser liposuction, skin tightening, fat freeze cool sculpting, and tummy tucks; all of which require the cutting, altering, or otherwise infiltrating of human tissue, including through the use of lasers.

37. The practice of cosmetology is regulated by statute and requires a license issued by the Department of Health. See Ark. Code Ann. §§ 17-26-101, 17- 26-301 *et seq.* Cosmetology includes, among other things, “externally manipulating, cleaning, waxing, or stimulating the body by means of the hands, devices, apparatus, or appliances with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.” Ark. Code Ann. § 17-26-102(b)(2).

38. It is unlawful for any person, firm, or corporation to violate the Cosmetology Act. Ark. Code Ann. § 17-26-104.

39. Cosmetology schools must be licensed by the Department of Public Health and its instructors must be licensed. Ark. Code Ann. § 17-26-401 *et seq.*

40. Defendants practice cosmetology without a license, and train others to do the same.

41. The practice of dentistry or dental hygiene or the attempt or the offer to practice either requires a license issued by the Arkansas Board of Dental Examiners. Ark. Code Ann. § 17-82-301(a)(1).

42. Under the Arkansas Dental Practice Act, "[n]o person shall practice dentistry or dental hygiene or attempt or offer to practice either" without a license issued by Arkansas Board of Dental Examiners. Ark. Code Ann. § 17-82-301(a)(1).

43. Practicing dentistry includes attempting or offering to perform teeth whitening services. Ark. Code Ann. § 17-2-301(a)(2) ("[P]racticing dentistry" includes the offer "by any means or method whatsoever to clean teeth or remove stains.")

44. Defendants engage in the practice of dentistry.

45. Defendants do not hold any of the required licenses issued by the Arkansas Department of Health, the Arkansas Board of Dental Examiners, the Arkansas State Medical Board, or the Arkansas State Board of Massage Therapy to perform the above-mentioned services.

46. Despite this, Defendants stated in a November 16, 2018, Facebook post, that "were certified & Licensed in Every service we offer" [*sic*]. See Exhibit D.

47. Defendants' statement that they are licensed to perform the services offered, when they are in fact not so licensed, violates Ark. Code Ann. §§ 4-88-107(a)(1) and 108(a)(2).

48. Defendants' practices and trainings, performed without the necessary licenses, and in contravention of the Prosecutor's cease and desist notice, constitute unconscionable business practices, in violation of Ark. Code Ann. § 4-88-107(a)(10).

V. VIOLATIONS OF LAW

49. The ADTPA prohibits any person or business from "[a]dvertising the goods or services with the intent not to sell them as advertised." Ark. Code Ann. § 4-88-107(a)(3).

50. Defendants violated Ark. Code Ann. § 4-88-107(a)(3) when they failed to perform the services for which they had accepted consumers' money.

51. The ADTPA prohibits any person or business from “[k]nowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of goods or services or as to whether goods are original or new or of a particular standard, quality, grade, style, or model.” Ark. Code Ann. § 4-88-107(a)(1).

52. Further, the ADTPA prohibits “[t]he concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission,” in connection with the sale or advertisement of any goods or services. Ark. Code Ann. § 4-88-108(a)(2).

53. Defendants violated Ark. Code Ann. §§ 4-88-107(a)(1) and 108(a)(2) by:

- a. Fraudulently advertising the capabilities of the services they provided, including that the services would be non-invasive and would yield permanent results; and
- b. Fraudulently holding themselves out to be licensed and certified by the Arkansas State Medical Board, Arkansas Medical Board, Arkansas Health Department, and the Arkansas State Board of Massage Therapy when they were in fact not licensed or certified.

54. Finally, engaging in “any other unconscionable, false, or deceptive act or practice in business, commerce, or trade” is a violation of the ADTPA. Ark. Code Ann. § 4-88-107(a)(10).

Defendants violated Ark. Code Ann. § 4-88-107(a)(10) when they:

- a. Performed surgeries and other medical procedures without a license in violation of Ark. Code Ann. § 17-95-401;

- b. Engaged in the practice of massage therapy without a license in violation of Ark. Code Ann. § 17-86-301(a)(1)(B);
- c. Held themselves out to the public as a massage therapist in violation of Ark. Code Ann. § 17-86-301(a)(1)(A);
- d. Trained and instructed other unlicensed individuals to perform the same or similar services in violation of Ark. Code Ann. § 17-86-301(a)(1)(B); and
- e. Continued to perform their advertised services and trainings in contravention of the Prosecutor's December 5, 2022, cease and desist notice.
- f. Offered for sale, offered to perform, and performed cosmetology services without a license in contravention of Ark. Code Ann. § 17-26-101 *et seq.*
- g. Offered for sale, offered to perform, and performed dental services or dental hygienist services without a license in contravention of Ark. Code Ann. § 17-2-301 *et seq.*

VI. PRAYER FOR RELIEF

55. The Attorney General may bring a civil action to seek to prevent persons from engaging in the use or employment of prohibited practices. Ark. Code Ann. § 4-88-113(a)(1).

56. Likewise, the Attorney General may bring a civil action to seek to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been acquired by means of any practices declared to be unlawful, together with other damages sustained. Ark. Code Ann. § 4-88-113(a)(2)(A).

57. The Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice. Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1).

58. Any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000.00 per violation. Ark. Code Ann. § 4-88-113(a)(3).

59. In addition, any person who violates the provisions of the ADTPA shall be liable to the Office of the Attorney General for all costs and fees, including but not limited to, expert witness fees and attorney's fees, incurred by the Office of the Attorney General in the prosecution of such actions. Ark. Code Ann. § 4-88-113(e).

60. A "person" is an individual, organization, group, association, partnership, corporation, or any combination thereof. Ark. Code Ann. § 4-88-102(5).

61. Defendants are "persons" who have engaged in an unconscionable, false, or deceptive act or practice in business, commerce, or trade.

62. The State demands a trial by jury.

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Tim Griffin, Attorney General, respectfully requests that this Court:

63. Issue such orders, pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), as may be necessary to prevent the use or employment by the Defendants of the practices described herein which violate the ADTPA.

64. Grant the motion for Temporary Restraining Order and Preliminary Injunction filed contemporaneously with this Complaint and incorporated by reference, barring Defendants from operating any massage therapy, body modification, dental, dental hygienist, or cosmetology treatment businesses in Arkansas, including but not limited to the sale of services, instruction, consulting, and marketing.

65. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), requiring Defendants to pay consumer restitution to those Arkansas consumers affected by the activities outlined herein;

in addition, or in the alternative, enter an order requiring Defendants to remit to affected consumers all sums obtained from Arkansas consumers by methods prohibited by Arkansas law.

66. Impose civil penalties pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by the Defendants in the amount of \$10,000.00 per each violation of the ADTPA proved at a trial of this matter.

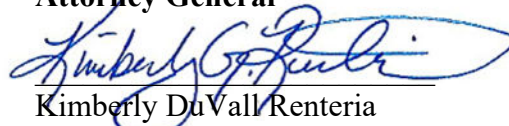
67. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(e), requiring Defendants to pay the State's costs in this investigation and litigation, including, but not limited to, attorneys' fees and costs.

68. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By:



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Arkansas Bar No. 2021307
Assistant Attorney General
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UNIFORM COVER PAGE

[To be used when required by Administrative Order No. 2 (g)*]

COURT: CIRCUIT COURT OF PULASKI COUNTY

Docket/Case Number: 60CV-23 - _____

CASE NAME: State of Arkansas *ex rel.* Tim Griffin Attorney General
PLAINTIFF/
PETITIONER: v.

DEFENDANT/
RESPONDENT: Hourglass Vixens, LLC; and Phatiffany Cook, in her Personal Capacity

TITLE OF PLEADING OR
DOCUMENT BEING FILED Exhibits A-D- State's Complaint
(If a multi-part file,
the designation "part _ of _"
(example, part 1 of 2)):

*Administrative Order No 2.

(g) *File Mark.* (1) There shall be a two inch (2") top margin on the first page of each document submitted for filing to accommodate the court's file mark. If the pleading or document must be filed in multi-parts because of size or for other reasons, the first page of each part must include the file name and file mark and shall clearly indicate the part number and number of parts (example, part 1 of 2).

(2) If a document is such that the first page cannot be drafted to provide sufficient space to satisfy the file-mark requirement, the document must include the uniform cover page developed by the Administrative Office of the Courts and found under Forms and Publications at www.arcourts.gov.



PROSECUTING ATTORNEY
STATE OF ARKANSAS | SIXTH JUDICIAL DISTRICT
LARRY JEGLEY



December 5, 2022

Ms. Phatiffina Cook
Hourglass Vixens
2024 Arkansas Valley Dr.
Building 2 Suite 204
Little Rock, AR 72212



Dear Citizen:

This office has received a complaint from the Arkansas Department of Health, Cosmetology, Massage Therapy, and Body Art Section, that you have been performing cosmetology and massage therapy services for compensation without a license from the State. If true, you could face penalties under Ark. Code Ann. Section 17-86-103.

You must immediately cease and desist your activities under penalty of law.


Sincerely,

Larry Jegley
Prosecuting Attorney
Sixth Judicial District

Cc: Kristie Wells

EXHIBIT A

facebook.com/Hourglass_vixens-1758823474401429/photos/2862553130695119



Hourglass_vixens
September 21, 2020

A little natural butt lift never hurt nobody 🍑 these are results from our regular butt enhancements 🍑 \$65 a session OR book our Maximum glutes Enhancements if your looking for a bigger look 🍑 I do recommend 5 sessions for permanent results !! Packages are available 🍑

<http://www.schedulicity.com/scheduling/HV5UUD>

7 2 Comments 1 Share

Like Comment Share

Most relevant

Brittney Sebastian
How much for maximum glutes
Like Reply 1y

Write a comment...
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100°F Sunny 4:35 PM 7/22/2022

EXHIBIT B

**BEFORE THE MASSAGE THERAPY
TECHNICAL ADVISORY COMMITTEE**

**IN THE MATTER OF
HOURGLASS VIXENS**

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

A hearing on the above-referenced matter was held before the Massage Therapy Advisory Technical Advisory Committee (MTTAC) on Monday, June 10, 2019, in Room 801 of the Freeway Medical Building, 5800 West 10th Street, Little Rock, Arkansas. Phatiffany Cook dba Hourglass Vixens, hereinafter referred to as "Respondent" did not appear before the Committee. Charles "Chuck" Thompson, General Counsel for the Arkansas Department of Health, appeared on behalf of the Arkansas Department of Health. On the basis of the testimony and other evidence presented, the Committee, after due deliberation, makes the following Findings of Facts, Conclusions of Law, and Order:

FINDINGS OF FACT

1. An inspection of Hourglass Vixens was attempted by the Arkansas Department of Health Cosmetology and Massage Therapy Section on 12/21/2018, located at 2024 Arkansas Valley Drive, Suite 204, Little Rock, Arkansas.
2. On September 28, 2018, a complaint was received by the Arkansas Department of Health Cosmetology and Massage Therapy Section. The complaint stated the owner, Phatiffany Cook was performing services without an Arkansas license. Upon further investigation, it was found that Hourglass Vixens was advertising Massage Therapy Services.
3. A license or registration record for Phatiffany Cook and/or Hourglass Vixens could not be located in the Massage Therapy database.

CONCLUSIONS OF LAW

Ark. Code Ann. § 17-86-301

Registration required - Exemptions

EXHIBIT C

CONCLUSIONS OF LAW

Ark. Code Ann. § 17-86-301

Registration required - Exemptions

(a) It shall be unlawful:

(4) For any person to operate a massage therapy school or clinic without its first being registered under the provisions of this chapter as a licensed massage therapy school or registered clinic;

(B) For any person who does not hold the applicable license issued by the Department of Health to engage professionally for payment, barter, donation, or exchange in the practice or instruction of massage therapy as defined in this chapter;

(3) To employ any person to practice or instruct under this chapter who does not hold a valid license issued by the department;

Ark. Code Ann. § 17-86-311

Disciplinary actions and penalties

(10) Failure to have licensed personnel to perform massage therapy techniques in his or her clinic or school.

(10) (e) In denying, suspending, or revoking any license, the committee shall afford any party review as provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and as otherwise provided by the rules and regulations of the State Board of Health.

Ark. Code Ann. § 17-86-311

Disciplinary actions and penalties

(10) Failure to have licensed personnel to perform massage therapy techniques in his or her clinic or school.

(10) (e) In denying, suspending, or revoking any license, the committee shall afford any party review as provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and as otherwise provided by the rules and regulations of the State Board of Health.

ORDER


Based upon the foregoing Findings of Fact and Conclusions of Law, the MTTAC hereby orders the case be turned over to the Prosecuting Attorney's office for criminal and civil action.

This **Order** shall become final unless appealed to Arkansas State Board of Health in accordance with the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq., within thirty (30) days of the receipt of the **Order**.

Massage Therapy Technical Advisory Committee

Kelli Kersey, Section Chief

facebook.com/1758823474401429/videos/285758952074699





Hourglass_vixens
November 16, 2018 · 🌐

👩🏻‍🍳👩🏻‍🍳 Were certified & Licensed in Every service we offer! When you book with us know that your in EXCELLENT CARE! ❤️🌟
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EXHIBIT D

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

STATE OF ARKANSAS, *ex rel.*
TIM GRIFFIN, ATTORNEY GENERAL

PLAINTIFF

v. CASE NO. 60CV-23-_____

HOURLASS VIXENS, LLC; and
PHATIFFANY COOK, IN HER
PERSONAL CAPACITY

DEFENDANTS

MOTION AND INCORPORATED BRIEF IN
SUPPORT FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION, AND OTHER RELIEF

COMES NOW, the State of Arkansas, *ex rel.* Tim Griffin, Attorney General (“the State”), for its Motion for Temporary Restraining Order, Preliminary Injunction, and Other Relief against Hourglass Vixens, LLC (“Defendant Company”) and Phatiffany Cook (“Defendant Cook”) (collectively “Defendants”) and states the following:

I. INTRODUCTION

This Motion and Incorporated Brief in Support was filed simultaneously with the Complaint in this matter. The Complaint is incorporated by reference herein.

In the public interest of protecting Arkansas consumers, the Attorney General seeks a preliminary injunction prohibiting Defendants from operating any massage therapy, body modification, dental, dental hygienist, or cosmetology treatment businesses in Arkansas, including but not limited to the sale of services, instruction, consulting, and marketing; and further prohibiting Defendants from continuing to engage in violations of the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. § 4-88-101 et seq.

As alleged in the Complaint, Defendants, Hourglass Vixens LLC (“Defendant Company”), and Phatiffany Cook (“Defendant Cook”), collectively (“Defendants”), have engaged in several violations of the Arkansas Deceptive Trade Practices Act (“ADTPA”), including but not limited to:

- a. Violating Ark. Code Ann. § 4-88-107(a)(3), by charging consumers for services that were not thereafter provided;
- b. Violating Ark. Code Ann. §§ 4-88-107(a)(1) and 108(a)(2), by fraudulently advertising the benefits and effects of their services;
- c. Violating Ark. Code Ann. §§ 4-88-107(a)(1) and 108(a)(2), by fraudulently advertising that they were licensed and certified to perform the services they advertised;
- d. Violating Ark. Code Ann. § 4-88-107(a)(10), by engaging in unconscionable business practices, such as performing surgical, dental, cosmetic, and massage therapy procedures without a license, as required under Ark. Code Ann. §§ 17-95-401, 17-82-301(a)(1), 17-26-104(a)(1), and 17-86-301(a)(1)(B);
- e. Violating Ark. Code Ann. § 4-88-107(a)(10), by continuing to operate their business, despite being instructed to cease and desist business activity by the Prosecutor for the Sixth Judicial District; and
- f. Violating Ark. Code Ann. § 4-88-107(a)(10), by training others whom they knew were unlicensed to perform the same or similar surgical and massage therapy procedures.

The Attorney General now seeks a temporary restraining order and preliminary injunction in the public’s interest, prohibiting Defendants from operating their business during the pendency of this case.

II. FACTUAL ALLEGATIONS

The factual allegations of Defendants' conduct are set out more fully in the Complaint.

The allegations pertinent to this Motion are as follows:

Defendants operate a business that purports to provide cosmetology treatments, body modification therapy, and dental, medical, and massage services. *See* State's Complaint ¶ 14. Many of the services Defendants provide require the penetration of one's skin with needles or blades or the penetration of one's skin with lasers or ultrasonic waves of varying strength. *See* State's Complaint ¶ 15. Other services Defendants offer do not require the use of needles, blades, lasers, or ultrasonic waves, but rather rely on massaging affected areas, or, most commonly, the application of suction devices to the affected areas. *See* State's Complaint ¶ 16.

Each of the services Defendants offer fall into one of the following categories: the practice of massage therapy, the practice of medicine, the practice of cosmetology, or the practice of dentistry. *See* State's Complaint ¶¶ 15-16, 28, 34-35, 37, and 43. Each of these practices requires a license in the State of Arkansas. *See* State's Complaint ¶¶ 27, 33, 37, and 41. Defendants do not have any of the required licenses.

Despite this, Defendants continue to perform and train others to perform services they are legally prohibited from performing and training others to perform, and Defendants continue to falsely advertise that they are licensed to perform these services when they are not. *See* State's Complaint ¶¶ 45-46, 48.

Additionally, Defendants falsely advertise that many of their procedures are non-invasive and can achieve permanent physical alterations after only a few treatments. *See* State's Complaint ¶ 24.

Finally, Defendants have, in at least two incidents reported to the Office of the Attorney General, accepted consumers' money for the performance of these services, but have then failed to complete the contracted for services. *See* State's Complaint ¶ 20. The State expects substantially more consumers who have been harmed by Defendants to be located during discovery.

III. ARGUMENT

Pursuant to Ark. Code Ann. § 4-88-104, the Attorney General is specifically authorized to seek “an injunction prohibiting any person from engaging in any deceptive or unlawful practice prohibited by [the ADTPA].”

To obtain an injunction at this stage in the proceedings, the Attorney General must show (1) evidence of an ADTPA violation exists, and (2) that an injunction is in the public's interest. Mercury Mktg. Techs. Inc. v. Arkansas ex rel. Beebe, 358 Ark. 319, 328, 189 S.W.3d 414, 420 (2004).

A. Legal Authority

The Attorney General has statutory authority to pursue an injunction to prevent false, deceptive, misleading, or unconscionable business practices. Ark. Code Ann. § 4-88-104. In seeking an injunction, the Attorney General need only show that it “clearly ha[s] reason to believe that a violation of the [Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. §§ 4-88-101,] is afoot.” *Id.* at 331, 189 S.W.3d at 422 (finding that the Attorney General is not required to plead irreparable harm or likelihood of success on the merits).

B. Evidence of an ADTPA Violation

Here, there is sufficient evidence for the Court to “clearly believe that a violation of the ADTPA is occurring.” *Id.* The State, in its Complaint, alleged that Defendants failed on at least two occasions to provide services for which Arkansas consumers had already paid. Further

Defendants published false and misleading advertisements regarding the benefits and effects of their services, and similarly published false advertisements regarding their certification and licensing to perform the advertised services. Lastly, the Defendants have engaged in a myriad of unconscionable behavior, including performing surgical, dental, cosmetic, and massage therapy procedures without a license, failing to comply with a cease and desist, and training others to violate the ADTPA in a similar manner. The State has also compiled a finding of fact and conclusions of law from the Massage Therapy Technical Advisory Committee, showcasing Defendants failure to obtain proper licensing. Defendants will not be able to dispute the Committee's findings—which further establish ADTPA violations.

C. Public Interest

Granting the State's Motion for Temporary Restraining Order, Preliminary Injunctive Relief, and Other Relief is in the public interest because the State holds a reasonable belief that Defendants will continue to violate the ADTPA if injunctive relief is not granted. Defendants have a history of advertising in a deceptive manner as well as taking the money of consumers without providing the services contracted for. The State is not the first entity to attempt to restrain Defendants' activity. When the Prosecutor of the Sixth Judicial District issued a cease and desist notice, Defendants failed to conform their deceptive and unconscionable business practices to the requirements of law in any way. Further, the nature of Defendants' ADTPA violations—namely the performance, advertisement, and propagation through the training of others of surgical, dental, cosmetic, and massage procedures—presents an ongoing danger to the health and safety of Defendants' clients and the clients of the individuals Defendants train. Injunctive relief, therefore, may prevent the hospitalization or death of Arkansans, which is certainly in the public's interest.

Seeking preliminary injunctive relief aids in preventing Defendants from further violating the ADTPA. Seeking preliminary injunctive relief also has a strong deterrent effect on the illegitimate business community. It is in the public interest to grant the State's request for preliminary injunctive relief.

D. Rule 65 Standard

While it is unnecessary to do so, the State can also show, for the benefit of its Motion for Temporary Restraining Order, Preliminary Injunctive Relief, and Other Relief, that the elements for preliminary injunctive relief, established by Arkansas Rule of Civil Procedure 65, weigh in favor of granting the State's Motion.

The four elements weighed to determine whether injunctive relief is warranted are as follows: (1) a substantial likelihood of success on the merits; (2) that irreparable injury will result if the order is not granted; (3) that the expected injury outweighs any potential harm the order will cause the opposing party (balancing of the equities); and (4) that the restraining order is in the public interest. As set forth below, every element weighs in favor of granting the State's request for preliminary injunctive relief against Defendants.

First, the State is substantially likely to succeed in its case. "The test for determining the likelihood of success is whether there is a reasonable probability of success in the litigation." Thurston v. Safe Surgery Arkansas, 2021 Ark. 55, 10, 619 S.W.3d 1, 13 (2021) (citing Custom Microsystems, Inc. v. Blake, 344 Ark. 536, 42 S.W.3d 453 (2001)). As previously stated, the Massage Therapy Technical Advisory Committee found Defendants did not have the proper licensing to perform the services they offered. This led to a cease and desist notice being issued by the Prosecutor for the Sixth Judicial District. At the very least, Defendants violated the ADTPA when they published advertisements stating that they were licensed to perform the services they

offered. This violation alone constitutes a sufficient likelihood of success to grant the requested injunctive relief; however, the State is also likely to be successful at proving that the Defendants violated the ADTPA at trial in the various other ways mentioned above.

Second, Arkansas consumers will continue to suffer an increased likelihood of irreparable harm due to Defendants' conduct if the State's Motion is not granted. "Harm is normally only considered irreparable when it cannot be adequately compensated by money damages or redressed in a court of law." Three Sisters Petroleum, Inc. v. Langley, 348 Ark. 167, 176, 72 S.W.3d 95, 101 (2002) (citing Kreutzer v. Clark, 271 Ark. 243, 607 S.W.2d 670 (1980)). Here, there is no question that consumers are at risk to suffer irreparable harm due to Defendants' conduct. Defendants are performing procedures, without the proper licensing, that have the potential to seriously injure, maim, or kill the individuals they are performed on. Further, Defendants are training others to perform the same procedures, without the proper licensing, and likely with inadequate and shoddy training. Additionally, Defendants advertise as though they have the proper credentials, and thereby capability, to perform these procedures, leaving consumers wholly unaware of the danger they are facing when they schedule an appointment with Defendants. The State believes that if a preliminary injunction is not issued, Defendants will continue to perform surgical, dental, cosmetic, and massage procedures without the proper licensing and with substantial risks to human life, safety, and well-being.

Third, a comparison of the potential harm to consumers weighed against the potential harm to Defendants unquestionably falls in favor of granting the preliminary injunction. As evidenced by Defendants' unlicensed operations, and the advertisement and training of the same, the consumers' safety outweighs Defendants' interest in continuing to operate their business. Furthermore, the Defendants' actions indicate that they have wholly disregarded attempts from

other State officials to stop them from operating their business. The Prosecutor for the Sixth Judicial District issued a cease and desist notice in furtherance of a finding by the Massage Therapy Technical Advisory Committee that Defendants were conducting their business without the proper licensing. Despite this, the State, upon information and belief, believes that Defendants continue to operate their business. Thus, the balancing of the equities weighs in favor of granting the preliminary injunctive relief.

Finally, the interest to the public in granting the requested injunctive relief is substantial. Taking all of the other elements together show that the potential harm to Arkansans is significant, immediate, and irreparable. As discussed more thoroughly above, stopping the substantial risk to human life, and the continued violations of the ADTPA, is in the public's interest.

Based on the foregoing, this Court should grant the Attorney General's request for preliminary injunctive relief.

The Attorney General has not contacted Defendants regarding this Motion. The Attorney General is attempting to confirm Defendants' address and is in the process of obtaining personal service upon each Defendant with the Summons, Complaint, and this Motion. A preliminary injunction should be issued without notice to Defendants because the Defendants continue to advertise that they can perform surgical, dental, cosmetic, and massage procedures, and that they have the proper licenses to do so, and because the Defendants continue to train others to do the same. Without an immediate order, Arkansas consumers could be subjected to the possibility of substantial injury or even death from Defendants. For the reasons set out above, the Court should grant the Attorney General's Motion.

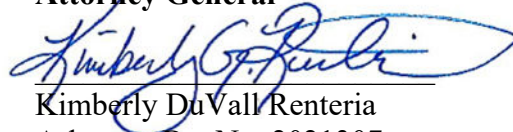
IV. CONCLUSION

For all the reasons stated herein, the State requests that its Motion be granted for all the relief requested, and for all other just and proper relief to which it may be entitled.

Respectfully submitted,

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