

FILED

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE  
SIXTH JUDICIAL DISTRICT AT KNOXVILLE

2010 MAY 24 AM 9:50

STATE OF TENNESSEE, *ex rel.* ROBERT )  
E. COOPER, JR., )

Plaintiff, )

v. )

MARLENE GARCIA, individually and )  
doing business as API ASISTENCIA )  
PROFESIONAL INMIGRATORIA )  
a sole proprietorship owned and operated )  
by MARLENE GARCIA, )

Defendant. )

HOWARD C. HOGAN

No. 177888-2

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

1. This civil law enforcement action is brought in the name of the State of Tennessee, in its sovereign capacity, by and through Robert E. Cooper, Jr., Attorney General and Reporter ("Attorney General") pursuant to Tenn. Code Ann. § 47-18-108 of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("TCPA"); the Notaries Public statute, Tenn. Code Ann. § 8-16-401 *et seq.*; the Unauthorized Practice and Improper Conduct statutes, Tenn. Code Ann. § 23-3-101 *et seq.*; the Attorney General's general statutory authority at Tenn. Code Ann. § 8-6-109; and the Attorney General's common law authority.

2. Mary Clement, Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, has requested that the State of Tennessee, by the Attorney General, commence civil law enforcement proceedings against the above-named Defendant for violations of the TCPA.

3. The Director and the Attorney General have reason to believe that the Defendant named herein has violated the TCPA and the Notaries Public statute. The Director and the Attorney General also have reason to believe that this action is in the public interest.

4. Defendant has been provided with ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2).

### **I. JURISDICTION AND VENUE**

5. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108.

6. Venue is proper in Knox County pursuant to Tenn. Code Ann. §§ 47-18-108(a)(3), because it is the county where the alleged unfair or deceptive acts or practices took place, and the county in which the Defendant conducts, transacts or has transacted business.

7. Venue is also proper in Knox County pursuant to Tenn. Code Ann. § 23-3-103(c)(2), because it is the county where the alleged violations took place or are about to take place, and it is the county where the Defendant conducts, transacts or has conducted business.

### **II. DEFENDANT**

The State of Tennessee alleges upon information and belief:

8. Defendant Marlene Garcia ("Defendant Garcia") is an individual and resident of Tennessee. Defendant Garcia personally participated in and controlled and directed the business practices of her sole proprietorship, A.P.I. Asistencia Profesional Inmigratoria.

8. Defendant Garcia owns and/or owned and operates and/or operated a sole proprietorship called A.P.I. Asistencia Profesional Inmigratoria. Defendant Garcia d/b/a A.P.I.

Asistencia Profesional Inmigratoria is and/or was headquartered at 5334 N. Broadway, Suite B, Knoxville, TN 37408.

### **III. GENERAL ALLEGATIONS**

The State of Tennessee alleges upon information and belief:

10. Defendant has advertised as a "notario publico" without the required disclaimer.
11. Defendant has engaged in unauthorized practiced of law and has misled consumers regarding her ability to provide legal services by coordinating "agreements" between clients.

### **IV. FACTUAL ALLEGATIONS**

Upon information and belief, the State of Tennessee alleges as follows:

12. Defendant has engaged in trade or commerce in whole or in part in the State of Tennessee by offering goods or services to consumers.
13. Defendant has claimed to be notary publics or notarios publicos.
14. Defendant Garcia ran a business located at 5334 N. Broadway, Suite B, Knoxville, TN 37408.
15. Defendant Garcia d/b/a A.P.I. Asistencia Profesional Inmigratoria advertised on a sign located at 5334 N. Broadway, Suite B, Knoxville, TN 37408 as having a "Notario Publico" without any disclaimer.
16. Defendant Garcia d/b/a A.P.I. Asistencia Profesional Inmigratoria also distributed business cards displaying the services of a "Notario Publico."
17. Defendant has provided legal services by arranging "agreements" between clients.

18. Defendant Garcia is not an attorney and not licensed to practice law in the State of Tennessee.

19. Defendant Garcia d/b/a A.P.I. Asistencia Profesional Inmigratoria does not employ an attorney who is licensed to practice law in the State of Tennessee.

20. Defendant has directly engaged in the alleged conduct and unfair or deceptive acts or practices described herein, had knowledge or should have had knowledge of the practices, and had the authority to control and stop the violations of the law.

21. As a result of the Defendant's conduct described in this Complaint, consumers may have suffered ascertainable losses associated with the various unfair, deceptive or misleading acts or practices alleged herein.

## **V. VIOLATIONS OF THE LAW**

### **COUNT I: TENNESSEE CONSUMER PROTECTION ACT**

22. The Plaintiff incorporates by reference and re-alleges each and every allegation contained in Paragraphs (10) - (21) of this Complaint.

23. Defendant has caused likelihood of confusion or of misunderstanding as to the source and approval of their goods or services, in violation of Tenn. Code Ann. § 47-18-104(b)(2).

24. Defendant has caused likelihood of confusion or of misunderstanding as to the affiliation, connection or association with, or certification by, another, in violation of Tenn. Code Ann. § 47-18-104(b)(3).

25. Defendant has used statements in advertisements which create a false impression of the quality, value, usability or origin of the goods or services offered, in violation of Tenn. Code Ann. § 47-18-104(b)(21).

26. Defendant has advertised as a notario publico without a clear and conspicuous disclaimer disclosing the individuals are not licensed to practice law in Tennessee as required by Tenn. Code Ann. § 8-16-401(a) in violation of Tenn. Code Ann. § 47-18-104.

27. All of the acts and practices engaged in and employed by Defendant described in this Complaint are deceptive to the consumer or other person in violation of Tenn. Code Ann. § 47-18-104(b)(27).

#### **COUNT II: UNAUTHORIZED PRACTICE OF THE LAW**

28. Plaintiff incorporates by reference and re-alleges each and every allegation contained in Paragraphs (10) - (21) of this Complaint.

29. Defendant has been and are engaging in "law business," and performing legal services for persons within the State of Tennessee as defined in Tenn. Code Ann. § 23-3-101 *et seq.*

30. By the procuring of or assisting in the drawing of legal documents for a valuable consideration, Defendant has been and is engaging in "law business" pursuant to Tenn. Code Ann. § 23-3-101(1).

31. By soliciting directly or indirectly to provide such services as the assisting in the drawing of legal documents and advising or counseling consumers for valuable consideration, Defendant has been and is engaging in "law business" pursuant to Tenn. Code Ann. § 23-3-101(1).

32. By engaging in the "law business" without having been duly licensed, Defendant has engaged in the unlawful practice of law, in violation of Tenn. Code Ann. § 23-3-103(a).

### DEMAND FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, pursuant to the Tennessee Consumer Protection Act of 1977, the Attorney General's general statutory authority, the Attorney General's common law authority, and this Court's equitable powers, prays:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101 and 47-18-116.
2. That process issue and be served upon Defendant requiring the Defendant to appear and answer this Complaint.
3. That this Court adjudge and decree that Defendant has engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977.
4. That this Court adjudge and decree that Defendant has engaged in the aforementioned acts or practices which violate the Tennessee Unauthorized Practice and Improper Conduct statutes.
5. That pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1), (a)(4), (a)(5), 23-3-103(c)(1) and (c)(3), this Court temporarily and permanently enjoin and restrain Defendant from engaging in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977, Unauthorized Practice and Improper Conduct statutes and other laws and regulations.

6. That this Court enter judgment against Defendant and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees and costs, expert and other witness fees, as provided by Tenn. Code Ann. §§ 47-18-108(a)(5), (b)(4), 23-3-103(c)(1) and other state law.

7. That pursuant to Tenn. Code Ann. § 47-18-108(b)(1), this Court make such orders or render such judgments as may be necessary to restore to any person who has suffered any ascertainable loss as defined in Tenn. Code Ann. § 47-18-2102(1), including statutory interest, and requiring that Defendant pay all costs of distributing and administering the same.

8. That pursuant to Tenn. Code Ann. § 23-3-103(c)(1), this Court make such orders or render such judgments as may be necessary to obtain restitution for any person who suffered an ascertainable loss from Defendant's violations of the Tennessee Unauthorized Practice and Improper Conduct statutes.

9. That this Court adjudge and decree that Defendant pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation of the Tennessee Consumer Protection Act of 1977 to the State of Tennessee as provided by Tenn. Code Ann. § 47-18-108(b)(3).

10. That this Court adjudge and decree that Defendant pay civil penalties of not more than ten thousand dollars (\$10,000.00) per violation of the Unauthorized Practice and Improper Conduct statutes to the State of Tennessee as provided by Tenn. Code Ann. § 23-3-103(c)(1).

11. That all costs in this case be taxed against the Defendant.

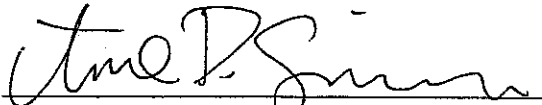
12. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,



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**ROBERT E. COOPER, JR.**  
Attorney General and Reporter  
B.P.R. No. 10934



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**ANNE D. SIMMONS**  
Assistant Attorney General  
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