

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

| | | |
|-------------------------------|---|---------------------------------|
| MALCOLM TERRALL TANNER, | § | |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | Civil Cause No: 4:2025-cv-00033 |
| | § | |
| LOVING COUNTY, TEXAS, et al., | § | |
| <i>Defendants.</i> | § | |

**INTERVENOR STATE OF TEXAS’ EXPEDITED MOTION TO STRIKE
OR IN THE ALTERNATIVE MOTION TO SEVER AND REMAND AND
REQUEST FOR RULING BY WEDNESDAY, OCTOBER 29, 2025**

The State of Texas, Intervenor, pursuant to Fed. R. Civ. P. 24(a)(2) claims an interest relating to this action and files this as its Expedited Motion to Strike or in the alternative Motion to Sever and Remand and Request for Ruling by Wednesday, October 29, 2025, to allow attorneys for the State to confirm or cancel travel arrangements regarding a Temporary Injunction Hearing set for 10:00 a.m. this Friday, October 31, 2025, before the 143rd Judicial District Court of Loving County, Texas in Mentone, Texas and would respectfully show as follows:

1. In accordance with Tex. Health & Safety Code §§ 341.048(e) and 341.092(d),(f) Cause No. 25-151-DCCV-00050 *State of Texas v. Malcolm Terrall Tanner* was filed by the Attorney General of Texas on October 10, 2025, with the 143rd Judicial District Court of Loving County, Texas. In such proceeding the State of Texas requested (among other things) that the court issue a Temporary Restraining

Order and grant Injunctive Relief in enforcement of the Texas Health & Safety Code Chapter 341. (A copy of the State's Petition is attached hereto and incorporated herein by reference as Exh. 1, see Claim One at pgs. 5-6). Enforcement of Texas Health & Safety Code Chapter 341 is a matter over which this honorable federal court would lack subject matter jurisdiction.

2. On October 15, 2025, Judge Alan J. Nicholas of the 143rd Judicial District Court of Loving County, Texas granted a Temporary Restraining Order and set a hearing for a Temporary Injunction hearing to be held on Friday, October 31, 2025, at 10:00 a.m. in Mentone, Texas. (A copy of the signed Order is attached hereto and incorporated herein by reference as Exh. 2).

3. Malcolm Tanner, thereafter without conferring with counsel for the federal defendants named in his original Complaint (see Dkt. No. 1), without conferring with the Attorney General of Texas on behalf of the State of Texas in the case pending before the 143rd Judicial District Court of Loving County, and without leave of court on Thursday, October 23, 2025, proceeded to file an Amended Complaint, Notice of Change of Venue and Removal (Dkt. No. 6) under this federal cause of action, in an attempt to add various individual State of Texas representatives or employees as individual defendants with additional causes of action in the instant federal cause of action and to improperly remove the pending State of Texas cause of action to this federal court. As Tanner failed to comply with Fed. R. Civ. P.

15(a)(2) his Amended Complaint, Notice of Change of Venue and Removal (Dkt. No. 6) should be stricken. Further, it is well established that federal court subject matter jurisdiction cannot be established upon simply a federal question counterclaim. *See Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002).

4. While the undersigned Assistant Attorney General Lauren McGee on Saturday, October 25, 2025, became aware that Malcolm Tanner had filed a Notice of Removal in Cause No. 25-151-DCCV-00050 *State of Texas v. Malcolm Terrall Tanner* pending before the 143rd Judicial District Court of Loving County, Texas, Tanner's Amended Complaint (Dkt. No. 6) should also be stricken or dismissed in the alternative, due to insufficient service or process under Fed. R. Civ. P. 12(b)(4),(5), as Tanner has not served the individual defendants named in his Amended Complaint (Dkt. No. 6), specifically Tanner has not effectuated any federal court process upon: Texas Attorney General Ken Paxton, Lauren McGee, Jennifer Foster, Ernest Garcia, or Andrew Brown.

5. In addition or in the alternative, as previously referenced, the State of Texas claims an interest in subject of the subject of Amended Complaint (Dkt. No. 6) and is so situated that any removal impedes and causes prejudice to the State's ability to protect its interest under the Texas Health & Safety Code, the Texas Civil Practice & Remedies Code, and the Texas Business & Commerce Code. This honorable

federal court would not have original federal court subject matter jurisdiction regarding enforcement actions brought by the State of Texas under the Texas Health & Safety Code, Texas Civil Practice & Remedies Code, and Texas Business & Commerce Code. The State of Texas did not and would not consent to any removal of the Cause No. 25-151-DCCV-00050 *State of Texas v. Malcolm Terrall Tanner*, to federal court. Furthermore, the individuals named in the Amended Complaint (Dkt. No. 6) as additional defendants, representatives / employees of the State of Texas, being Texas Attorney General Ken Paxton, Lauren McGee, Jennifer Foster, Ernest Garcia and Andrew Brown did not consent to be named as defendants nor did they consent to any removal.

6. To the extent that Malcolm Tanner has alleged any violations of federal law in his Amended Complaint, as the basis for removal, the court should sever and remand in accordance with 28 U.S.C. §§ 1441(c)(2), 1447(c) and Fed. R. Civ. P. 21, to allow the 143rd Judicial District Court of Loving County, Texas, to proceed with any temporary injunction hearing or other proceedings as may be deemed necessary by that court in Cause No. 25-151-DCCV-00050.

CONCLUSION

As set out above, there is an upcoming Temporary Injunction hearing set in the 143rd Judicial District Court of Loving County Texas regarding the state law claims. The State requests that this court on an expedited basis strike or dismiss

Tanner's Amended Complaint, Notice of Change of Venue and Removal (Dkt. No. 6) or in the alternative sever the state law claims as outlined above and remand them back to the Loving County District Court and require Tanner to pay costs and reasonable attorney fees of at least \$750, in accordance with 28 U.S.C. §1447(c), and grant the State of Texas such other relief at law or equity to which the State of Texas may be entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Civil Litigation

ERNEST C. GARCIA
Chief, Administrative Law Division

JOHNATHAN STONE
Chief, Consumer Protection Division

/s/ Lauren McGee

LAUREN MCGEE
Assistant Attorney General
State Bar No. 24128835

ERNEST C. GARCIA
Assistant Attorney General
State Bar No. 07632400
Office of the Attorney General of Texas
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-3203
Fax: (512) 320-0167

Lauren.McGee@oag.texas.gov

Ernest.Garcia@oag.texas.gov

Andrew Brown
Assistant Attorney General
State Bar No. 24135334
Office of the Attorney General of Texas

Consumer Protection Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 964-8741
Andrew.Brown@oag.texas.gov

Attorneys for the State of Texas

CERTIFICATE OF SERVICE

I, Lauren McGee, Assistant Attorney General of Texas, certify that a correct copy of the foregoing has been served on all parties and/or counsel of record on October 28, 2025, using the Court's electronic filing system and that plaintiff Malcolm Tanner was served by email to: tysonemmate@icloud.com (as referenced in Dkt. No. 1, pg. 5 and Dkt. 6, pg. 10) and by certified mail to: Malcolm Tanner, 1304 S. Grant Ave., Crawfordsville, IN 47933, CMRRR 7008 3230 0003 0508 6755.

/s/ Lauren McGee
Lauren McGee
Assistant Attorney General

Cause No. _____

| | | |
|--|---------------------------------|---|
| THE STATE OF TEXAS, <i>Plaintiff,</i> | § § § § § § § | IN THE DISTRICT COURT OF LOVING COUNTY, TEXAS 143rd JUDICIAL DISTRICT |
| v. | | |
| MALCOLM TERRALL TANNER, <i>Defendant.</i> | | |

**PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR AN
 EMERGENCY TEMPORARY RESTRAINING ORDER, INJUNCTIVE
 RELIEF AND CIVIL PENALTIES**

The State of Texas (Plaintiff or the State) brings this suit against Malcolm Terrall Tanner (Defendant or Tanner), a resident of Crawfordsville, Indiana, who boasts that his goal is to overthrow the local government in Loving County and run for president in 2028. Loving County, Texas is a rural county in west Texas with a population of 64 according to the 2020 census. Located in the Permian Basin, which is known for its rich oil deposits, the Loving County tax base is massive compared to its population with a total taxable value of over \$18 billion in 2024.

In January of 2025, Tanner purchased two adjoining five-acre tracts of barren land in Loving County known locally as 2985 Private Road 3008, Mentone, Texas 79754, parcels 108451 and 108463 (the Property). He has been soliciting “followers” to move to Loving County by offering a free place to live on the Property and \$5,000 per month.

However, the Property lacks sewer access, septic systems, running water, has limited electricity produced by gas powered generators, and has a burn pit dug in the ground to dispose of trash. *See Exhibits A-C.*

Due to the lack of septic and sewer access and the increasing number of individuals inhabiting the land, the State believes that Tanner is violating or threatening to violate Chapter 341 of the Texas Health and Safety Code. The Property is also used as a meeting place for Tanner and his co-conspirators to plan organized criminal activity. The State asks the Court to enjoin Tanner from continuing these illegal activities and assess civil penalties.

DISCOVERY

1. Plaintiff will conduct discovery under a Level 2 Discovery Control Plan pursuant to Texas rule of Civil Procedure 190.
2. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169(a) because Plaintiff seeks non-monetary injunctive relief.

NATURE OF THE SUIT

3. This is a civil enforcement action to enforce Chapter 341 of the Texas Health and Safety Code, and its related regulations. This matter involves the improper disposal of sewage, human excreta, and wastewater as well as conditions that are a possible and probable medium of disease transmission to or between humans. Plaintiff seeks injunctive relief and civil penalties.
4. The State also brings claims for violations of Texas Civil Practice and Remedies Code section 125.063 for public nuisance and common law public nuisance.
5. Finally, the State brings a claim for violations of the of Deceptive Trade Practice Act (DTPA), Chapter 17 of the Texas Business and Commerce Code.

PARTIES

6. The State of Texas, by and through Ken Paxton, the Attorney General of Texas, is authorized to file suit to enforce Chapter 341 of the Texas Health and Safety Code pursuant to section 341.092(f), enforce violations of Chapter 125 of the Texas Civil Practice and Remedies Code pursuant to section 125.064(a), and enforce violations of the DTPA pursuant to Texas Business and Commerce code section 17.47.

7. Malcolm Terrall Tanner a/k/a Malcolm Tanner or Malcolm T. Tanner is an individual who owns property known locally as 2985 Private Road 3008, Mentone, Texas 79754 parcels 108451 and 108463. He can be served with process at his residence, 1304 South Grant Avenue, Crawfordsville, Indiana 47933, or wherever he may be found.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this proceeding pursuant to Texas Health and Safety Code section 341.092.

9. Venue is proper in Loving County pursuant to Texas Health and Safety Code section 341.092(g), Texas Civil Practice and Remedies Code sections 125.002(a), and Texas Business and Commerce Code section 17.47(b).

FACTUAL BACKGROUND

10. In January of 2025, Malcolm Tanner purchased two adjoining five-acre parcels of land in Loving County, Texas.

11. The land was undeveloped and sits in the middle of rural west Texas.

12. Since purchasing the Property, Tanner has been advertising “free” homes to consumers on social media and other messaging platforms, such as Clubhouse, to

The State of Texas v. Malcom Terrall Tanner
Plaintiff’s Original Petition and Request for an Emergency Temporary Restraining
Order, Injunctive Relief and Civil Penalties

those willing to move to the County and register to vote. He appears to be targeting women with children.

13. According to his multiple social media posts, Tanner aspires to change the name of Loving County to Tanner County and run in the 2028 presidential election.

14. The majority of the individuals living on the Property were enticed by his promise of “free” homes and moved from out of state. But rather than homes (much less free homes), these people are now living in recreational vehicles and camper vans that were purchased by Tanner and lack running water, proper waste disposal, or reliable electricity.

15. Neither parcel of land is plumbed for sewage or septic disposal. The recreational vehicles and camper vans are not tied in to proper waste disposal.

16. Given the ever increasing population calling Defendant’s property home, the necessity to dispose of accumulated sewage and human excreta, and the lack of plumbing for sewage or septic disposal, the State believes Defendant is or is threatening to dispose of sewage and human excreta in a manner that contaminates surface soil, contaminates sub-surface drinking water, and creates a risk for disease transmission to a person or between persons in violation of Texas Health & Safety Code section 341.011.

17. Contrary to Tanner’s advertising, however, there are no “free” homes. Rather, reports indicate that individuals who move to Defendant’s property are evicted when they fail to make monthly payments or perform work on Defendant’s behalf; that Defendant receives financial support from those individuals as a condition of them

remaining on the property; and that Defendant and his co-conspirators seek to engage in organized criminal activity on the property.

LEGAL BACKGROUND

18. At the request of the county district attorney, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty. Tex. Health & Safety Code § 341.092(f).

19. “If it appears that a person has violated, is violating, or is threatening to violate this chapter, [...] the attorney general on request by the district attorney [...] may institute a civil suit in district court for: (1) injunctive relief to restrain the person from continuing the violation or threat of violation; (2) the assessment and recovery of a civil penalty; or (3) both injunctive relief and civil penalty. Tex. Health & Safety Code § 341.092(d).

20. The Attorney General also possesses authority to restrain violations of the Texas Deceptive Trade Practices Act wherever he has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful under the Act. Tex. Bus. & Com. Code § 17.47(a)

Claim One: Violation of Texas Health & Safety Code § 341.011

21. A public nuisance includes sewage, human excreta, wastewater, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons. Tex. Health & Safety Code § 341.011.

22. Human excreta in a populous area shall be disposed of through properly managed sewers, treatment tanks, chemical toilets, or privies constructed and maintained in conformity with the Department of State Health Services specifications, or by other methods approved by the department. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of a drinking water supply, the infection of flies or cockroaches, or the creation of any other public health nuisance. Tex. Health & Safety Code § 341.014(a).

23. The Defendant may not cause, suffer, allow, or permit a violation of the Health and Safety Code or a rule adopted thereunder. Tex. Health & Safety Code § 341.092(a).

24. Defendant, who owns the land, and the vehicles, campers and/or tents on it has created a situation that is violating or threatening to violate the Texas Health and Safety Code by having a multitude of occupied vehicles, campers and/or tents on land without access to property sewage, human excrement, or wastewater disposal.

25. Without access to proper disposal, the sewage and human excrement from individuals living in these vehicles, campers and/or tents is likely to be disposed of in a manner that pollutes the soil, could contaminate any sub surface drinking water, and creates the potential for disease transmission in violation of Texas Health & Safety Code Chapter 341.

26. Unless enjoined, Defendant will continue allow the situation described above to occur.

Claim Two: Violation of Texas Civil Practice & Remedies Code § 125.063

27. The habitual use of a place by a combination, criminal street gang, or foreign terrorist organization for engaging in gang activity is a public nuisance.

28. A “combination” means three or more persons who collaborate in carrying on criminal activities [...]” Tex. Penal Code § 71.01(a), and includes:

- a. Organized criminal activity as described by Section 71.02, Penal Code;
- b. Terroristic threat as described by Section 22.07, Penal Code.

29. “Gang activity” means the following types of conduct:

- (A) organized criminal activity as described by Section 71.02, Penal Code;
- (B) terroristic threat as described by Section 22.07, Penal Code.

Tex. Civ. Prac. & Rem Code § 125.061(3).

30. Defendant or his co-conspirators or combination have violated Texas Penal Code 22.07, Terroristic Threat, by threatening violence against law enforcement and oil field workers.

31. The Attorney General may sue to enjoin a violation of Section 125.063. Tex. Civ. Prac. & Rem. Code § 125.064(a).

32. Upon finding that a combination constitutes a public nuisance, the Court may enter an order enjoining the Defendant from engaging in the gang activities of the combination; and impose any other reasonable requirements to prevent the combination from engaging in future gang activities.

33. If the Court finds that a place is habitually used in a manner that constitutes a public nuisance, the court may include in its order reasonable requirements to prevent the use of the place for gang activity.

Claim Three: Common Law Public Nuisance

34. The State has a claim against Defendant under the common law public nuisance doctrine. *See, e.g., Riley v. Angelle*, 2022 WL 3092892, at *4 (Tex. App.—Houston [1st Dist.] Aug. 4, 2022); *see* Restatement (Second) of Torts § 821C (1979) (officer with “authority as a public official or public agency to represent the state” can bring public nuisance action). The State has an “intrinsic right to enact, interpret, and enforce its own laws.” *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015). That includes the authority to “temporarily enjoin those breaking” State law “pending trial,” *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020), as well as violations of Legislatively declared “existing policy.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). When the State brings enforcement actions and it is “determined that [a law] is being violated, it is within the province of the district court to restrain it.” *State v. Texas Pet Foods, Inc.*, 591 S.W.2d 800, 805 (Tex. 1979).

35. A common law public nuisance is present based on the standard assessment of public nuisance factors. “The question of reasonableness” in the public nuisance context “is determined by a variety of factors.” *Jamail v. Stoneledge Condo. Owners Ass’n*, 970 S.W.2d 673, 676 (Tex. App.—Austin, 1998). Those factors include (1) “[w]hether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience”; (2)

“whether the conduct is proscribed by a statute, ordinance or administrative regulation”; or (3) “whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actors knows or has reason to know, has a significant effect upon the public right.” Restatement (Second) of Torts § 821B. All of those factors show that a public nuisance exists here. The conduct involves a significant interference with the public health, safety, peace, comfort, and convenience, the conduct is proscribed by statute, including Texas Health & Safety Code § 341.011, and the conduct is continuing in nature and has a significant effect upon a public right.

36. There is a probable, imminent, and irreparable injury absent an injunction. The State suffers irreparable injury as a matter of law when the law is broken. *See, e.g., Shields v. State*, 27 S.W.3d 267, 273 (Tex. App.—Austin 2000, no pet.) (State need not prove likelihood of future violations to enjoin statutory violation); *Mortgage Banc & Trust, Inc. v. State*, 718 S.W.2d 865, 869 (Tex. App.—Austin 1986, no writ) (similar); *Rio Grande Oil Co. v. State*, 539 S.W.2d 917, 921 (Tex. App.—Houston [1st Dist.] 1976, writ ref’d n.r.e.) (similar).

Claim Four: Violations of the Texas Deceptive Trade Practices Act

37. The Texas Deceptive Trade Practices Act expressly includes “real property” within its definition of “goods.” Tex. Bus. & Com. Code § 17.45(1).

38. As set forth above, Defendant has, in the course of trade and commerce, engaged in false, misleading, and deceptive acts and practices, as declared unlawful

by § 17.46(a) and (b) of the Texas Deceptive Trade Practices Act. Such acts and practices include, but are not limited to:

- a. Engaging in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA § 17.46(a);
- b. Representing that goods or services have approval, characteristics, uses, or benefits which they do not have, in violation of DTPA § 17.46(b)(5);
- c. Representing that goods or services are of a particular standard, quality, or grade, if they are of another, in violation of DTPA § 17.46(b)(7);
- d. Advertising goods or services with intent not to sell them as advertised, in violation of DTPA § 17.46(b)(9);
- e. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions, in violation of DTPA § 17.46(b)(11);
- f. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA § 17.46(b)(12); and
- g. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer(s) into a transaction which the consumer(s) would not have entered had the information been disclosed, in violation of DTPA § 17.46(b)(24).

INJUNCTIVE RELIEF

39. “Texas courts have held that when an applicant relies upon a statutory source for injunctive relief, such as the DTPA, the statute’s express language supersedes the common law injunctive relief elements...” *David Jason W. & Pydia, Inc. v. State*, 212 S.W.3d 513, 519 (Tex. App.—Austin 2006, no pet.); *see also Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 210 (Tex. 2002).

40. The Texas Health & Safety Code allows the State to obtain injunctive relief to remedy violations or threatened violations of the public nuisance statutes. Tex. Health & Safety Code § 341.092(f), (h).

41. Under the Texas Deceptive Trade Practices Act, “whenever the consumer protection division [(1)] has reason to believe that any person is engaging in, [(2)] has engaged in, or [(3)] is about to engage in any act or practice declared to be unlawful” and that the “proceedings would be in the public interest...the division may bring an action... to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.” Tex. Bus. & Com. Code § 17.47(a).

A. Ex Parte Temporary Restraining Order

42. In the present matter, an emergency exists such that immediate and irreparable injury, loss, or damage would occur as a result of any delay in obtaining a temporary restraining order.

43. As set forth above, Defendant is currently violating or threatening to violate Chapter 341 of the Texas Health and Safety Code. The State requests that the Court

immediately enter an ex parte Temporary Restraining Order against Defendant and his officers, agents, employees, and all other persons in active concert or participating with him, enjoining them from discharging or allowing the discharge of any sewage or human excrement in a manner that could contaminate the soil, sub-surface drinking water, or create the potential for disease transmission.

44. The State further requests that Defendant be enjoined from allowing any person to move on to, reside, or otherwise establish habitation or domicile on the property known locally as 2985 Private Road 3008, Mentone, Texas 79752, parcels 108451 and 108463 and from advertising that he is offering any “free” housing at such locations.

B. Temporary and Thereafter Permanent Injunction

45. The State requests that after notice and hearing, the Court temporarily enjoin Defendant and his officers, agents, employees, and all other persons in active concert or participating with him from discharging or allowing the discharge of any sewage or human excrement in a manner that could contaminate the soil, sub-surface drinking water, or create the potential for disease transmission.

46. The State further requests that Defendant be enjoined from allowing any person to move on to, reside, or otherwise establish habitation or domicile on the Property known locally as 2985 Private Road 3008, Mentone, Texas 79752, parcels 108451 and 108463 and from advertising that he is offering any “free” housing at such locations.

47. The State asks that, after trial on the merits, the Court permanently enjoin Defendant and his officers, agents, employees, and all other persons in active concert or participating with him from discharging or allowing the discharge of any sewage or human excreta in a manner not authorized by Chapter 341 of the Texas Health and Safety Code; and from allowing any person to move on to, reside, or otherwise establish habitation or domicile on the Property known locally as 2985 Private Road 3008, Mentone, Texas 79752, parcels 108451 and 108463.

CIVIL PENALTIES

48. The State seeks civil penalties in an amount of not more than \$10,000 per DTPA violation. Tex. Bus. & Com. Code § 17.47(c).

49. The Texas Health & Safety Code authorizes civil penalties between \$10 and \$200 for each day of each public nuisance violation alleged in this petition.

50. The State seeks civil penalties for each day of each violation.

PRAYER

The State requests:

1. The Court grant the State's request for an ex parte temporary restraining order as described above;
2. The Court, after notice and hearing, issue a temporary injunction as described above;
3. The Court, after a final hearing on the merits, enter a permanent injunction as described above;
4. The Court, after a final hearing on the merits, grant judgment for appropriate civil penalties against Defendant, including post-judgment interest; and

5. For such other and further relief, at law and in equity, to which the County may show itself justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Civil Litigation

ERNEST C. GARCIA
Chief, Administrative Law Division

JOHNATHAN STONE
Chief, Consumer Protection Division

/s/ Lauren McGee
LAUREN MCGEE
Assistant Attorney General
State Bar No. 24128835
Office of the Attorney General of Texas
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-3203
Lauren.McGee@oag.texas.gov

Andrew Brown
Assistant Attorney General
State Bar. No. 24135334
Office of the Attorney General of Texas
Consumer Protection Division
300 W. 15th St.
Austin, Texas 78701
Telephone: (832) 348-7316
Andrew.Brown@oag.texas.gov

***Attorneys for Plaintiff, The State of
Texas***

JURAT

My name is Clinton Fielder, and I am a Deputy Sheriff for the Loving County Sheriff's Department, a governmental agency located at 114 W. Collins Ave, Mentone, Texas 79754. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing factual statements in this Petition are true and correct.

Executed in Loving County, Texas on this 9th day of October, 2025.



Deputy Sheriff Clinton Fielder

EXHIBIT A



EXHIBIT B



EXHIBIT C



Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Lauren McGee on behalf of Lauren McGee
Bar No. 24128835
lauren.mcgee@oag.texas.gov
Envelope ID: 106731389
Filing Code Description: Petition
Filing Description: Final Petition with Exhibits
Status as of 10/14/2025 8:03 AM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|-----------------|-----------|-------------------------------|-----------------------|--------|
| Lauren McGee | | lauren.mcgee@oag.texas.gov | 10/10/2025 5:30:06 PM | SENT |
| Ernest Garcia | | ernest.garcia@oag.texas.gov | 10/10/2025 5:30:06 PM | SENT |
| Jennifer Foster | | Jennifer.Foster@oag.texas.gov | 10/10/2025 5:30:06 PM | SENT |
| Andrew Brown | | andrew.brown@oag.texas.gov | 10/10/2025 5:30:06 PM | SENT |

AT 9:40 O'CLOCK AM
OCT 15 2025

Cause No. 25-151-DCCV-00050

THE STATE OF TEXAS,
Plaintiff,

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF
Moyle Cam

v.

LOVING COUNTY, TEXAS

MALCOLM TERRALL TANNER,
Defendant.

143rd JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER AND ORDER SETTING HEARING FOR TEMPORARY INJUNCTION

On this day, the Court, having considered Plaintiff's, the State of Texas's (State), Verified Original Petition and Request for an Emergency Temporary Restraining Order, Injunctive Relief, and Civil Penalties, grants the State's request for an ex parte emergency temporary restraining order enjoining Defendant Malcolm Terrall Tanner (Defendant) and his officers, agents, employees, and all other persons in active concert or participation with him from: 1) discharging or allowing the discharge of any sewage or human excreta in a manner that could contaminate the soil, sub-surface drinking water, or create the potential for disease transmission; and 2) allowing any person to move on to, reside, or otherwise establish habitation or domicile on the property located at 2985 Private Road 3008, Mentone, Texas 79754 parcels 108451 and 108463.

Based on the verified Petition and other evidence presented with the State's application, **the Court finds** that Defendant and his officers, agents, employees, and other acting in concert or participation with him have violated or are threatening to violate Texas Health and Safety Code section 341 by discharging or

allowing the discharge of sewage or human excreta in a manner that could contaminate the soil, sub-surface drinking water, or create the potential for disease transmission. As a result of said discharge, this Order is entered ex parte to prevent the immediate and irreparable injury, loss, or damage to public health. The contamination of soil, sub-surface drinking water, and the potential for disease transmission is irreparable.

The State has, therefore, met its burden establishing the requirements for being granted injunctive relief under Texas Health & Safety Code section 341.092(f).

Finally, **the Court further finds** that because the State seeks injunctive relief pursuant to an authorized statute, it need not prove immediate and irreparable injury, nor does the Court have to balance the equities when the State litigates in the public interest. *See State v. Texas Pet Foods*, 591 S.W.2d 800 (Tex. 1979). Accordingly, the application for an emergency ex parte temporary restraining order is **GRANTED**.

It is, therefore, ordered that, for the duration of this order and any extensions of such order granted by this Court or agreed to by the parties, Defendant and his officers, agents, employees, and all other persons in active concert or participation with him, comply with this Order as follows:

1. **It is ordered** that Defendant shall not discharge or allow the discharge of any sewage or human excrement in a manner that could contaminate the soil, sub-surface drinking water, or create the potential for disease transmission

at his property located at 2985 Private Road 3008, Mentone, Texas 79752, parcels 108451 and 108463.

2. **It is further ordered** that Defendant shall refrain from allowing any person to move on to, reside, or otherwise establish habitation or domicile on the property located at 2985 Private Road 3008, Mentone, Texas 79752, parcels 108451 and 108463.
3. **Finally, it is ordered** that the Clerk shall issue notice to Defendant at 1304 South Grant Avenue, Crawfordsville, Indiana 47933 and 2985 Private Road 3008, Mentone, Texas 79754, that the hearing on the State's application for a temporary injunction is set for October 31, 2025, at 10:00 (a.m.) p.m. The purpose of the hearing will be to determine whether this temporary restraining order should be extended, or a temporary injunction should be issued pending a full trial on the merits.
4. The State of Texas is exempt from paying a filing fee, bond, or other security costs.

This order expires on November 7, 2025.

SIGNED on October 15, 2025, at 9:46 (a.m.) p.m.

Alan Nicholas

PRESIDING JUDGE



Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Lauren McGee on behalf of Lauren McGee

Bar No. 24128835

lauren.mcgee@oag.texas.gov

Envelope ID: 106797418

Filing Code Description: Proposed Order

Filing Description: Proposed TRO_2

Status as of 10/14/2025 9:05 AM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|-----------------|-----------|-------------------------------|-----------------------|--------|
| Jennifer Foster | | Jennifer.Foster@oag.texas.gov | 10/14/2025 8:33:09 AM | SENT |
| Ernest Garcia | | ernest.garcia@oag.texas.gov | 10/14/2025 8:33:09 AM | SENT |
| Andrew Brown | | andrew.brown@oag.texas.gov | 10/14/2025 8:33:09 AM | SENT |

Associated Case Party: STATE OF TEXAS

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|----------------------------|-----------------------|--------|
| Lauren McGee | | lauren.mcgee@oag.texas.gov | 10/14/2025 8:33:09 AM | SENT |

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

| | | |
|-------------------------------|---|---------------------------------|
| MALCOLM TERRALL TANNER, | § | |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | Civil Cause No: 4:2025-cv-00033 |
| | § | |
| LOVING COUNTY, TEXAS, et al., | § | |
| <i>Defendants.</i> | § | |

ORDER STRIKING PLAINTIFF’S AMENDED COMPLAINT, NOTICE OF CHANGE OF VENUE AND REMOVAL

The State of Texas, Intervenor, filed an Expedited Motion for the Court to Strike or Dismiss the Plaintiff’s Amended Complaint, Notice of Change of Venue and Removal (Dkt. No. 6) or in the alternative for the court to Sever and Remand Cause No. 25-151-DCCV-00050 to the 143rd Judicial District Court of Loving County, Texas. The court having considered the motion and arguments finds that the motion should be **GRANTED**.

It is hereby ordered by the court that the Plaintiff’s Amended Complaint, Notice of Change of Venue and Removal (Dkt. No. 6) is hereby **STRICKEN** from the record as the plaintiff failed to comply with Fed. R. Civ. P. 15(a)(2).

It is further ordered, that the 143rd Judicial District Court of Loving County, Texas, may proceed with any temporary injunction hearing or other proceedings as may be deemed necessary by that court in Cause No. 25-151-DCCV-00050.

Signed and entered this _____ day of October 2025.

Honorable David Counts
United States District Judge