

IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI

STATE EX REL. JEREMIAH W (JAY) NIXON,)
ATTORNEY GENERAL,)
P.O. Box 899)
Jefferson City, MO 65102)

and)

STATE BOARD OF EMBALMERS)
AND FUNERAL DIRECTORS,)
3605 Missouri Boulevard)
P.O. Box 423)
Jefferson City, MO 65106-0423)

Plaintiffs,)

v.)

No. _____

WARREN FUNERAL CHAPEL, INC.,)
A Missouri corporation,)
12 East Ash Street)
Columbia, Missouri 65203)

Serve: Harold Warren, Jr.)
12 East Ash Street)
Columbia, Missouri 65203,)

HAROLD WARREN, SR.)
12 East Ash Street)
Columbia, MO 65203, and)

HAROLD WARREN, JR.)
12 East Ash Street)
Columbia, Missouri 65203,)

Defendants.)

PETITION FOR PRELIMINARY INJUNCTION
AND PERMANENT INJUNCTION

Plaintiffs, Attorney General Jeremiah W (Jay) Nixon, and the State Board of Embalmers and Funeral Directors (“Board”), by and through counsel, the Attorney General for the State of Missouri, for its cause of action states:

COUNT I: PUBLIC HEALTH, SAFETY, AND WELFARE VIOLATIONS

A. Nature of the Case

The Board brings this action to restrain and enjoin Defendant, Warren Funeral Chapel, Inc., (“Warren Funeral Chapel”), from offering to engage or engaging in the performance of any acts or practices of a funeral establishment as defined under § 333.011(4), RSMo, as amended, based on its failure to properly care for human remains under its control and to fail to properly guard against contagious, infectious, or communicable diseases or the spread thereof.

The Board further brings this action to restrain and enjoin Warren Funeral Chapel, Harold Warren, Sr., and Harold Warren, Jr., from engaging in the practice of funeral directing and/or embalming because of actual acts that have occurred that have resulted in irreparable harm and/or to prevent irreparable harm from occurring.

B. The Parties

1. Petitioner, the State Board of Embalmers and Funeral Directors (“Board”), is an agency of the State of Missouri, established and existing pursuant to Section

333.151, RSMo¹, for the purpose of administering and enforcing Chapter 333 and portions of Chapter 436, RSMo, and the regulations adopted thereunder.

2. Warren Funeral Chapel, Inc., is a Missouri corporation doing business in Boone County and Callaway County, Missouri.

3. Warren Funeral Chapel, Inc., has a current and active license, no. 2001029782, to operate a Function A and Function C funeral establishment in Columbia, Boone County, Missouri.²

4. Warren Funeral Chapel, Inc., has a current and active license, no. 002230, to operate a Function C funeral establishment in Fulton, Callaway County, Missouri.

5. All conduct alleged hereafter pertains to activities of the funeral establishment in Columbia, Missouri.

6. Harold Warren, Sr., is licensed by the Board as an embalmer, license no. 7012, and as a funeral director, license no. 5568. As of the filing of this Petition and at all relevant times herein, both licenses are and were current and active.

7. Harold Warren, Jr., is licensed by the Board as an embalmer, license no. 7013, and as a funeral director, license no. 5569. As of the filing of this Petition and at all relevant times herein, both licenses are and were current and active.

¹ All references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

² Funeral establishment licenses are specific for certain functions, as set forth in 20 CSR 2120-2070(2).

8. During the times relevant to this Petition, Harold Warren, Sr., was the funeral director-in-charge, as such is defined in 20 CSR 2120.1.040, until February 28, 2008.

9. During the times relevant to this Petition, Harold Warren, Jr., was the funeral director-in-charge, as such is defined in 20 CSR 2120.1.040, since February 28, 2008.

C. Jurisdiction and Venue

10. This Court has jurisdiction and venue over this cause of action pursuant to § 333.241, RSMo, which authorizes the Board to seek injunctive relief to prevent any person from offering to engage or engaging in the performance of any acts or practices for which a license is required upon a showing that the person presents a substantial probability of serious danger to the health, safety or welfare of the public. Section 333.241, RSMo, states in relevant part:

1. Upon application by the board, and the necessary burden having been met, a court of general jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person from:

.....

(2) Engaging in any practice or business authorized by a certificate of registration or authority, permit or license issued pursuant to this chapter upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or patient of the licensee.

2. Any such action shall be commenced either in the county in which such conduct occurred or in the county in which the defendant resides.

3. Any action brought under this section shall be in addition to and not in lieu of any penalty provided by this chapter and may be brought concurrently with other actions to enforce this chapter.

Improper Care and Storage of Human Remains

D. V.

11. On August 10, 2007, D. V. died and was admitted to Warren Funeral Chapel.³
12. On August 19, 2007, funeral services for D. V. were held at Warren Funeral Chapel.
13. On July 11, 2008, almost one year later, Harold Warren, Jr., delivered the body of D. V. to Kinney Mortuary Service & Crematory, Inc., for cremation. The body of D. V. had been embalmed.
14. Warren Funeral Chapel does not have a refrigeration unit for the storing of human remains. D. V. was stored at Warren Funeral Chapel from August 10, 2007 to July 11, 2008 without refrigeration in violation of 20 CSR 2120-2.070(21), which states:

(21) According to section 333.121.2(17), RSMo, the State Board of Embalmers and Funeral Directors may impose disciplinary action for failure to obtain authorization to embalm from the person entitled to custody or control of the body, if the body is embalmed. If the body is not embalmed, a Missouri

³ Initials are used to protect against the release of sensitive information.

licensed funeral establishment shall not hold the unembalmed body for any longer than twenty-four (24) hours unless the unembalmed body is refrigerated in a cooling unit at a temperature of forty degrees Fahrenheit (40° F) or cooler or encased in an airtight metal or metal-lined burial case, casket or box that is closed and hermetically sealed.

July 11, 2008 Inspection

15. On July 11, 2008, inspectors for the Board inspected Warren Funeral Home.
16. Upon entering Warren Funeral Chapel, the inspectors noted a strong odor throughout the facilities.
17. During its inspection of Warren Funeral Chapel, the Board inspectors found the body of J. H. in an advanced stage of decay stored in the Electrical Room of Warren Funeral Chapel.
18. J. H. died on September 9, 2007. Her cause of death was Hepatitis B, Hepatitis C, and Alcoholic Hepatitis.
19. The body of J. H. was delivered to Warren Funeral Chapel on September 9, 2007.
20. J. H.'s remains were never embalmed and were stored in a double body bag. Warren Sr. opened the body bag to reveal the remains with his bare hands.
21. J. H.'s remains were stored at Warren Funeral Chapel without refrigeration or embalming from September 9, 2007 until July 11, 2008, in violation of 20 CSR 2120-2.070(21), as cited above.

22. Thereafter, the Boone County Medical Examiner took the body of J. H. into custody and it has now been cremated.

23. On July 11, 2008, the inspectors found a casket that had a strong odor. Upon opening the casket, a cockroach ran off and body fluids were in the foot end of the casket along with powder formaldehyde.

24. Warren Sr. stated that the body of J. H. had just been removed from the casket, and that it would be used for the cremation of another body.

25. On July 11, 2008, the inspectors found the body of W. B. lying on a cot in the basement. W. B. died on July 10, 2008.

26. Warren Sr. stated that at that time, the body of W. B. had not been embalmed. While talking with the inspectors, Warren Sr. unzipped the body bag in which W. B. was stored and starting positioning the facial features with his bare hands.

July 15, 2008 Inspection

27. On July 15, 2008, inspectors for the Board inspected Warren Funeral Home.

28. During this inspection, the Medical Examiner for Boone County took custody of the body of J. H. which was still at Warren Funeral Home.

29. On July 15, 2008, W. B.'s body was still present, but Warren Sr. said it had been embalmed. The Statement of Goods and Services for W. B. indicated that he was to be cremated and not embalmed.

30. On July 15, 2008, the body of R. K. was in the embalming preparation room. R. K. died on July 13, 2008 at University Hospital. The body of R. K. was picked up by Warren Funeral Chapel from University Hospital on July 15, 2008, at approximately 11:00 a.m.

31. As of the time of the inspection, the body of R. K. was not embalmed and was to be cremated.

32. At the time of the inspection, Warren Funeral Chapel did not have an authorization to embalm R. K., as required by § 333.121.2(17), RSMo, and 20 CSR 2120-2.070(21), cited above, and such services were not included in the Statement of Goods and Services, as required by § 333.145.1, RSMo, which provides:

1. Every funeral firm in this state or the funeral service licensee thereof shall give or cause to be given to the person or persons making funeral arrangements or arranging for the disposition of a dead human body, at the time such arrangements are completed and prior to the time of rendering the service or providing the merchandise, a written statement signed by the purchaser or purchasers or their legal representatives, and a representative of the funeral establishment, showing to the extent then known:

(1) The price of the service that the person or persons have selected and what is included therein;

(2) The price of each of the supplemental items of service or merchandise requested;

(3) The amount involved for each of the items for which the firm will advance moneys as an accommodation to the family;

(4) The method of payment.

July 16, 2008 Inspection

33. On July 16, 2008, inspectors for the Board inspected Warren Funeral Home.
34. The body of R. K. was still at Warren Funeral Chapel and had not been embalmed.
35. The body of L. F. was also in the basement. L. F. died just after midnight on July 15, 2008. Warren Funeral Chapel picked up the body of L. F. from Boone County Hospital in the morning of July 15, 2008. The body of L. F. was to be cremated and not embalmed.
36. More than 24 hours had passed since the bodies of R. K. and L. F. were received by Warren Funeral Chapel.
37. The storing of the bodies of R. K. and L. F. without refrigeration or embalming for more than 24 hours was in violation of 20 CSR 2120-2.070(21), cited above.
38. In the casket with the body of L. F. was a black garbage bag which contained human organs. These were not L. F.'s organs because no autopsy had been performed on the body of L. F. The bag contained organs from more than one body.
39. Warren Sr. represented that the human organs were from another person, D. T., who was buried on July 15, 2008. Warren Sr. said that he had forgotten to bury them

with D. T. on July 15, 2008, and that he was intending to cremate them with the body of L. F.

40. The cremation of L. F. with the other human organs would have resulted in a violation of 20 CSR 2120-2.071(18) for cremating the remains of more than one body without proper authorization.

41. Regulation 20 CSR 2120-2.071(18), provides:

(18) The remains of only one (1) body shall be in the cremation chamber at one (1) time unless simultaneous cremation has been authorized in writing by the person(s) entitled to custody or control of each body.

42. The Board is informed and believes that none of the human organs contained in the trash bag belonged to the body of D. T.

43. The inspectors noted incisions on the body of L. F. indicative of embalming. Warren Funeral Chapel had embalmed or started to embalm the body of L. F. on July 15, 2008 without written authorization in violation of 20 CSR 2120-2.070(21), cited above, and § 333.121.2(17), RSMo.

Other Unsanitary Conditions and Violations

44. As of July 11, 2008, the embalming log for Warren Funeral Chapel ended with a record of a body being embalmed on June 18, 2008.

45. As of July 11, 2008, the embalming room and utensils were dirty and had not been cleaned after Warren Funeral Chapel's last embalming, in violation of 20 CSR 2120-2.090(9), which states:

(9) All preparation rooms and all articles stored in them shall be kept and maintained in a clean and sanitary condition. All embalming tables, hoppers, sinks, receptacles, instruments and other appliances used in embalming or other preparation of dead human bodies shall be so constructed that they can be kept and maintained in a clean and sanitary condition. The following minimum standards shall apply:

.....

(B) Facilities shall exist for the proper disinfection of embalming instruments and the embalming table[.]

46. As of July 11, 2008, the embalming table was not covered, in violation of 20-CSR 2120-2.090(9)(E), which states:

(9) All preparation rooms and all articles stored in them shall be kept and maintained in a clean and sanitary condition. . . . The following minimum standards shall apply:

.....

(E) When not in use, embalming tables shall be cleaned, disinfected and covered with a sheet.

47. On July 15, 2008, the embalming room was in disarray. The embalming table was covered with blood and not covered, the trash can was running over, the instruments had not been cleaned and disinfected, in violation of 20 CSR 2120-2.090(9), cited above.

48. On July 15, 2008, the body of G. E. was found on the floor in a box. It appeared that the body of G. E. was embalmed. He was to be cremated.

49. As of July 15, 2008, the embalming log still ended with the June 18, 2008 embalming and did not show that W. B., G. E., or D. T. had been embalmed, in violation of 20 CSR 2120-2.070(24), which states:

(24) Each Function A funeral establishment licensed for embalming shall maintain on the premises in the preparation room a register log.

50. In the alternative, if the body of W. B. was not embalmed as of July 15, 2008, then such would have been stored at Warren Funeral Chapel for more than 24 hours without embalming or refrigeration in violation of 20 CSR 2120-2.070(21), cited above.

51. Warren Funeral Chapel's failure to maintain the premises in a clean and orderly condition violates 20 CSR 2120-2.070(14) and (15), which states:

(14) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be kept free and clean of litter, dirt, debris and clutter or other objects or conditions which present a potential or actual hazard to the health, safety or welfare of the public.

(15) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be maintained in a manner that does not present a potential or actual hazard to the health, safety or welfare of the public.

52. Warren Funeral Chapel's storing of a diseased body that had not been embalmed without refrigeration for ten months, its consistent holding of bodies without embalming and refrigeration for more than 24 hours, its keeping of soiled caskets on the premises and using them for other bodies, its failure to maintain the embalming room in a clean and orderly condition, its failure to maintain an embalming log, and the handling of

dead and diseased bodies without gloves, shows that Warren Funeral Chapel has failed and/or refused to properly guard against contagious, infectious and communicable diseases as required by § 333.121.2(19), RSMo, which states:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

.....

(19) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof[.]

53. The conduct of Warren Funeral Chapel, Warren Sr., its funeral directors-in-charge until February 28, 2008, and Warren Jr., its funeral director-in-charge since February 28, 2008, as alleged herein, constitutes a substantial probability of danger to the public health, safety and welfare of the employees and clients of Warren Funeral Chapel, and of the general public, thus authorizing this Court to grant injunctive relief pursuant to § 333.241.1(2), RSMo.

WHEREFORE, based on the foregoing, the Board prays this Court for the following relief:

a. Issue a judgment finding that defendants have violated §§ 333.121.2(17) and (19) and 333.145, RSMo, and 20 CSR 2120-2.070(14), (15), (21) and (24), 20 CSR

2120-2.071(18), and 20 CSR 2120-2.090(9), and thus pose a danger to the health, safety and welfare of its employees, its clients and the public, generally;

b. Issue preliminary and permanent injunctive relief pursuant to § 333.241, RSMo, prohibiting Harold Warren, Sr., and Harold Warren, Jr., from engaging in the practice of funeral directing and/or embalming, and prohibiting Warren Funeral Chapel from operating a Missouri funeral establishment until such time as defendants can provide the Court with verification that they can operate within Missouri law to protect the health, safety, and welfare of Missouri citizens;

c. Assess against Warren Funeral Chapel all costs, fees, and expenses of these proceedings, including, but not limited to, the Board's investigative costs, attorney's fees, and costs incurred in prosecuting this action; and

d. Such other and further relief as this Court deems just and proper in these circumstances.

COUNT TWO: MERCHANDISING PRACTICES VIOLATIONS

54. Plaintiff adopts and incorporates the foregoing allegations of fact as though set forth herein in bringing Count Two against defendants Warren Funeral Chapel, Inc., Harold Warren, Sr., and Harold Warren, Jr., and alleges the following in support of a Petition for Preliminary and Permanent Injunctions, Civil Penalties and Other Relief arising from the violations alleged below of Missouri's Merchandising Practices Act (Mo. Rev. Stat. §§ 407.010 through 407.140).

55. Plaintiff, Jeremiah W. (Jay) Nixon, brings this Count Two in his capacity as the duly elected, qualified and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to common law, constitutional, and statutory authority of the Office of the Attorney General, including but not limited to Chapter 407 of the Revised Statutes of Missouri (as amended), and regulations promulgated thereunder.⁴ The undersigned is a duly appointed Assistant Attorney General.

56. This Court has jurisdiction over the subject matter of Count Two pursuant to Chapter 407 of the Revised Statutes of Missouri. Specifically, this Court has jurisdiction over this action under Section 407.100 RSMo which allows the Attorney General to seek injunctive relief, civil penalties, restitution, and other relief for violations of Section 407.020, RSMo.

57. This Court also has personal jurisdiction over the Defendants pursuant to Section 407.100 RSMo.

58. Venue lies in the County of Boone in that the Defendants' principle place of business is located within Boone County and violations of the Missouri Merchandising Practices Act described below occurred, among other places, in Boone County, Missouri; accordingly venue is proper in this circuit. § 407.100.7 RSMo.

⁴ All statutory references are to Mo. Rev. Stat. (2000), as presently amended, unless otherwise indicated.

The Missouri Merchandising Practices Act
(§ 407.010 - § 407.145 RSMo)

59. Section 407.020, RSMo 2000, provides as follows:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in § 407.452, in or from the State of Missouri, is declared to be an unlawful practice....

60. Section 407.010 defines the term “merchandise” to mean “any objects, wares, goods, commodities, intangibles, real estate or services;”

61. Section 407.010 defines the term “person” to mean “any natural person or his legal representative, partnership, firm, for profit or not for profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof;”

62. Section 407.010 defines the term “sale” to mean “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit,” and

63. The Circuit Court has jurisdiction of the attorney general’s claim of unlawful practices pursuant to § 407.100, RSMo 2000, which provides:

(1) Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek

and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitation, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

(2) In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds their funds or property may be hidden or removed from this state or that such orders or injunctions are otherwise necessary.

(3) If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

(4) The court, in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including, but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

(5) The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.

(6) The court may award to the state a civil penalty or not more than one thousand dollars per violation; except that, if the

person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance or procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

(7) Any action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.

(8) The attorney general is authorized to enter into consent judgments or consent injunctions with or without admissions or violations of this chapter. Violation of any such consent judgment or consent injunction shall be treated as a violation under section 407.110.

64. Pursuant to the authority granted under Section 407.145, RSMo 2000, the Attorney General has promulgated rules explaining and defining terms used in 407.020, RSMo 2000, copies of which are attached hereto as Exhibit "A" and incorporated herein by reference.

Defendant's Trade Practices

65. Defendants are engaged in the marketing and offer for sale and sale of funeral services and other funeral-related merchandise, including, but not limited to funeral directing and embalming and related services, as well as the sale of caskets and related funeral supplies in and from their funeral establishments in Boone County and Callaway County, Missouri.

66. The above-described funeral related services and goods and supplies constitute merchandise as that term is defined by Sections 407.010 RSMo and 407.1070(8), RSMo 2000.

67. The providers of funeral services and other funeral-related merchandise are subject to regulation and licensure by the Missouri Board of Funeral Embalmers, which have promulgated regulations governing the provision of such merchandise for the protection of public health and safety.

Violations of Section 407.020, RSMo

68. Defendants, acting individually and through employees and agents, have engaged in conduct which violates § 407.020, RSMo by employing methods, acts, uses and practices of deception, fraud, false pretenses, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts in connection with the sale of funeral-related merchandise, by

A. Omitting to disclose, concealing or suppressing material facts by failing to meaningfully advise consumers (a) that Warren Funeral Chapel lacked refrigeration facilities in its Boone County location, and (b) that Warren Funeral Chapel was engaged the storing and handling human remains in violations of State Regulations, which facts were and are material to consumers in their selection and purchase of funeral services, in violation of § 407.020, RSMo., and 15 CSR 60-9.110;

B. Engaging in misrepresentation by stating, directly and through implication, that (a) the remains of deceased persons would be cremated when they were not, (b) that the remains of deceased persons would be embalmed, when they were not, (c) that the wishes and directions of families of deceased persons had been, were being, or would be followed with regard to the provision of funeral services and other funeral-related merchandise, (d) that the remains of deceased persons would be handled in a manner consistent with consumer expectations and the standard practices of the funeral industry, and (e) that the remains of deceased persons would be handled in accordance with State Regulations governing the provision of funeral services by licensed funeral service providers when such direct and implied statements were not in accord with the fact, in violation of § 407.020.1, RSMo and further in violation of 15 CSR 60-070.

C. Engaging in unfair practices by (a) failing to provide the services contracted, and (b) failing to provide such services in a method and manner compliant with State Regulations governing the provision of the same, where such conduct constitutes a unilateral breach of contract in violation of 15 CSR 60-8.070, constitutes illegal conduct in violation of 15 CSR 60-090, and is further unfair pursuant to 15 CSR 60-8.020, all in violation of § 407.020, RSMo.

Basis for Preliminary Injunction

69. Based on knowledge and belief of Plaintiff, the Defendant and its employees and agents have engaged in an unknown number of violations of § 407.020 of Missouri's Merchandising Practices Act, and are likely to continue to engage in more violations of such Act for the purpose of offering for sale ownership and membership interests.

70. Section 407.100 RSMo provides this Court with the authority to issue a preliminary injunction and to fashion appropriate remedies necessary to grant relief in actions brought under the Merchandising Practices Act.

71. The Attorney General has investigated and is continuing to investigate the above described violations of Section 407.020 RSMo and intends to seek entry of a preliminary injunction to protect the public and to carry out the mandate of Chapter 407 on the basis that the Defendant retains the ability to commit further violations of the Merchandising Practices Act and the practices alleged in this Petition are likely to continue.

72. Irreparable harm to the public caused by such volatile conduct is presumed for purposes of injunctive relief under Chapter 407, and because Defendant is likely to continue engaging in the practices alleged in this Petition, specifically in Paragraphs 11-68 above, Plaintiff seeks a Preliminary Injunction during the pendency of this action, until

a final judgment on the merits, to protect the public from these ongoing unlawful practices.

73. Plaintiff has no adequate remedy at law.

Relief

As to Count II, Plaintiff, the State of Missouri, respectfully asks this Court to grant the following relief:

1. Following a hearing to issue a Preliminary Injunction, issue an order:
 - A. Finding that Defendant has violated the provisions of § 407.020, RSMo;
 - B. Finding that Plaintiff, State of Missouri, and the public will suffer irreparable injury, loss, and/or damage in the absence of this Preliminary Injunction; and
 - C. Prohibiting and enjoining Defendant from continuing to engage in the acts and practices described in Paragraphs 11-68 above until the completion of a trial and the rendering of a judgment on Plaintiff's claims.

2. Following a trial on the merits, issuing a Judgment:
 - A. Finding that Defendant has violated the provisions of § 407.020, RSMo;

- B. Enjoining Defendant from engaging in the acts and practices described in this Petition and specifically set forth in Paragraphs 11-68 above;
- C. Ordering the Defendant, jointly and severally, to pay to the Plaintiff, for the benefit of any and all persons who may have suffered an ascertainable loss by reason of Defendants' employment of acts and practices found by the Court to be unlawful pursuant to § 407.020, RSMo, all amounts necessary to restore to such persons any monies or property acquired by the Defendant, or by others for which the Defendant were responsible, as provided by Section 407.100, RSMo;
- D. Ordering the Defendants, jointly and severally, to pay to the Treasurer of Boone County, Missouri, for the benefit of the Boone County School Fund, civil penalties, in the sum of one thousand dollars (\$1,000.00) for each and every violation of § 407.020, RSMo found by the Court to have occurred;
- E. Ordering the Defendants, jointly and severally, to pay to the Merchandising Practices Revolving Fund, pursuant to Section 407.140 RSMo, an amount of money equal to ten percent (10%) of the total restitution ordered against Defendants, or such other amount

as the Court deems fair and equitable;

- F. Ordering the Defendants, jointly and severally, to pay to the Attorney General's Office, pursuant to Section 407.130 RSMo, an amount of money equal to all court costs incurred in this action and all costs of investigation and prosecution of this action, including reasonable attorneys' fees and any future costs of administering a restitution fund for payments to consumers as requested above;
- G. Ordering any and all such additional and further orders as this Court deems just, proper and necessary in this action.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

ANNE E. SCHNEIDER
Assistant Attorney General
Missouri Bar No. 35479

CRAIG H. JACOBS
Assistant Attorney General
Missouri Bar No. 48358

7th Floor, Broadway State Office Building
221 West High Street
P.O. Box 899
Jefferson City, Missouri 65102
Telephone: (573) 751-1143
Fax: (573) 751-5660

ATTORNEYS FOR PLAINTIFFS

s

VERIFICATION OF PETITION

The undersigned, being duly sworn, does hereby swear, attest, and affirm the allegations of the foregoing petition are true, accurate, and complete to the best of her knowledge and belief, and that all such allegations are based upon information and belief supported by evidence.

Becky Dunn, Executive Director
State Board for Embalmers and Funeral
Directors

The foregoing was subscribed and sworn to before me this _____ day of
_____ 2008.

Notary Public

My commission expires: _____