

CAUSE NO D-1-GN-21-006174

SKY MARKETING CORP., D/B/A	§	IN THE DISTRICT COURT
HOMETOWN HERO, CREATE A CIG	§	
TEMPLE, LLC, DARRELL SURIFF,	§	
AND DAVID WALDEN	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS DEPARTMENT OF STATE	§	
HEALTH SERVICES, JOHN	§	
HELLERSTEDT, IN HIS OFFICIAL	§	
CAPACITY AS COMMISSIONER OF	§	126TH DISTRICT COURT
THE TEXAS DSHS,		
<i>Defendants.</i>		

**NOTICE OF APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, the Texas Department of State Health Services (DSHS) and Dr. John Hellerstedt, in his official capacity as Commissioner of DSHS, through counsel, hereby file this Notice of Interlocutory Appeal in compliance with Texas Rule of Appellate Procedure 25.1.

The trial court number and style of this case is D-1-GN-21-006174; *Sky Marketing Corp., D/B/A Hometown Hero, Create A Cig Temple, LLC, Darrell Suriff, And David Walden v. Texas Department of State Health Services, John Hellerstedt, In His Official Capacity as Commissioner of The Texas DSHS*, in the 126th District Court, Travis County, Texas.

Defendants desire to appeal the November 8, 2021, interlocutory orders signed by the Honorable Judge Jan Soifer which denied Defendant's plea to the jurisdiction and granted Plaintiff's motion for a temporary injunction. *See* Exhibits 1 and 2. Defendants are entitled to an interlocutory appeal under Texas Rule of Appellate Procedure 28.1(a)

and Texas Civil Practice and Remedies Code § 51.014(a)(4) and (8), which allow for an appeal from an interlocutory order that grants a temporary injunction or denies a plea to the jurisdiction by a governmental unit.

Defendants appeal to the Third Court of Appeals.

This is an accelerated appeal as provided by Texas Rule of Appellate Procedure 28.1. This is not a parental termination or child protection case, as defined in Rule 28.4.

#### **NOTICE OF AUTOMATIC STAY**

This notice of appeal automatically stays the trial and all other trial court proceedings of this matter pending resolution of this appeal. Tex. Civ. Prac. & Rem. Code § 51.014(b).

#### **NOTICE THAT THE DEFENDANTS NEED NOT FILE A COST BOND**

Notice is further given that pursuant to Civil Practice and Remedies Code § 6.001 Defendants – a department of this state and the head of a department of this state – are not required to file a bond. Tex. Civ. Prac. & Rem. Code § 6.001(a). Defendants’ appeal is therefore perfected upon the filing of the notice of appeal.

#### **NOTICE REGARDING SUPERSEDEAS**

Notice is also given that, upon the filing of this instrument, the temporary injunction is superseded pursuant to Texas Civil Practice and Remedies Code Section 6.001(b) and Texas Rules of Appellate Procedure 24.2(a)(3), 29.1(b).

#### **NOTICE REGARDING CLERK’S RECORD**

Pursuant to Texas Rule of Appellate Procedure 35.3, Defendants-Appellants respectfully

request that the District Clerk of Travis County, Texas, file the Clerk's Record in the above referenced cause.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on November 10, 2021, on the following attorney-in-charge, by e-service and/or e-mail:

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### Automated Certificate of eService

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