

CAUSE NO. _____

**ADB INTERESTS, LLC AND
ASHLEY BLACK, INDIVIDUALLY**

Plaintiffs

v.

**KAREN WALLACE, INDIVIDUALLY
and d/b/a JOURNEYZ SPA &
PRODUCTS**

Defendant

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION
AND APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW ADB Interests, LLC (“ADB”) and Ashley Black, Individually, (“Ms. Black,” and with ADB, collectively, “Plaintiffs”), complaining of Karen Wallace, Individually and d/b/a Journeyz Spa & Products (“Defendant”), and for cause of action and grounds for relief would respectfully demonstrate unto this Honorable Court the following:

**I.
DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under Level 2 of Texas Rules of Civil Procedure 190.
2. Pursuant to TEX. R. CIV. P. 47, Plaintiff seeks monetary relief of \$200,000.00 but not more \$1,000,000.00 and non-monetary relief.

**II.
PARTIES**

3. ADB Interests, LLC. is a limited liability company organized and existing under the laws of the State of Texas with its principal office in Houston, Harris County, Texas.

4. Ashley Black is a resident of Galveston County, Texas.

5. Karen Wallace, Individually and d/b/a Journeyz Spa & Products is an individual citizen of Texas, who may be served with process at her usual place of business: 1116 Santa Fe St., Corpus Christi, Nueces County, Texas 78404 or wherever she may be found. Service is requested at this time.

III.
JURISDICTION AND VENUE

6. The court has jurisdiction over this dispute because the damages sought are within the jurisdictional limits of the court. Venue is proper in Harris County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE § 15.017 because this is a suit for libel, slander and invasion of privacy and it is brought, at the election of Plaintiffs, in the county in which ADB's principal office is located at the time of the accrual of the cause of action and pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002 because all or a substantial part of the acts complained about occurred in Harris County, Texas.

IV.
STATEMENT OF FACTS

7. Plaintiff, ADB produces, markets and sells consumer products to aid in opening the fascia, which is the thin sheath of fibrous tissue enclosing muscles and organs. ADB's products include the FasciaBlaster®, FaceBlaster™, Mini2™, Nugget and other products designed to assist the consumer in achieving optimal results, including instructional videos on the proper use of each product. ADB's products are designed for self-treatment to assist in pain reduction, improved flexibility, joint function, circulation, muscle definition and performance, nerve activity, posture, and enhanced beauty, including the virtual elimination of cellulite.

8. Ms. Black is the managing member of ADB. She is a leader in the development of fasciology, the study and treatment of the fascia to improve the body. Ms. Black is the inventor and developer of ADB's products.

9. The FasciaBlaster® is the cornerstone of ADB's product line.

10. Defendant is the owner of Journeyz Spa & Products, based on Defendant's public representations that Journeyz Spa is "my business." Upon information and belief, Defendant purchased or otherwise acquired the original FasciaBlaster®, in 2015.

11. In April and May, 2017, Defendant published outrageous, defamatory, disparaging and unsubstantiated allegations that FasciaBlaster® caused a variety of serious medical diseases and conditions on multiple public and private Facebook pages and message threads, including her personal page, her business page and various group pages.

12. Upon information and belief, Defendant published false, defamatory and disparaging comments on the Facebook group page called "Blaster 'THE REAL STORY,'" alleging a connection between the FasciaBlaster® and inflammation causing an increase in cortisol levels. Defendant further claimed that the alleged increase in cortisol caused her to suffer two miscarriages. Defendant compounded her defamatory and disparaging remarks by publishing several graphic and disturbing photographs of the fetuses, creating the false impression that the FasciaBlaster® caused her miscarriages. Defendant published graphic details about the photographs claiming that the FasciaBlaster® caused damage to the unborn children.

13. Defendant published a defamatory and disparaging narrative on the Facebook group page called "Fasciabasters-WOMEN OVER 40," alleging that Defendant's weight gain, extreme detox, acne, estrogen release and inflammation, were caused by her use of the FasciaBlaster®.

14. Defendant published a defamatory and disparaging video on the Facebook group page “FRESH” claiming that the loose skin of her midsection was caused by “two years of faciablasing.”

15. Later the same day, Defendant published another false, defamatory and disparaging comment, claiming that the alleged medical issues asserted in the earlier post were “facts.”

16. On or about April 28, 2017, Defendant re-published a false, defamatory and disparaging post from her business site as follows:

“use of these products [FasciaBlaster® or FaceBlaster™] can cause a chain reaction in the body that starts with inflammation. That inflammation leads to raised cortisol levels in the body. That raise in cortisol causes eventual thyroid disfunction[sic], hormone imbalance, increased estrogen, extreme detox, and cellular shutdown in your body.”

17. In the same posting, Defendant falsely claimed the following are the result of using ADB’s products:

“extreme detox symptoms, feeling dizzy, sick, acne, extreme fatigue, emotional detox, headaches, pain behind the eyes, cold or flu like body aches, adrenal fatigue, weight gain that diet and exercise won’t effectively get rid of, loose skin and possible blood clots.”

18. Defendant engaged in a malicious campaign to direct other Facebook users to review Defendant’s personal Facebook page so that they could read the aforementioned narrative via individual Facebook messages. Defendant’s actions in this regard were committed with actual malice and without privilege.

19. Defendant published another false, defamatory and disparaging allegation on the FRESH Facebook group page that the FasciaBlaster® caused harm by claiming as follows: “I managed to damage myself more in 2 years with fascia blasting than Mother Nature could in 23 years of 5 boys all of them 8-10lb kids at birth.”

20. Defendant published a false, defamatory and disparaging narrative claiming she is “being threatened.” Further, Defendant alleged that Ms. Black lied and “endangered MY health, the health of anyone I have recommended her products to, and my reputation as an Esthetician.”

21. Defendant published false, defamatory and disparaging comments that Ms. Black will “bully, threaten, or harass anyone who has a negative experience.” Additionally, Defendant published a defamatory and disparaging accusation that Ms. Black and ADB threatened her: “I was warned I should make my personal page and my business page PRIVATE or turn them OFF before they tried to harm me or my reputation as an Esthetician and before they ruined my ratings online!!!!”

22. Defendant published false, defamatory and disparaging comments on the Fascia Info Facebook group page that she was in a “cardiac hospital” emergency room due to “coughing up mucus with blood” and again alleging that the FasciaBlaster® was directly responsible. Additionally, Defendant referred to Ms. Black as “Satan” in this publication. Defendant’s false, defamatory and disparaging comments were made with actual malice.

23. Defendant published a false, defamatory and disparaging narrative on the Fascia Info Facebook group page, alleging that the FasciaBlaster® causes fibromyalgia. She further falsely alleged that “miscarriage, mystery weight gain, mystery thyroid disfunction[sic], & hormone disfunction[sic], & hormone disfunction[sic] that requires medical intervention AND now mysteriously developed fibromyalgia and possible neurology problems” as side effects of using the FasciaBlaster®.

24. Defendant published false, defamatory and disparaging comments on the Fascia Info Unplugged Facebook group page that Ms. Black is somehow engaged in an illegal activity

regarding sales of the FasciaBlaster®. Defendant's false, defamatory and disparaging comments were made with actual malice and without privilege.

25. Defendant further published defamatory and disparaging comments alleging that the liability release section of the consumer purchase agreement makes the consumer a "test subject" for Plaintiffs.

26. Defendant published on the Fascia Info Unplugged page personal photos from Ms. Black's private page of Ms. Black and her daughter without permission along with defamatory and disparaging comments that Ms. Black was untruthful. Defendant's actions and comments in this regard reveal her actual malice toward Ms. Black.

27. Defendant repeated false, defamatory and disparaging comments on the Fascia Info Unplugged page claiming that a 40 lbs weight gain, cellular disfunction[sic] and fibromyalgia" were caused by the FasciaBlaster®.

28. Defendant published another false, defamatory and disparaging allegation that "fascia blasting in ME caused inflammation that raised my cortisol" on the FasciaBlaster Negative Effects Info and Negative Reviews Facebook group page. Defendant further alleges in this publication that fascia blasting caused her to have two miscarriages due to possible folic acid malabsorption.

29. Defendant published another false, defamatory and disparaging comment on the FasciaBlaster Negative Effects Info and Negative Reviews Facebook group page alleging that use of the FasciaBlaster® caused clots, pituitary gland and cognitive issues. Defendant ended this comment with "haters gonna hate though right??"

30. Defendant published false, defamatory and disparaging comments on the FasciaBlaster Negative Effects Info and Negative Reviews Facebook group page claiming that the

FasciaBlaster® is “dangerous for anyone to use!!!” and to “STOP using the fascia blasters even “lightly” it’s not IF it effects [sic] you it’s WHEN.” Defendant further encouraged individuals to file “FDA, BBB or state medical complaints” in a campaign to damage Plaintiffs’ business and products.

31. Defendant published a post on the Blaster “THE REAL STORY” Facebook group page another false, defamatory and disparaging allegation that the FasciaBlaster® was responsible for causing lupus (an autoimmune disease), fibromyalgia and miscarriages.

32. Defendant published on the Blaster “THE REAL STORY” Facebook group page a false, defamatory and disparaging comment alleging that use of the FasciaBlaster® is unsafe.

33. On or about May 22, 2017, Defendant published in a Facebook message thread the following: “She [Ms. Black] deserves a throat punch.”

34. On or about May 22, 2017, Defendant published in a Facebook message thread “we gave her a list of side effects a mile long . . . including miscarriage and blood clots and life threatening stuff.”

35. On or about May 22, 2017, Defendant published in a Facebook message thread “I’m scared this is going to turn into an epidemic of people being sick, depressed, hurt or killed by this before we can get it stopped.”

36. On or about May 22, 2017, Defendant published in a Facebook message thread “I can’t believe AB [Ms. Black] compares us to internet porn addicts of catfish trolls...what a stupid lying bitch!”

37. On or about May 16, 2017, Defendant published in a Facebook message thread “I’m all for getting as many women on board as possible to get AB shut down because I think her products are dangerous.” Defendant published multiple comments revealing her actual malice

toward Plaintiffs and her intent to harm Plaintiffs' business by keeping FasciaBlaster® off store shelves.

38. On or about May 18, 2017, Defendant published in a Facebook message thread that Plaintiffs "treat people like they really are slaves."

V.
BUSINESS DISPARAGEMENT

39. Plaintiffs hereby incorporate and re-allege the above paragraphs as if set forth fully herein.

40. Defendant published false and disparaging words about ADB and the FasciaBlaster® to third parties.

41. Defendant published the false and disparaging words with malice and without privilege.

42. The publication of the false and disparaging words caused ADB to suffer special damages, recovery of which is sought herein

VI.
DEFAMATION AND DEFAMATION PER SE

43. Plaintiffs hereby incorporate and re-allege the above paragraphs as if set forth fully herein.

44. Defendant published false statements and untruths about Ms. Black.

45. Defendant's defamation includes libel that was direct and by implication tends to, and has subjected Ms. Black to public hatred, contempt and ridicule. Defendant's defamation was committed with actual malice and without privilege.

46. Defendant's defamation constitutes defamation *per se* as well as defamation *per quod* and Defendant was negligent *per se* in her defamation of Ms. Black.

VII.
INVASION OF PRIVACY

47. Plaintiffs hereby incorporate and re-allege the above paragraphs as if set forth fully herein.

48. Defendant unreasonably acquired and published photographs of Ms. Black's private life, including photos of her family, to people who belong to groups on the Internet dedicated to harming and harassing her. Defendant's publication of Ms. Black's private photographs to individuals with an axe to grind put her safety and the safety of her family at serious risk.

49. The published photographs served no legitimate public purpose and Ms. Black suffered injury because the publication of her private photographs to unbalanced and irrational individuals put her safety and the family of her safety at risk.

VIII.
NEGLIGENCE PER SE

50. Plaintiffs hereby incorporate and re-allege the above paragraphs as if set forth fully herein.

51. Defendant willfully and intentionally violated Texas Statutes, namely, Sections 42.07 and 42.072 of the Texas Penal Code by engaging in harassment and stalking of Ms. Black.

52. Section 85.001 of the Civil Practices and Remedies Code sets forth civil liability for stalking.

53. Defendant's actions are the proximate cause of injury to Ms. Black, recovery of which is sought herein.

IX.
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

54. Plaintiffs hereby incorporate and re-allege the above paragraphs as if set forth fully herein.

55. Defendant's actions constitute intentional infliction of emotional distress. Specifically, Defendant acted intentionally or recklessly to cause Ms. Black to suffer severe emotional distress. The emotional distress suffered by Ms. Black caused substantial disruption in her daily activities. Defendant's conduct was extreme and outrageous because it included multiple false, defamatory and disparaging comments intended to harm Ms. Black and her livelihood. Defendant's extreme and outrageous conduct proximately caused the severe emotional distress suffered by Ms. Black. No alternative cause of action would provide a remedy for the severe emotional distress caused by Defendant's conduct.

X.
LANHAM ACT CLAIM

56. Plaintiffs hereby incorporate and re-allege the above paragraphs as if set forth fully herein.

57. Defendant engaged in anti-competition efforts in violation of 15 U.S.C. § 1125(a) against Plaintiffs. Specifically, Defendant, on or in connection with goods and services, used the registered trademark FasciaBlaster® in commerce, including (1) false or misleading descriptions of fact; and (2) false or misleading representations of facts to cause confusion or mistake or to deceive others as to the affiliation, connection, or association of Defendant with Plaintiffs or as to the origin, sponsorship, or approval of her services or Plaintiffs' goods and services and commercial activities.58. Additionally, Defendant engaged in violations of 15 U.S.C. § 1125(d) by using FasciaBlaster® , a protected mark, and its domain name without regard to the

goods or services of the parties with bad faith intent to profit from the mark. Defendant intended to divert consumers from FasciaBlaster®'s online location to a site accessible under its domain name that could harm the goodwill of the mark, either for commercial gain or with the intent to tarnish or disparage the mark. Based on the foregoing, Plaintiffs seek injunctive relief to prevent further damage to their protected marks.

X.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

59. Plaintiffs hereby incorporate and re-allege the above paragraphs as if set forth fully herein.

60. To obtain a temporary injunction, the applicant must show: (i) a cause of action; (ii) a probable right to the relief sought; and (iii) probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *Intercontinental Terminal Co. v. Vopak North America, Inc.*, 2011 WL 4398553, *2 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

61. Plaintiffs seek injunctive relief to require Defendant to remove disparaging and defamatory comments about Ms. Black, ADB and FasciaBlaster® from any and all websites, message boards, and social media websites, which is not a prior restraint on free speech but is an “abuse of the liberty to speak.” *Kinney v. Barnes*, 443 S.W.3d 87 (Tex. 2014). Plaintiffs alleged causes of action against Defendant, and as indicated in this verified petition, Plaintiffs (i) show a probable right of recovery and likelihood of success on the merits, (ii) Plaintiffs will suffer imminent, irreparable harm without Court intervention, and (iii) there is no adequate remedy at law.

62. As a direct and proximate result of the Defendant's wrongful actions, Plaintiffs suffered and will continue to suffer imminent, irreparable injury for which no remedy at law exists without temporary and permanent injunctive relief. Plaintiffs will post the reasonable bond necessary to facilitate the injunctive relief requested. Plaintiffs request that the bond amount, if any, be nominal.

63. The only adequate, effective, and complete relief for Plaintiffs is to enjoin Defendant from maintaining past false, defamatory and disparaging comments on Internet websites, message boards, and social media websites until there is an adjudication of whether such statements are defamatory and disparaging. Pursuant to TEX. R. CIV. P. 680 *et seq.* and Tex. Civ. Prac. & Rem. Code 65.001 *et seq.*, and in order to preserve the *status quo* during the pendency of this action, Plaintiffs requests a temporary restraining order, and upon hearing, a temporary and permanent injunction, ordering and immediately enjoining Defendant, including her agents, servants, employees, independent contractors, attorneys, representatives, and those persons or entities in active concert or participation with them (collectively, the "Restrained Parties") from (i) maintaining publications, in any form, including without limitation by electronic mail, social media, message boards, letter, handbill, poster, and any advertising medium of any kind any information about Ms. Black, her family, or former and extended family, (ii) maintaining publications, in any form, including without limitation by electronic mail, social media, message boards, letter, handbill, poster, and any advertising medium of any kind any false, misleading, defamatory or disparaging comments about Ms. Black, FasciaBlaster®, other products of **ADB or its affiliates.**, (iii) contacting, directly or indirectly, Plaintiffs' agents, servants, employees, independent contractors, representatives, customers and clients; and (iv) all such other acts as this Court deems appropriate for injunctive relief.

XI.
ATTORNEY'S FEES

64. The undersigned attorneys have been retained by Plaintiffs to represent them in connection with this lawsuit. Plaintiffs are entitled to recover all reasonable and necessary attorneys' fees incurred in prosecuting this action through trial and all appellate levels pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, and as otherwise permitted at law or equity.

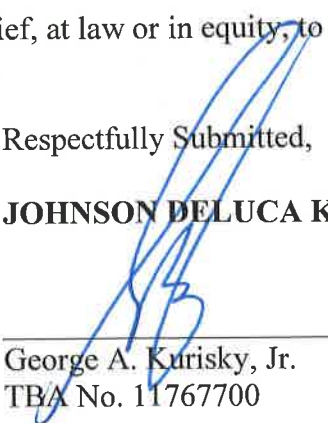
PRAYER

WHEREFORE, Plaintiffs, ADB, and Ashley Black respectfully pray that Defendant Karen Wallace be cited to appear and answer herein and that upon final trial Plaintiffs be awarded all relief as set out herein, including:

- (1) A temporary restraining order, and upon hearing, a temporary injunction for the relief requested above;
- (2) Upon final trial, judgment against Defendant for permanent injunctive relief;
- (3) Actual damages, nominal damages, exemplary damages and prejudgment and post-judgment interest;
- (4) Plaintiff's reasonable and necessary attorneys fees' in prosecuting its claims through trial and, if necessary, through appeal;
- (5) All costs of suit; and
- (6) Such other and further relief, at law or in equity, to which the Plaintiffs may show themselves justly entitled.

Respectfully Submitted,

JOHNSON DELUCA KURISKY & GOULD, P.C.



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**ATTORNEYS FOR PLAINTIFFS
ADB INTERESTS, LLC AND ASHLEY BLACK**

VERIFICATION

STATE OF TEXAS

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COUNTY OF GALVESTON


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Before me, the undersigned Notary Public, on this day personally appeared Ashley Black, who, after being duly sworn, stated under oath the following:

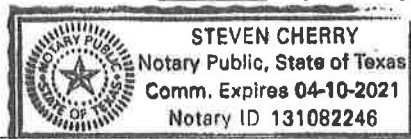
“My name is Ashley Black. I am over twenty-one years of age, of sound mind, and capable of making this affidavit. I am the Managing Member of ADB Interests, LLC a Plaintiff in this cause. I have read Plaintiff’s Original Petition, and the facts stated therein are within my personal knowledge, and are true and correct to the best of my knowledge.”

Further affiant sayeth not.



Ashley Black
Manager
ADB Interests, LLC

Sworn to and subscribed before me by Ashley Black on the 25 day of May, 2017.



Notary Public in and for
The State of Texas

My commission expires: 04-10-2021

VERIFICATION

STATE OF TEXAS

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§

COUNTY OF GALVESTON

Before me, the undersigned Notary Public, on this day personally appeared Ashley Black, who, after being duly sworn, stated under oath the following:

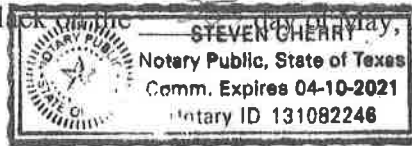
“My name is Ashley Black. I am over twenty-one years of age, of sound mind, and capable of making this affidavit. I am a Plaintiff in this cause. I have read Plaintiff’s Original Petition, and the facts stated therein are within my personal knowledge, and are true and correct to the best of my knowledge.”

Further affiant sayeth not.



Ashley Black

Sworn to and subscribed before me by Ashley Black on this day of May, 2017.



Notary Public in and for
The State of Texas

My commission expires: 04-10-21