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BUREAU OF LEGAL SERVICES

LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

SUIT NO. 149903

21ST JUDICIAL DISTRICT COURT

VERSUS

PARISH OF LIVINGSTON

CHARLES FERACI

STATE OF LOUISIANA

EX PARTE PETITION TO MAKE COMPLIANCE ORDER(S) EXECUTORY
PURSUANT TO LA. R.S. 40:6(G)

The petition of Dr. Jimmy Guidry, M.D., in his official capacity as State Health Officer, Louisiana Department of Health and Hospitals ("DHH"), Office of Public Health, through undersigned counsel, respectfully represents:

FILED
CLERK OF COURT
PARISH OF LIVINGSTON
2015 SEP 18 PM 2:56
DEPUTY CLERK

1.

Dr. Jimmy Guidry, State Health Officer for DHH, Office of Public Health is granted jurisdiction and authority to enforce the State Sanitary Code (Louisiana Administrative Code Title 51) pursuant to La. R.S. 40:4 and R.S. 40:5, including enforcement of compliance orders pursuant to LSA R.S. 40:6(G).

2.

Made defendant herein is **Charles Feraci** (hereinafter "Defendant"), a person of full age of majority domiciled in Livingston Parish, Louisiana.

3.

Defendant is the owner of the house and premises located at 19755 Feraci Road, Livingston, Louisiana 70754.

4.

A Compliance Order issued pursuant to La. R.S. 40:4, 40:5, 40:6, and Sanitary Code Part I, §111, signed by Dr. Jimmy Guidry, State Health Officer, and J.T. Lane, DHH Assistant Secretary for the Office of Public Health, was hand delivered to Defendant on April 22, 2015. A certified copy of said Compliance Order, which bears the DHH-assigned number OPH-2015-OW-005, together with all attachments thereto, is attached to this petition as **Exhibit DHH-A**. The process server's return associated with the hand delivery of Compliance Order No. OPH-2015-OW-005 is attached hereto as **Exhibit DHH-B**.

5.

As more particularly described therein, Compliance Order No. OPH-2015-OW-005 was issued only after DHH personnel conducted various inspections and provided Defendant with all

notice(s) required under Sanitary Code Part I.

6.

Compliance Order No. OPH-2015-OW-005 was issued to Defendant because he failed, after numerous notices and other attempts by DHH to obtain voluntary compliance, to comply with Sanitary Code Part XIII, §707(A), which states that:

Individual sewerage systems shall be kept in service and in a serviceable condition sufficient to insure compliance with this code and in order to avoid creating or contributing to a nuisance or a public health hazard.

7.

As noted in the exhibits attached to Compliance Order No. OPH-2015-OW-005, the onsite sewerage treatment system presently in use at Defendant's house has a sewer pipe that crosses a neighboring property located at 19725 Feraci Road, Livingston, Louisiana 70754. The sewer pipe is in disrepair and causing effluent to surface in the neighbor's yard. Therefore, the sewerage system is in violation of Sanitary Code Part XIII, §707(A), and §305(A) which state that:

Individual sewerage systems shall be kept in service and in a serviceable condition sufficient to insure compliance with this code and in order to avoid creating or contributing to a nuisance or a public health hazard.

A person shall not directly or indirectly discharge, or allow to be discharged, the contents or effluent from any plumbing fixtures, vault, privy, portable toilet, or septic tank, into any road, street, gutter, ditch, water course, body of water, or onto the surface of the ground.

8.

Despite being properly served with Compliance Order No. OPH-2015-OW-005, Defendant did not thereafter, within the twenty days allowed under Sanitary Code Part I, §111 or otherwise, submit to either DHH or the Division of Administrative Law any form of written request that might be construed as a request for an administrative appeal of said Compliance Order.

9.

A Notice and Order of Imposition of Penalties ("NOIP") issued pursuant to La. R.S. 40:4, 40:5, 40:6, and Sanitary Code Part I, §113, signed by Dr. Jimmy Guidry and J.T. Lane, was served on the Defendant son on August 12, 2015. A certified copy of the NOIP is attached hereto as **Exhibit DHH-C**. The process server's return associated with the hand delivery of the NOIP is

attached hereto as **Exhibit DHH-D**.

10.

As noted therein, the NOIP was preceded by a Post Order Inspection Report ("POIR"), attached hereto as **Exhibit DHH-E**, conducted and completed by DHH personnel on May 14, 2015, and served upon Defendant via hand delivery on the same date, as evidenced by Defendant's son's signature on the POIR.

11.

DHH issued the NOIP because Defendant failed to notify DHH in writing, as required by the POIR, that he had complied with Compliance Order No. OPH-2015-OW-005.

12.

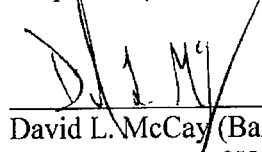
The Defendant has not complied with all of the actions required by Compliance Order No. OPH-2015-OW-005, nor paid the penalty assessed by the NOIP. DHH is thus entitled to an ex parte judgment making both Compliance Order No. OPH-2015-OW-005 and the NOIP a judgment of the district court and making the judgment executory, pursuant to La. R.S. 40:6(G).

13.

Petitioner also suggests that the filing of this Petition and attached documents should be free from payment of any costs of court or other security bonds pursuant to La. R.S. 40:31, which exempts the Department of Health and Hospitals, and its agents and subdivisions, from court costs in any suit.

WHEREFORE, petitioner Dr. Jimmy Guidry, State Health Officer, Louisiana Department of Health and Hospitals ("DHH"), Office of Public Health, prays that Compliance Order No. OPH-2014-OW-009 and the NOIP be made executory in this court, pursuant to La. R.S. 40:6(G), that all costs of these proceedings be taxed against the defendant, and for all other general and equitable relief warranted.

Respectfully Submitted:



David L. McCay (Bar Roll No. 23527)
La. Department of Health and Hospitals
Bureau of Legal Services
P.O. Box 3836
Baton Rouge, Louisiana 70821-3836
Telephone: (225) 342-1123; fax 342-2232
david.mccay@la.gov

LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

VERSUS

CHARLES FERACI

* SUIT NO. 149903 F
*
* 21ST JUDICIAL DISTRICT COURT
*
* PARISH OF LIVINGSTON
*
* STATE OF LOUISIANA

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

FILED
CLERK OF COURT
PARISH OF LIVINGSTON
2015 SEP 18 PM 2:57
DEPUTY CLERK
[Signature]

BEFORE ME, the undersigned Notary Public, personally came and appeared:

Dr. Jimmy Guidry, State Health Officer

who, after being duly sworn, did depose and state:

That he is the petitioner in the above and foregoing petition, that he has read the above-captioned petition, and that all of the allegations of fact contained therein are true and correct to the best of his information, knowledge, and belief.

[Signature]

Jimmy Guidry, M.D.

SWORN TO AND SUBSCRIBED before me, Notary Public, on this 16th day of September, 2015.

[Signature]

NOTARY PUBLIC
DAVID L. McCAY
LA BAR ROLL #23527
NOTARY PUBLIC, STATE OF LOUISIANA
MY COMMISSION IS FOR LIFE

LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

VERSUS

CHARLES FERACI

SUIT NO. 149903 F

21st JUDICIAL DISTRICT COURT

PARISH OF LIVINGSTON

STATE OF LOUISIANA

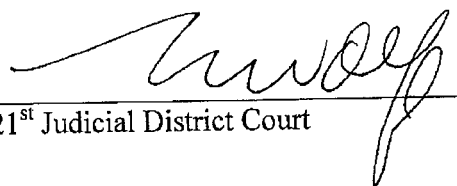
JUDGMENT

The court, having reviewed the above and foregoing petition, together with all exhibit and affidavits attached thereto, finds the law and evidence in favor of plaintiff, Louisiana Department of Health and Hospitals, and against the defendant, **Charles Feraci** (whose date of birth and social security number are unknown to plaintiff). Accordingly:

IT IS ORDERED, ADJUDGED, AND DECREED that Compliance Order No. OPH-2015-OW-005, issued by the Louisiana Department of Health and Hospitals to Charles Feraci, a copy of which is attached hereto, is hereby made an executory judgment of this court; and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Notice and Order of Imposition of Penalties dated July 6, 2015, issued by the Louisiana Department of Health and Hospitals to Charles Feraci, a copy of which is attached hereto, is hereby made an executory judgment of this court and, accordingly, judgment is hereby rendered in favor of the plaintiff, Louisiana Department of Health and Hospitals, and against the defendant, Charles Feraci, in the amount of **Ten Thousand and 0/100 Dollars (\$10,000.00)**, together with legal interest thereon from date of judicial demand until paid, and for all costs.

SIGNED in chambers this 25th day of September, 2015, at Livingston, Louisiana.



JUDGE, 21st Judicial District Court

FILED
CLERK OF COURT
PARISH OF LIVINGSTON
2015 SEP 18 PM 2:17
DEPUTY CLERK

PLEASE SERVE NOTICE, PETITION WITH ATTACHMENTS, AND JUDGMENT ON:

Charles Feraci
19755 Feraci Road
Livingston, Louisiana 70754