

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

CHOICE, INC. OF TEXAS d/b/a CAUSEWAY
MEDICAL CLINIC, *et al.*,

Plaintiffs,

v.

WILLIAM A. GRAHAM,

Defendant.

CASE DOCKET NO.:

DIVISION:

SECTION:

JUDGE:

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

PRELIMINARY STATEMENT

Plaintiffs seek immediate injunctive relief against Defendant William A. Graham's ("Graham") unlawful and irreparably harmful practice of infringing Plaintiff Choice, Inc. of Texas d/b/a Causeway Medical Clinic's ("Causeway") trademarks CAUSEWAY MEDICAL CLINIC and CAUSEWAY, and falsely holding himself out as an abortion provider or abortion referral service in order to prevent or dangerously delay women from exercising their constitutionally protected right to obtain an abortion.

Graham advertises the phone number for his false "service" under the name "Causeway Center For Women" in the yellow pages, in online telephone directories, and with directory assistance. Graham holds Causeway Center For Women out to callers as an abortion referral service, and in many instances Graham specifically advertises Causeway Center For Women as an abortion provider or abortion referral service. Causeway Center For Women is no such thing. Causeway Center For Women is nothing more than a sham operation run by Graham for the sole purpose of defrauding women and thereby preventing them from exercising their right to obtain an abortion.

Women who call Graham—whether by looking in a telephone directory for an abortion provider or by calling directory assistance for the number for "Causeway" (the trade name by which Plaintiff Causeway is commonly known in the New Orleans area (Dugal Decl. ¶ 4))—do so under the mistaken impression that they are reaching an abortion provider or abortion referral service. Graham intentionally perpetuates this misconception throughout his interaction with the women who call his number, claiming that he is an abortion referral service and assuring callers that he will schedule abortions for them. Graham uses scare tactics and deceit to convince the women who call his number to use his "service" rather than that of Plaintiff Causeway or another abortion clinic. For example, Graham tells women that Plaintiff Causeway has dozens of

lawsuits pending against it, that Plaintiff Causeway is a “butcher shop,” and that the practitioners at Plaintiff Causeway will often tell a woman that she is further along in her pregnancy than she actually is in order to extract more money for the procedure. (Doe One Decl. ¶ 13, 16) Graham further entices women to use his “service” by promising that the doctors to whom he will refer them will charge a significantly lower price for the procedure than do Plaintiff Causeway and other medical centers that provide abortions.

Graham does not actually set up appointments for the women who put their trust in him. Rather, Graham falsely states that he has set up an appointment with an unidentified doctor, only to repeatedly “cancel” and “reschedule” the fake appointments. To women who express concern about the repeated rescheduling, Graham asserts that it is better for a woman’s health to obtain an abortion later in her pregnancy (Cabrera Decl. ¶ 18), or that abortions are available in Louisiana beyond 24 weeks gestation (Cabrera Decl. ¶ 18; Doe Four Decl. ¶ 15; Doe One Decl. ¶ 16). Often, a woman will not realize Graham’s deceit until her pregnancy has advanced to such a stage that the abortion procedure is more costly and more risky than when she first sought the abortion. In other instances, a woman will not realize Graham’s fraud until it is too late for her to obtain a legal abortion at all. Graham’s sole intent throughout his interaction with the women who call his number is to prevent the women from exercising their constitutionally protected right to obtain an abortion.

Graham’s unlawful conduct—namely, his infringement of the CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks; his deceitful trade practices and advertising tactics; and his unconscionable interference with a woman’s right to choose whether to continue her pregnancy—and the grave and irreparable harm such conduct inflicts on Plaintiff Causeway, Dr. James DeGueurce, Dr. DeGueurce’s patients, and the individual Plaintiffs and the class they seek

to represent, warrant immediate injunctive relief. Specifically, Plaintiffs request that (1) Graham immediately cease all use of a name that is confusingly similar to and therefore infringes upon the CAUSEWAY MEDICAL CLINIC and CAUSEWAY marks; (2) Graham immediately cease making false and misleading statements about Plaintiff Causeway; (3) Graham immediately cease falsely holding himself out as a provider of medical services, abortions, referrals for abortions, or financial assistance for any of the aforementioned services, be it orally, in advertising, in any form of telephone directory, or otherwise; (4) Graham immediately cease advertising, under any name, be it in the yellow pages, in online directories, or otherwise, under the headings “Abortion,” “Abortion Services,” “Abortion Provider,” “Abortion Referrals,” “Abortion Information & Services,” or substantially similar heading language, unless he is licensed as an outpatient abortion facility or approved as a health care facility or service that provides or refers for abortions under applicable state law; (5) Graham take all steps necessary to put an intercept operator or similar device or service in place to ensure that persons intending to call “Causeway Medical Clinic” or “Causeway” do not reach Graham; and (6) Graham immediately cease offering medical advice without a valid license or other authorization to practice medicine issued by the appropriate state authority.

The interim relief now sought will not interfere with any legitimate business of Graham, as Graham does not in fact operate any business or provide any service. The issuance of a preliminary injunction against Graham will, however, serve the public interest by protecting women from Graham’s fraud and deceit and protecting Plaintiff Causeway’s marks.

BACKGROUND FACTS

I. THE PARTIES

A. Plaintiff Causeway

Plaintiff Causeway first used CAUSEWAY MEDICAL CLINIC as a trade name in Louisiana on August 5, 1999. Plaintiff Causeway registered CAUSEWAY MEDICAL CLINIC as a trade name with the Louisiana Secretary of State on August 16, 1999. (Ex. A.)

Plaintiff Causeway provides a range of reproductive health care services, including abortions up to the 24th week of pregnancy, non-directive options counseling, contraceptive counseling and services, pap smears, pregnancy testing, referrals for appropriate health services at other facilities, and post-operative examinations and counseling. (DeGueurce Decl. ¶ 2.)

Plaintiff Causeway serves the obstetrical and gynecological needs of the greater New Orleans, Louisiana area by providing confidential and safe medical care. Plaintiff Causeway advertises its services in media such as the New Orleans yellow pages and various online telephone directories. (Ex. B-F.)

B. Plaintiff James DeGueurce, M.D.

James DeGueurce, M.D. (“Dr. DeGueurce”) is a physician licensed to practice medicine in the state of Louisiana. (DeGueurce Decl. ¶ 1.) Dr. DeGueurce is board-certified in obstetrics and gynecology and has been providing abortion services for over 24 years. (DeGueurce Decl. ¶ 2.) Dr. DeGueurce provides a range of reproductive health care services at Plaintiff Causeway, including abortions, pap smears, contraceptive counseling, and post-operative examinations. (DeGueurce Decl. ¶ 2.) Dr. DeGueurce sues on his own behalf and on behalf of his past, current, and future patients who have contacted or will contact Graham.

Dr. DeGueurce has treated many patients who have been harmed by Graham’s fraudulent tactics. (DeGueurce Decl. ¶ 19.) Graham’s fraud has confused many women into believing that

they have an appointment scheduled with Plaintiff Causeway, when in fact they have a fake appointment scheduled with Graham's non-existent abortion providers. (DeGueurce Decl. ¶¶ 13, 14.) This means, in many cases, that Dr. DeGueurce cannot provide the services to the women at the time they believe (from their contact with Graham) that they had an appointment scheduled. Graham's fraud causes other women to delay or cancel their previously scheduled appointments with Plaintiff Causeway. (DeGueurce Decl. ¶ 16.) The end result of Graham's fraud is harm to Dr. DeGueurce's patients, either by causing them to delay their visits to Plaintiff Causeway to the point of requiring a more expensive and risky procedure, or causing them to delay to the point of completely foreclosing their opportunity for a safe and legal abortion. (DeGueurce Decl. ¶¶ 10, 11, 16-19.)

C. Individual Plaintiffs Jane Doe One, Jane Doe Four, and Priscilla Cabrera

1. Jane Doe One

Plaintiff Jane Doe One ("Doe One") is a 21-year-old university student in New Orleans. (Doe One Decl. ¶¶ 1, 3.) She was deceived and misled by Graham's infringement of Plaintiff Causeway's marks and Graham's false representations that he provides abortion referral services, and as a result Doe One was unable to obtain a desired termination of her pregnancy. (Doe One Decl. ¶¶ 23, 24; *see also generally* Doe One Decl.)

Doe One discovered she was pregnant on October 20, 2003, and decided immediately that she was not prepared to have a baby and that her best course was to obtain an abortion. (Doe One Decl. ¶ 6.) On December 3, 2003, she visited Plaintiff Causeway for initial tests and a consultation and was told that she was 15 weeks pregnant. (Doe One Decl. ¶¶ 7, 8.) She scheduled an appointment for her procedure at Plaintiff Causeway for December 5, 2003. (Doe One Decl. ¶ 8.) Doe One was unable to obtain the necessary funds in time for her December 5,

2003, appointment, however, and she cancelled her appointment. (Doe One Decl. ¶ 9.) Doe One later rescheduled her appointment at Plaintiff Causeway for January 30, 2004. (Doe One Decl. ¶ 10.) In order to determine the address for Plaintiff Causeway, on January 29, 2004, Doe One called directory assistance and requested the number for a medical or women's clinic in the New Orleans area called "Causeway." (Doe One Decl. ¶ 11.) Unbeknownst to Doe One, the number she was given by directory assistance was that of Graham's sham operation, Causeway Center For Women.

When a man answered the phone at the number she had received from directory assistance, Doe One asked whether she had reached "Causeway." Graham responded that she had, but Doe One soon realized that he was not associated with Plaintiff Causeway Medical Clinic, the "Causeway" Doe One had intended to reach. (Doe One Decl. ¶¶ 11, 12.) She remained on the phone with Graham, however, after he informed her that he was previously employed at Plaintiff Causeway, that Plaintiff Causeway had 40 to 50 lawsuits filed against it, and that Plaintiff Causeway was "a butcher shop." (Doe One Decl. ¶ 13.) Graham told Doe One that he provided a service that connected women in need of an abortion with private physicians who performed the procedure. (Doe One Decl. ¶ 15.) Graham assured Doe One that the doctors he worked with were safe. (Doe One Decl. ¶ 15.) He quoted her a fee for the procedure that was less expensive than Plaintiff Causeway's fee and told her that it would not increase as her pregnancy advanced. (Doe One Decl. ¶ 15.) Graham also offered Doe One a payment plan and assured her that any money she had already paid to Plaintiff Causeway for her initial consultation and tests would be deducted from the final fee for her procedure. (Doe One Decl. ¶ 15.)

When Doe One explained to Graham that she was nervous about missing her appointment with Plaintiff Causeway because her pregnancy was relatively advanced, Graham

told her that Plaintiff Causeway frequently lied about how far along a woman was in her pregnancy in order to obtain more money for procedures. (Doe One Decl. ¶ 16.) Graham further informed Doe One that the doctors he worked with could provide abortions up to 30 weeks. (Doe One Decl. ¶ 16.)

Based on Graham's representations, Doe One cancelled her appointment with Plaintiff Causeway and agreed to have Graham schedule an appointment for her within the next nine days. (Doe One Decl. ¶¶ 17, 20.) Graham informed Doe One that he would call her shortly before her scheduled appointment to provide her with the exact date, time, and location of her appointment. (Doe One Decl. ¶¶ 17, 20.) When Graham did not call as promised, Doe One repeatedly phoned him to obtain this information. Graham eventually returned her phone calls, only to inform her that he had to reschedule her appointment for a later date. The same thing happened with the next "appointment"—*i.e.*, Graham did not phone Doe One as promised to provide her with the necessary information regarding her appointment before her appointment, and after many unanswered phone calls from Doe One, Graham finally called to tell her that her appointment needed to be rescheduled. (Doe One Decl. ¶¶ 17, 19, 20).

Soon thereafter, Doe One began to experience pre-term labor and went to Tulane University Medical Hospital for treatment. (Doe One Decl. ¶ 22.) After hearing of Doe One's interaction with Graham, the nurse at the hospital told her of another woman she had read about who had suffered a similar situation, and Doe One realized that she had been defrauded by Graham. (Doe One Decl. ¶ 22.)

Doe One immediately made efforts to obtain an abortion elsewhere, but was informed by both New Orleans East Women's Clinic and Causeway that she had passed the 24th week of her pregnancy and could no longer obtain a legal abortion in Louisiana. (Doe One Decl. ¶ 23.)

Forced against her will to carry her baby to term, Doe One had to stop attending school and received “incompletes” in several of her classes. (Doe One Decl. ¶ 34.)

Doe One’s pregnancy was a difficult one. She was put on bed rest beginning on April 9, 2004, and she visited hospitals several times in April 2004 for early contractions and other emergency medical complications. (Doe One Decl. ¶ 32.) On April 30, she was admitted to the hospital due to strong contractions. (Doe One Decl. ¶ 35.) On May 1, Doe One’s contractions were very close together, but her dilation was not progressing normally. In addition, the heavy contractions were causing her breathing complications. (Doe One Decl. ¶ 36.) The doctors determined that she and her baby were in danger, and an emergency cesarean section was performed, a month before Doe One’s expected due date of June 2, 2004. (Doe One Decl. ¶ 37.) Doe One had an infection in and around her uterus, and the baby, born at 5.65 pounds, did not cry immediately upon delivery. (Doe One Decl. ¶ 38.) It was ultimately determined that the baby was healthy, though Doe One continued to suffer complications from the cesarean section, such as difficulty breathing, and remained in the hospital for a week. (Doe One Decl. ¶ 39.) After being released from the hospital, Doe One remained on bed rest for some time. (Doe One Decl. ¶ 40.)

2. Jane Doe Four

Jane Doe Four (“Doe Four”) is a 22-year-old single mother who was deceived and misled by Graham and as a result was forced to carry her pregnancy to term. (Doe Four Decl. ¶¶ 1, 16.)

Doe Four’s son has severe Hemophilia-B, a genetic disease that runs in Doe Four’s family and that Doe Four will pass on to her male children. (Doe Four Decl. ¶ 4.) Though he is only one-year old, Doe Four’s son has already had four surgeries, and he requires intravenous-pushed medicine twice a week. He must wear a helmet and knee and elbow pads whenever he is awake and out of bed. (Doe Four Decl. ¶ 5.)

In the Fall of 2003, when Doe Four discovered she was pregnant, she feared that if she had a son, he too would have Hemophilia-B. (Doe Four Decl. ¶ 6.) This fear was confirmed by doctors who told Doe Four that the fetus was male. (Doe Four Decl. ¶ 6.) Knowing that she did not have the time or money to properly care for two children, especially two children with Hemophilia-B, Doe Four decided to have an abortion. (Doe Four Decl. ¶ 6.)

In December 2003, Doe Four called several abortion providers listed in the yellow pages to compare prices and other information. (Doe Four Decl. ¶ 7.) One of the numbers she called was that of Graham. (Doe Four Decl. ¶ 8.) Doe Four informed Graham of her son's condition and her fear of giving birth to another child with Hemophilia-B. (Doe Four Decl. ¶ 10.) Graham quoted her affordable prices and informed her that a number of abortion facilities in the area had been sued due to the poor medical care they provide. (Doe Four Decl. ¶ 9.)

Based on Graham's representations, Doe Four decided to use Graham's "service," and Graham told her that he would arrange for an appointment for her for the following Saturday. (Doe Four Decl. ¶¶ 11-12.) Graham told her that he would call her the Friday before her appointment to tell her where her procedure would be performed. (Doe Four Decl. ¶ 12.) Graham did not call Doe Four as promised. (Doe Four Decl. ¶ 13.) Doe Four later called Graham, and he told her that the physician who was scheduled to perform her abortion was called out of town for an emergency. (Doe Four Decl. ¶ 13.) Graham said that he rescheduled Doe Four's appointment for the following Saturday. (Doe Four Decl. ¶ 13.) Graham repeated this pattern of scheduling and rescheduling for three months. (Doe Four Decl. ¶ 14.)

Throughout the three months of deception, Graham always provided Doe Four with a credible reason for rescheduling her appointments. (Doe Four Decl. ¶ 14.) At one point, Doe Four expressed concern that the delay caused by the repeated cancellations might prevent her

from obtaining an abortion at all, and Graham assured her that abortions are done in New Orleans past 24 weeks. (Doe Four Decl. ¶ 15.)

Eventually, Doe Four realized that Graham was a fraud and that he was not going to arrange for an abortion for her at all. (Doe Four Decl. ¶ 16.) By that time, however, Doe Four was past the 24th week of her pregnancy, and she was informed by the abortion providers that she called that she would not be able to obtain an abortion. (Doe Four Decl. ¶ 16.) Doe Four was devastated to learn that she had been deceived by Graham into carrying her pregnancy to term against her will. (Doe Four Decl. ¶ 17.) Believing throughout her interaction with Graham that she was going to obtain an abortion, she did not seek prenatal care or even take vitamins. (Doe Four Decl. ¶ 17.) Doe Four's financial condition is such that she struggles to provide sufficient food, clothes, and care for her first child, and she is fearful that having two children with Hemophilia-B will leave her and her children homeless. (Doe Four Decl. ¶¶ 6, 19.)

3. Priscilla Cabrera

Plaintiff Priscilla Cabrera ("Cabrera") is a 33-year-old woman who was deceived and misled by Graham's scheme to prevent women from obtaining abortions. (Cabrera Decl. ¶ 1.)

When Cabrera discovered she was pregnant, she knew that she was not in a position to have a child, and she decided to exercise her constitutionally protected right to obtain an abortion. (Cabrera Decl. ¶ 3.) On December 26, 2003, Cabrera searched the BellSouth classified telephone directory for the New Orleans area in order to find an abortion provider. (Cabrera Decl. ¶ 5.) Cabrera purposefully looked under the "Abortion Services" heading, rather than the "Abortion Alternatives" heading. (Cabrera Decl. ¶ 5; Ex. C.) Directly below the "Abortion Services" heading was the following statement: "Note: Businesses At This [H]eading Assert That They Perform Abortions Or Refer Clients To Businesses That Do." (Ex. C.) Cabrera called the numbers listed under the "Abortion Services" heading believing that those were the

numbers for abortion providers or abortion referral services. Graham's Causeway Center For Women was one of the "businesses" listed under the "Abortion Services" heading, and Cabrera called that number. (Cabrera Decl. ¶ 6.)

Cabrera's call was answered by Graham, who identified himself as "Mr. Glenn" and told Cabrera that he provided a service that connected women seeking an abortion with private practice physicians who performed abortions. (Cabrera Decl. ¶ 7.) Graham told Cabrera that, unlike the doctors he worked with, clinic doctors were unable to make it in the real world and that the clinics generally were unsafe. (Cabrera Decl. ¶ 9.) Graham told Cabrera that if an abortion was performed too early, it could be harmful to her health. (Cabrera Decl. ¶ 18.) Graham further told Cabrera that he could arrange for a procedure for up to 30 weeks into the pregnancy. (Cabrera Decl. ¶ 18.) Graham told her that the cost of the procedure with the doctors he worked with would be \$125. (Cabrera Decl. ¶ 18.)

Graham claimed that he would set up an appointment for Cabrera to obtain an abortion on January 10, 2004. (Cabrera Decl. ¶ 15.) Graham did not call Cabrera for several weeks, however, despite Cabrera's repeated calls to him. (Cabrera Decl. ¶ 16.) When she finally spoke with Graham again, she expressed concern about the greater health risk and higher cost that would result from the delay. (Cabrera Decl. ¶ 18.) Graham assured her that it was better for her health to delay the procedure, that he could arrange for an abortion up to between the 26th and 30th week of pregnancy, and that the price of the procedure would not go up with time. (Cabrera Decl. ¶ 18.) Graham asserted that he had rescheduled an appointment for Cabrera for January 24, 2004. (Cabrera Decl. ¶ 19.) Graham repeatedly cancelled and rescheduled Cabrera's appointment, subjecting Cabrera to much emotional distress. She was depressed, frightened, and frustrated as a result of the repeated rescheduling of appointments, and she made suicidal

comments. (Cabrera Decl. ¶¶ 20, 21.) Eventually, Cabrera realized that Graham had misled her. (Cabrera Decl. ¶ 25.)

Cabrera was ultimately able to obtain an abortion from Midtown Medical/Gulf South Family Planning on February 4, 2004. (Cabrera Decl. ¶ 27.)

D. Defendant William A. Graham

Graham is a known anti-abortion activist in Louisiana and the surrounding area. (Dugal Decl. ¶ 8.) Graham, through his sham “service” Causeway Center For Women, diverts women looking for the real Causeway. Graham misleads and deceives women seeking abortions into dangerously delaying or altogether foregoing the exercise of their legal choice.

II. GRAHAM’S UNLAWFUL CONDUCT

A. Graham’s Scheme

Graham runs a sham operation listed in the yellow pages, in online directories, and with directory assistance as “Causeway Center For Women.” While Causeway Center For Women is listed in various business directories as an abortion provider or abortion referral service, in actuality it serves no business purpose and certainly does not provide abortion services. Advertising Causeway Center For Women as Graham does is merely a vehicle to connect Graham, under false pretenses, with women seeking abortions from Plaintiff Causeway or other clinics. Graham’s sole purpose in answering calls to Causeway Center For Women is to mislead and deceive women seeking abortions into not exercising their legal choice.

Graham obtains the confidence of the women who call his number by holding himself out as a sympathetic, supportive referral service connected to safe, confidential, and inexpensive abortion providers. (Cabrera Decl. ¶¶ 7, 9; Doe One Decl. ¶ 15.) Graham employs scare tactics to convince women to use his “service” rather than go to a medical clinic, claiming that clinics are unsafe, unsanitary, and will expose the women to protesters. (Cabrera Decl. ¶¶ 9, 10; Doe

Four Decl. ¶ 9.) As part of his fraud, Graham provides unlicensed and false medical advice, such as telling women when it is safest to obtain an abortion, by claiming that he can arrange for abortions up to the 30th week of pregnancy, and by assessing the side effects of pregnancy. (Cabrera Decl. ¶¶ 14, 18; Doe One Decl. ¶ 16.)

Once he has convinced his callers to use his “service,” Graham claims to set up appointments with private-practice physicians, only to repeatedly cancel and reschedule those appointments. (Cabrera Decl. ¶¶ 15, 16, 19.) This deception continues until the date to legally obtain an abortion has passed, or until the women catch on to Graham’s fraud. (Doe Four Decl. ¶ 16; Doe One Decl. ¶¶ 22, 23; Cabrera Decl. ¶ 25.)

B. The Effect Of Graham’s Scheme On Plaintiff Causeway

Because of Graham’s use of the name “Causeway Center For Women,” which is confusingly similar to Plaintiff Causeway’s marks, CAUSEWAY and CAUSEWAY MEDICAL CLINIC, Graham often receives calls from women who had intended to reach Plaintiff Causeway. (*See* Doe One Decl. ¶ 11.) Graham falsely tells callers who explain that they meant to call Causeway Medical Clinic that the clinic is unsafe, unsanitary, has had dozens of malpractice lawsuits filed against it, employs incompetent doctors, and has a practice of telling women that they are farther along in their pregnancy than they are as a means of extracting more money for the procedure. (Cabrera Decl. ¶ 9; Doe One Decl. ¶ 16.) In short, Graham paints a picture of Plaintiff Causeway as a back-alley butcher shop. In contrast, Graham claims, the doctors with whom he works provide safe and affordable services. (Cabrera Decl. ¶ 10; Doe One Decl. ¶ 15.) As a result of Graham’s scare tactics, Plaintiff Causeway has lost many existing and prospective patients. (DeGueurce Decl. ¶ 22.) This misinformation and loss of patients not only damages Plaintiff Causeway’s marks and hurts Plaintiff Causeway’s business and its reputation, but it also curtails the clinic’s ability to provide the community it serves with safe, quality health

care.

C. The Effect Of Graham's Scheme On Dr. DeGueurce's Patients And Members Of The Plaintiff Class

Graham's tactics—instilling fear in women by spreading lies about the real abortion services available to them; gaining the women's confidence by extracting personal information, providing medical advice, and claiming to be sympathetic to the women's situation; and duping women into believing that he will arrange abortions for them at a below-market price—have misled countless women into unnecessary and risky delay. (*Generally* Cabrera Decl.) In other cases, Graham's tactics have foreclosed the women's opportunity for abortion altogether. (Doe One Decl. ¶ 24; Doe Four Decl. ¶ 16; Dugal Decl. ¶ 14.)

The injury inflicted by Graham upon the victims of his fraud is chilling. Women who are scared and misled into putting their trust in Graham suffer gravely, both during the perpetration of Graham's fraud and after he has been found out. For example, Cabrera was an "emotional wreck" and talked of killing herself during her interaction with Graham—the cycle of preparing for her procedure only to hear from Graham at the last minute that the appointment was cancelled and rescheduled was devastating for her. (Cabrera Decl. ¶ 20.) Doe One took steps to end her life upon discovering Graham's fraud and being told by a real clinic that she would be unable to obtain a termination given the late stage of her pregnancy. (Doe One Decl. ¶ 31.) There are countless other similarly situated, traumatized women who are currently suffering or will suffer in the future from Graham's deception.

ARGUMENT

For the purposes of their motion for a preliminary injunction, Plaintiffs are relying on their claims for trademark infringement, unfair competition, and false advertising under federal law, as well as their state law claims for trademark infringement, unfair competition, fraud, and breach of duty. Plaintiffs seek to preliminarily enjoin Graham from using a name confusingly similar to the marks CAUSEWAY and CAUSEWAY MEDICAL CLINIC, from spreading misinformation about Plaintiff Causeway, from falsely holding himself out as an abortion provider or abortion referral service, from deceiving callers to his phone number into believing that he is an abortion referral service, and from offering medical advice without a proper license or other authorization to practice medicine.

Every one of the four factors to be considered in ruling on a motion for a preliminary injunction weighs heavily in favor of granting the requested relief in this case. A party seeking a preliminary injunction must show: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury on the part of the moving party if the injunction is not granted; (3) that the threatened injury outweighs any damage that the injunction might cause the non-moving party; and (4) that the injunction will not disserve the public interest. *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989) (citation omitted). As demonstrated below, Plaintiffs meet each of these four requirements and are entitled to a preliminary injunction preventing Graham from infringing the CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks and confusing and misleading women into believing that he will aid them in obtaining an abortion.

I. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS OF THEIR CLAIMS

Plaintiffs are able to demonstrate a substantial likelihood of prevailing on the merits of their claims and are, therefore, entitled to preliminary injunctive relief.

A. Trademark Infringement And Unfair Competition Under Federal And State Law

1. Applicable Legal Standards

Section 43(a) of the Lanham Act prohibits any false designation of origin which “is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities with another person.” 15 U.S.C.

§ 1125(a)(1). Thus, to prevail on their federal trademark infringement and unfair competition claims, Plaintiffs must show that they have a valid mark entitled to protection and that Graham’s conduct is likely to cause confusion concerning the source or sponsorship of Graham’s “service.” *Soweco, Inc. v. Shell Oil Co.*, 617 F.2d 1178 (5th Cir. 1980); *Prudhomme v. Procter & Gamble Co.*, 800 F. Supp. 390, 393 (E.D. La. 1992) (citing cases).

Similarly, to prevail on their infringement claim under state law, La. Rev. Stat. Ann. § 51:222, Plaintiffs must demonstrate a protectable trade name and infringement of that name, as determined by the likelihood of confusion standard. *See Merit Indus. Constructors v. Je Merit Constructors*, 563 So. 2d 1008, 1009 (La. Ct. App. 1990) (citation omitted). Likewise, a claim under Louisiana’s unfair competition law, La. Rev. Stat. Ann. § 51:1401 *et seq.*, turns on the likelihood of confusion. *Louisiana World Exposition, Inc. v. Logue*, 746 F.2d 1033, 1039 (5th Cir. 1984) (“Likelihood of confusion is the essential ingredient for claims of unfair competition under . . . the Louisiana statute.”) (citation omitted).

2. Plaintiff Causeway's Marks Are Protectable

The CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks are protectable, thus satisfying the first requirement for trademark infringement and unfair competition under federal and state law.

A mark is classified as either generic, descriptive, suggestive, or arbitrary, with arbitrary marks being the strongest and generic marks the weakest. *See Sport Supply Group, Inc. v. Columbia Casualty Co.*, 335 F.3d 453, 461 n.7 (5th Cir. 2003) (setting forth spectrum of marks); *Soweco, Inc. v. Shell Oil Co.*, 617 F.2d 1178, 1183 (5th Cir. 1980) (same); *Gulf Coast Bank v. Gulf Coast Bank & Trust Co.*, 652 So. 2d 1306, 1313 (La. 1995) (same). The CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks are suggestive and as such are automatically protectable. *See Soweco*, 617 F.2d at 1184; *Gulf Coast Bank*, 652 So. 2d at 1314. A suggestive mark “suggests, rather than describes” the characteristics of the goods or services to which it applies, and requires imagination on the part of the consumer to understand the nature of those goods or services. *Soweco*, 617 F.2d at 1184 (quoting *Vision Center v. Opticks, Inc.*, 596 F.2d 111, 115 (5th Cir. 1979)); *Gulf Coast Bank*, 652 So. 2d at 1313 (same).

Because the marks CAUSEWAY and CAUSEWAY MEDICAL CLINIC do not immediately reflect that the clinic provides abortions and other reproductive healthcare services, the marks are suggestive. Consumers would be quite reasonable in assuming that Plaintiff Causeway offered any host of medical services wholly unrelated to reproductive healthcare. The marks CAUSEWAY and CAUSEWAY MEDICAL CLINIC, therefore, suggest, rather than describe, the type of services that Plaintiff Causeway provides.

At the very least, the CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks are descriptive with secondary meaning, and thus are protectable. *Soweco*, 617 F.2d at 1183; *Gulf Coast Bank*, 652 So. 2d at 1313. A descriptive mark is one which “identifies a characteristic or

quality of an article or service.” *Soweco*, 617 F.2d at 1183 (quoting *Vision Center v. Opticks, Inc.*, 596 F.2d 111, 115 (5th Cir. 1979)); *see also Gulf Coast Bank*, 652 So. 2d at 1313.

Although a descriptive mark is not inherently distinctive, *Sport Supply Group, Inc.*, 335 F.3d at 461 n.7, a descriptive mark that has acquired secondary meaning is protectable. *Soweco*, 617 F.2d at 1183. Secondary meaning arises when “words which have a primary meaning of their own . . . by long use in connection with a particular product, come to be known by the public as specifically designating that product.” *Volkswagenwerk Aktiengesellschaft v. Rickard*, 492 F.2d 474, 477 (5th Cir. 1974); *see also American Machinery Movers, Inc. v. Machinery Movers of New Orleans, LLC*, 136 F. Supp. 2d 599, 603 (E.D. La. 2001); *Gulf Coast Bank*, 652 So. 2d at 1314. Direct and circumstantial evidence that can be used to demonstrate secondary meaning includes evidence of actual consumer confusion, the defendant’s intent, the length of time the name has been in use, advertising efforts, and consumer testimony. *American Machinery Movers, Inc.*, 136 F. Supp. 2d at 603; *Gulf Coast Bank*, 652 So. 2d at 1314.

The marks CAUSEWAY and CAUSEWAY MEDICAL CLINIC have clearly acquired secondary meaning. The record is replete with instances of actual consumer confusion. (Doe One Decl. ¶ 12; Dugal Decl. ¶¶ 6, 7, 9, 10.) Moreover, Graham is clearly attempting to capitalize on the secondary meaning acquired by the CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks by using a confusingly similar name to lure women into calling his phone number. Further, CAUSEWAY MEDICAL CLINIC was registered as a Louisiana trade name in August 1999 and Plaintiff Causeway has used the mark continuously since then. Plaintiff Causeway advertises in a variety of media aimed at reaching women in need of reproductive health care, including the yellow pages and online. In short, CAUSEWAY and CAUSEWAY MEDICAL CLINIC have become known by the greater New Orleans community

as marks denoting a specific, well-regarded clinic that offers safe and confidential abortions. *See Soweco*, 617 F.2d 1178, 1184 n.16 (secondary meaning exists where “the primary significance of the term in the minds of the consuming public is not the product but the producer”); *see also* Dugal Decl. ¶ 4.

3. Graham’s Actions Have Caused Consumer Confusion And Are Likely To Continue To Cause Such Confusion

The second requirement for a trademark infringement or unfair competition action under federal or state law is also satisfied here, as there is a substantial likelihood of confusion between CAUSEWAY and CAUSEWAY MEDICAL CLINIC, on the one hand, and “Causeway Center For Women,” on the other. “Confusion is synonymous with trademark infringement and the presence of a trademark infringement would indicate a substantial likelihood of success on the merits. Thus, if confusion between trademarks exists the first criteria for a preliminary injunction is met.” *Acme Refrigeration Supplies Inc. v. Acme Refrigeration of Baton Rouge, Inc.*, 961 F. Supp. 936, 938 (E.D. La. 1996) (citation omitted).

In determining whether a likelihood of confusion exists, courts often consider the following factors: (1) the type of mark allegedly infringed; (2) the similarity between the two marks; (3) the similarity of the products or services; (4) the identity of the retail outlets and purchasers; (5) the identity of the advertising media used; (6) the defendant’s intent; and (7) evidence of actual confusion. *Westchester Media v. PRL USA Holdings, Inc.*, 214 F.3d 658, 664 (5th Cir. 2000) (citations omitted); *Gulf Coast Bank*, 652 So. 2d at 1321. This list is not exhaustive, however, and no one of these factors is dispositive. *Westchester Media*, 214 F.3d at 664; *Gulf Coast Bank*, 652 So. 2d at 1321. Moreover, “a finding of a likelihood of confusion does not require a positive finding on a majority of these ‘digits of confusion.’ The court is also free to consider other relevant factors in determining whether a likelihood of confusion exists.”

Westchester Media, 214 F.3d at 664 (citations omitted); *see also Gulf Coast Bank*, 652 So. 2d at 1321 (“It must be remembered that these factors are but a tool in answering the ultimate question of whether there is a likelihood of confusion.”).

(i) Plaintiff Causeway’s Marks Are Suggestive

As discussed above, CAUSEWAY and CAUSEWAY MEDICAL CLINIC are suggestive marks and thus protectable. The marks do not explicitly state what service is offered, but rather require that consumers use their imagination to link CAUSEWAY and CAUSEWAY MEDICAL CLINIC to reproductive health care for women. At the very least, CAUSEWAY and CAUSEWAY MEDICAL CLINIC are descriptive marks with secondary meaning. Women in the greater New Orleans area have come to know Plaintiff Causeway as one of the few clinics in their community offering safe, high-quality, affordable abortions. *Supra* Part 2, Section I(A)(2).

(ii) Graham’s “Causeway Center For Women” Is Confusingly Similar To Plaintiff Causeway’s Marks

The name Graham uses for his sham service, “Causeway Center For Women,” is strikingly similar to Plaintiff Causeway’s marks, CAUSEWAY and CAUSEWAY MEDICAL CLINIC. The name for Graham’s “service” and Plaintiff Causeway’s marks share the word “Causeway,” a fact which is of particular significance given the tendency of consumers to refer to Plaintiff Causeway Medical Clinic simply as “Causeway.” (Dugal Decl. ¶ 4.) Further, given the strong association among consumers of the CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks with reproductive health care for women, Graham’s use of the words “center for women” does nothing to distinguish his “service,” and in fact further confuses consumers as to the source of that “service.”

**(iii) Graham Falsely Holds Himself Out As A Provider Of
The Identical Service That Plaintiff Causeway Provides**

Another factor to be considered in determining the likelihood of confusion is the identity of the services offered by the parties. Plaintiff Causeway provides a range of women's reproductive health services, including abortions. While Graham does not actually offer *any* service, he holds himself out as a provider of the identical services for which many women go to Plaintiff Causeway. Specifically, Graham advertises Causeway Center For Women as an abortion provider or abortion referral service. (Exs. B-G.) Graham's listing is often located directly above Plaintiff Causeway's listing. (Exs. B, C.) Moreover, Graham holds himself out to the women who call his number as an abortion referral service. (Doe One Decl. ¶ 15.) To women who tell Graham that they intended to reach Plaintiff Causeway Medical Clinic, Graham replies that the doctors he works with provide higher quality and more affordable abortions. (Doe One Decl. ¶ 15.) That is, Graham specifically holds his "service" out as an alternative to Plaintiff Causeway.

**(iv) Graham Targets Women Who Would Otherwise Seek
Plaintiff Causeway's Services**

Graham targets the same women who make up Plaintiff Causeway's patient base. In fact, the success of Graham's scheme depends on his reaching women who would otherwise make use of Plaintiff Causeway's services. Graham is counting on the "initial interest confusion" of Plaintiff Causeway's patients to further his deceptive scheme; that is, Graham intends to confuse women into believing that he is Plaintiff Causeway just long enough for them to call his phone number and allow him an opportunity to convince them, through misrepresentations and deception, to avail themselves of his "service," rather than Plaintiff Causeway's. *See Elvis Presley Enters., Inc. v. Capece*, 141 F.3d 188, 204 (5th Cir. 1998) ("[I]nitial-interest confusion is beneficial to the Defendants because it brings patrons in the door. . . . Once in the door, the

confusion has succeeded because some patrons may stay, despite realizing that [Defendants'] bar has no relationship with [Plaintiff].”).

(v) Graham Advertises In The Same Media As Plaintiff Causeway

Graham advertises his “service” in the same media as does Plaintiff Causeway. They are both listed in the yellow pages and in online telephone directories under headings such as “Abortion Providers” and “Abortion Services.” Given the relatively small number of abortion providers in the greater New Orleans area, the listing for “Causeway Center For Women” almost invariably appears within close proximity to Plaintiff Causeway’s listing.

(vi) Graham’s Sole Intent In Using The Name “Causeway Center For Women” Is To Confuse Women Into Believing They Are Calling Plaintiff Causeway

Graham’s sole intent in using the name “Causeway Center For Women” is to confuse women into believing they are calling Plaintiff Causeway. Indeed, the success of Graham’s scheme depends on this confusion. Part of Graham’s *modus operandi* is to first reach women seeking abortions by confusing them into believing they are reaching Plaintiff Causeway, an actual abortion provider. By using a name confusingly similar to Plaintiff Causeway’s marks, Graham confuses women who have been referred to Plaintiff Causeway, or women who have already visited or called Plaintiff Causeway, to call his number by mistake. Graham then uses lies and deceit to convince the women not to go to Plaintiff Causeway for their procedure, but rather to schedule an appointment for an abortion through his sham service.

(vii) There Has Been An Abundance Of Actual Consumer Confusion

As evidenced by the horrifying stories of the individual plaintiffs in this case, Graham’s use of the name “Causeway Center For Women” has caused considerable consumer confusion. Doe One, for instance, reached Graham after she called directory assistance looking for the

number for “Causeway.” Doe One intended to reach Plaintiff Causeway, from whom she had already received an initial consultation and with whom she had scheduled an appointment for an abortion. (Doe One Decl. ¶ 11.) The nurses and administrators at Plaintiff Causeway regularly speak with and treat women who reached Graham only by confusing his “service” for Plaintiff Causeway. (Dugal Decl. ¶ 6.) Women frequently arrive at Plaintiff Causeway believing they have an appointment scheduled, only to be told that they were defrauded by Graham and no appointment exists. (Dugal Decl. ¶ 13.)

Actual consumer confusion such as is clearly present here is “strong proof” of a likelihood of confusion. *Soweco*, 617 F.2d at 1186. “While very little proof of actual confusion would be necessary to prove the likelihood of confusion, an almost overwhelming amount of proof would be necessary to refute such proof.” *World Carpets, Inc. v. Dick Littrell’s New World Carpets*, 438 F.2d 482, 489 (5th Cir. 1971). It is, thus, irrefutable that actual confusion as well as a likelihood of confusion exists here, making a preliminary injunction appropriate to stop Graham’s continuing unlawful and deceptive use of a name confusingly similar to the CAUSEWAY and CAUSEWAY MEDICAL CLINIC marks.

B. False Advertising Under The Lanham Act

1. Applicable Legal Standards

Each of the elements of a false advertising claim under the Lanham Act is clearly present in this case, and Plaintiff Causeway has a substantial likelihood of prevailing on those claims as well. Section 43(a) of the Lanham Act provides a civil cause of action for false advertising against

[a]ny person who, on or in connection with any goods or services . . . , uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which . . . in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic

origin of his or her or another person's goods, services, or commercial activities.

15 U.S.C. § 1125(a)(1)(B). To state a cause of action for false advertising under the Lanham Act a plaintiff must prove the following: (1) the making of a false or misleading statement of fact about a product or service; (2) that such statement either deceived or was capable of deceiving a substantial segment of potential consumers; (3) that the deception was material in that it is likely to bear on a consumer's purchasing decision; (4) that the product or service is in interstate commerce; and (5) injury or a likelihood of injury on the part of the plaintiff as a result of the statement. *IQ Prods. Co. v. Pennzoil Prods. Co.*, 305 F.3d 368, 375 (5th Cir. 2002) (citing *Pizza Hut, Inc. v. Papa John's Int'l, Inc.*, 227 F.3d 489, 495 (5th Cir. 2000)); see also *Smith v. Lucent Techs, Inc.*, Civ. Action No. 02-0481, 2004 U.S. Dist. LEXIS 4074, at *80-81 (E.D. La. Mar. 15, 2004).

2. Graham Has Made Numerous False Statements About His "Service"

Graham has made and continues to make numerous false statements in advertising his "service." Specifically, Graham lists his phone number as that of an abortion provider, abortion referral service, or source for abortion information and services.¹ (Exs. B-G.) Such assertions

¹ By listing his service as an abortion provider, abortion referral service, or source of information regarding abortions, Graham has engaged in "commercial advertising or promotion" for purposes of the Lanham Act.

In order for representations to constitute "commercial advertising or promotion" under Section 43(a)(1)(B), they must be: (1) commercial speech; (2) by a defendant who is in commercial competition with plaintiff; (3) for the purpose of influencing customers to buy defendant's goods or services. While the representations need not be made in a "classical advertising campaign," but may consist instead of more informal types of "promotion," the representations (4) must be disseminated sufficiently to the relevant purchasing public to constitute "advertising" or "promotion" within that industry.

Seven-Up Co. v. Coca-Cola, Co., 86 F.3d 1379, 1384 (5th Cir. 1999) (citations omitted). Graham's statements are commercial in nature in that they are aimed at consumers. Graham is in direct competition with Causeway, and his sole purpose in listing his sham service in the telephone directory is to divert

(Footnote continues on next page.)

are patently false. Graham does not provide abortions, nor does he provide referrals to businesses that do provide abortions. Rather, Graham sets up fake appointments for the women who call his number, only to cancel and reschedule those appointments until his fraud is discovered or the woman's opportunity for a legal abortion has passed. Graham does not even provide abortion "information"—what he provides is abortion mis-information. (*See, e.g., Doe One Decl.* ¶ 16 (Graham asserted that Louisiana physicians provide abortions up to 30 weeks gestation.) Thus, Graham's statements are "literally false," and the court can assume that such statements are misleading to consumers. *See IQ Prods. Co.*, 305 F.3d at 375 ("If the statement at issue is shown to be literally false, the court must assume that it actually misled consumers, without requiring any evidence of such deception."); *Pizza Hut, Inc.*, 227 F.3d at 497 ("[W]hen the statements of fact at issue are shown to be literally false, the plaintiff need not introduce evidence on the issue of the impact the statements had on consumers.").

3. Graham's False And Misleading Statements Have Deceived Countless Women And Are Likely To Deceive Countless More In The Absence Of An Injunction

Graham's false and misleading statements in various telephone directories have influenced countless women who would not otherwise have called his phone number to do so, and Graham's false and misleading statements have caused countless women to avail themselves of his "service," rather than obtaining an abortion with Plaintiff Causeway or another legitimate abortion provider.

For example, Plaintiff Cabrera first reached Graham after finding his phone number in

(Footnote continued from previous page.)

women away from clinics such as Plaintiff Causeway and mislead them into using his "service" instead. Graham widely disseminates his false representations by listing his number as that of an abortion provider, abortion referral service, or source of information regarding abortions with at least three online telephone directories and in the yellow pages of at least two telephone books. (Exs. B-G.)

the BellSouth yellow pages for the New Orleans area under the “Abortions Services” heading. (Cabrera Decl. ¶ 5.) Cabrera purposefully looked under the “Abortion Services” heading, rather than the “Abortion Alternatives” heading, because she wanted to reach an abortion provider or abortion referral service. (Cabrera Decl. ¶ 5.) Under the “Abortion Services” heading is the clear statement, “Businesses At This [H]eading Assert That They Provide Abortions Or Refer Clients To Businesses That Do.” (Ex. B.) Under the “Abortion Alternatives” heading, by contrast, is the clear statement, “Organizations Listed At This Heading Assert That They Provide Assistance, Counseling And/Or Information On Abortion Alternatives And That *They Do Not Provide Abortion Services Or Counseling Or Information On The Attainment Of Abortion.* (Ex. B (emphasis added).) Further, the nurses and administrators at Plaintiff Causeway have spoken with countless women who have been similarly misled by Graham’s tactic of listing his “service” in telephone directories as an abortion provider, abortion referral service, or source of abortion information. (Dugal Decl. ¶ 7.)

4. Graham’s Deception Is Material And Has Influenced Countless Consumer Purchasing Decisions

For purposes of a claim of false advertising under the Lanham Act, the deception caused by a false statement is material if it is likely to influence the consumer’s purchasing decision. *Smith*, 2004 U.S. Dist. LEXIS 4074, at *81. Graham’s deception is clearly material under this standard. Graham’s misstatements as to the nature of his “service” go to the very heart of the decision of a woman who is seeking an abortion to call “Causeway Center For Women,” as evidenced by the many women who call Graham under the mistaken impression that he is a provider of abortions or operates an abortion referral service. *Supra* Part 2, Section I(B)(3).

5. **Graham's Service Is In Interstate Commerce**

By advertising in telephone directories (including online directories) that service the greater New Orleans-Metairie, Louisiana area, Graham has placed his "service" in interstate commerce. Given the scarcity of abortion providers in Mississippi, Texas, and Florida, for example, women from those states frequently travel to the New Orleans-Metairie area to obtain abortions. (Dugal Decl. ¶ 5.)² Thus, by holding himself out as an abortion provider or abortion referral service in the greater New Orleans, Louisiana area, Graham is necessarily an interstate "service."

6. **Plaintiffs Causeway And Dr. DeGueurce Have Suffered And Are Likely To Continue To Suffer Injury As A Direct Result Of Graham's Misrepresentations And Deception**

Plaintiffs Causeway and Dr. DeGueurce have suffered injury as a result of Graham's deceptive tactics. *See supra* Part 1, Section II(B). Because of Graham's false advertising, women who intended to call an abortion provider such as Plaintiff Causeway called Graham instead. Given the scarcity of abortion providers in the New Orleans area (Ex. E (listing only three abortion clinics, including Plaintiff Causeway and excluding Graham's sham service)), it is likely that many of those women would otherwise have called Plaintiff Causeway. Thus, as a result of Graham's false advertising, Plaintiffs Causeway and Dr. DeGueurce have lost many patients and prospective patients. This loss of patients not only hurts their business but curtails the clinic's ability to provide the community it serves with safe, quality health care.

² See The Alan Guttmacher Institute, *State Facts About Abortion: Mississippi*, available at <http://www.guttmacher.org/pubs/sfaa/mississippi.html>, ("In 2000, 98% of Mississippi counties had no abortion provider. 86% of Mississippi women lived in these counties. In the South census region, where Mississippi is located, 32% of women having abortions traveled at least 50 miles, and 10% traveled more than 100 miles.").

C. Plaintiffs Are Likely To Succeed On Their Fraud Claims

1. Applicable Legal Standards

Fraud is defined as “a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction.” La. Civ. Code Ann. Art. 1953. To prove fraud, a party must demonstrate (1) a misrepresentation of a material fact, (2) made with the intent to deceive, and (3) causing justifiable reliance with resulting injury. *Guidry v. U.S. Tobacco Co.*, 188 F.3d 619 (5th Cir. 1999). Graham’s conduct clearly amounts to actionable fraud under Louisiana law.

2. Graham Misrepresents Material Facts

Virtually everything about Graham’s sham service is a misrepresentation. Graham misrepresents in his telephone book listings and other forms of advertising that he provides abortions or referrals to abortion providers. (*See* Exs. B-F.) His fraud continues when he answers the phone calls of women seeking abortions and informs the women that they have reached an abortion referral service. (Doe One Decl. ¶ 15.) Graham, who is not a licensed physician, then dispenses untruthful medical advice to the women, informing them that, among other things, the earlier an abortion is performed the more risks there are to a woman’s health. (Doe One Decl. ¶ 16; Cabrera Decl. ¶ 18.)

Graham misinforms the women about real abortion clinics, including Causeway, stating falsely that they are unsafe and unsanitary, that they employ incompetent doctors, and that clinics typically tell women that they have to get their procedures done sooner rather than later as a ruse to get more money from their patients. (Doe One Decl. ¶ 16.) Graham then misrepresents to the women that he will provide them with access to inexpensive and high-quality medical care. (Cabrera Decl. ¶¶ 10, 12; Doe Four Decl. ¶ 9; Doe One Decl. ¶ 15.) Once he has gained the

women's confidence and convinced them that they are better off arranging an abortion through him, Graham falsely states that he has set up an appointment with an unidentified abortion provider. (Cabrera Decl. ¶ 15; Doe Four Decl. ¶ 12.) Graham provides the women with only the date and time of their appointments, claiming that he will call them the day of the scheduled procedure to tell them where to go.³ (Cabrera Decl. ¶ 15.) Graham claims that this secrecy is necessary to protect the doctors who perform the abortions. (Cabrera Decl. ¶ 11.) Graham does not call as promised, however, and the date for the women's "appointment" passes. When Graham next speaks with the women, he explains that their appointments had to be cancelled, and he promises to reschedule the appointments. (Doe Four Decl. ¶ 13.) Graham repeats this process until the women catch on to his fraud, by which time it is often too late, either by law or for financial reasons, for the women to obtain an abortion. (Doe Four Decl. ¶ 16; Doe One Decl. ¶ 23.)

3. Graham Makes Material Misrepresentations With The Intent To Deceive

Graham clearly intends to deceive his callers into believing that he operates an abortion referral service and that he is in fact arranging abortions for them. The success of Graham's scheme to prevent women from obtaining abortions depends on such deceit. Graham's sole purpose in setting up his fraudulent service, advertising it as an abortion provider or abortion referral service, and taking the phone calls of women seeking abortions is to deceive the women

³ While an unfulfilled promise or statement as to future events does not give rise to a cause of action for fraud, fraud may be predicated on promises made with the intention not to perform at the time the promise is made. *Sun Drilling Prods. Corp. v. Rayborn*, 798 So. 2d 1141 (La. Ct. App. 2001). Graham does not intend to perform on his promises to arrange for abortions at the time that he makes those promises. Much to the contrary, the entire purpose of Graham's scheme is to trick women into believing that he will make good on his promise to arrange for an abortion and to perpetuate that fraud until such time as the women are no longer able to obtain a safe and legal procedure.

into delaying their procedures until the time for safe and legal abortions has passed. Every misrepresentation made by Graham is calculated and intended to further this deceitful practice.

4. Graham's Fraudulent Actions Cause Justifiable Reliance And Resultant Injury

Women who call Graham's number under the false impression that they are calling an abortion provider or abortion referral service justifiably rely on the misrepresentations made by Graham. As a result of Graham's fraud, the women suffer emotional, financial, and physical injury.

(i) Graham's Fraudulent Actions Cause Justifiable Reliance

Louisiana law provides that "[f]raud does not vitiate consent when the party against whom the fraud was directed could have ascertained the truth without difficulty, inconvenience, or special skill." La. Civ. Code. Art. 1954. However, that "exception does not apply when a relation of confidence has reasonably induced a party to rely on the other's assertions or representations." *Id.*

Women who call directory assistance asking for "Causeway" and are given Graham's phone number have no way of ascertaining that the number they receive is not that of an abortion provider or abortion referral service. Similarly, women who search the yellow pages or online directories for abortion providers and are misled by Graham listing himself as such have no way of ascertaining that Graham is in fact a fraud. Thus, women who call Graham's number justifiably rely on the information reasonably available to them to conclude that Graham does indeed provide abortions or referrals to abortion providers. Once the women reach Graham by telephone, share their medical histories with him, and receive medical advice and misinformation from him, they have entered into a relationship of confidence with Graham and are reasonable in relying on the veracity of his representations without further investigation.

(ii) Graham’s Fraudulent Actions Cause Injury

Graham’s fraudulent actions cause emotional, physical, and financial harm to the women who rely on his representations as an abortion provider or abortion referral service. Graham’s repeated last-minute rescheduling of abortion appointments subjects the women to emotional anguish, as they spend their supposed appointment day preparing for the procedure, only to be told they will have to relive such anxiety again. At least one woman entertained suicidal thoughts after being subjected to this “emotional rollercoaster.” (Cabrera Decl. ¶ 20.) Once they discover Graham’s fraud, women typically feel manipulated and violated. (Cabrera Decl. ¶ 29.) Women who do not discover Graham’s fraud until their pregnancies have advanced to the stage that a more expensive, lengthy, and risky procedure is needed suffer physically, emotionally, and financially. (Cabrera Decl. ¶¶ 20, 21, 25, 27, 29.) Similarly, women who are not able to exercise their desired choice as a result of Graham’s fraud incur great financial expense and emotional anguish in carrying their babies to term. (Doe Four Decl. ¶¶ 19, 20.) Doe Four, for example, described feeling “devastated” upon learning of Graham’s fraud (Doe Four Decl. ¶ 17), and she fears that will not be able to afford to care for her children, especially given the grave disease from which her son suffers and from which her baby will suffer as well (Doe Four Decl. ¶¶ 6, 19). Doe One attempted to take her own life and to force a miscarriage. (Doe One Decl. ¶¶ 28, 31.) Many suffer physically as well. (Doe One Decl. ¶ 39; Doe Four Decl. ¶ 18.)

D. Breach of Duty

1. Applicable Legal Standards

Louisiana’s general duty and liability statute, Article 2315, provides: “Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.” La. Civ. Code art. 2315. Article 2315 “broadly sets forth the terms by which society’s conduct is governed, *i.e.*, that each individual is accountable for his or [her] actions as they affect

fellow members of society.” *Bethea v. Modern Biomedical Servs., Inc.*, 704 So. 2d 1227, 1233 (La. Ct. App. 1997). Thus, to prove a cause of action under Article 2315, a plaintiff must demonstrate damage on the part of the plaintiff caused by fault on the part of the defendant. *Bourgeois v. A.P. Green Indus., Inc.*, 716 So. 2d 355, 357 (La. 1998) (“Louisiana Civil Code article 2315 imposes delictual liability on a person whose fault causes ‘damage’ to another.”), *superseded by statute on other grounds as stated in Ewing v. Armstrong World Indus.*, 846 So. 2d 813 (La. Ct. App. 2003).

2. Plaintiffs Have Suffered And Will Continue To Suffer Actionable Damage

The emotional, physical, and financial hardships inflicted by Graham upon the women he deceives clearly constitute damage under Louisiana law. Article 2315 is a broad statute that “speaks in general terms in order to ensure that the specific wrongs not foreseeable by the drafters would be included, for ‘as the drafters . . . realized, no one could foresee all the possible types of civil injuries and accidents that might befall people.’” *Bethea*, 704 So. 2d at 1233 (quoting Shael Herman, *THE LOUISIANA CIVIL CODE*, 52 (1993)).

As discussed above, women who put their trust in Graham suffer gravely as a result of his deceit. *Supra* Part 2, Section I(C)(4)(ii). Women suffer an “emotional rollercoaster” as they are repeatedly told by Graham that the day for their procedure has been postponed. (Cabrera Decl. ¶ 20.) Upon realizing that they have been deceived, Graham’s victims feel violated and manipulated. (Cabrera Decl. ¶ 29.) Many are so distraught that they entertain taking their own lives or aborting their fetuses through self-inflicted damage. (Cabrera Decl. ¶ 20; Doe One Decl. ¶ 13.) Many women do not discover Graham’s fraud until their pregnancies have advanced to the stage when a more expensive, lengthy, and risky procedure is needed. (Cabrera Decl. ¶ 27.) Other women do not discover that Graham is a fake until their time for a safe, legal abortion has

passed. (Doe One Decl. ¶ 23; Doe Four Decl. ¶ 16.) All of these women—whether they must undergo more risky and expensive procedures than they otherwise would have, or whether they are forced to carry their babies to term—suffer physically, emotionally, and financially at the hands of Graham.

3. Graham Is At Fault For His Actions

Graham’s intentional acts of deceit constitute fault under Article 2315. “The parameters of what constitutes fault in Louisiana reach far and wide in order to hold people accountable for their harmful actions regardless of whether or not their actions are covered by a statutory provision.” *Bethea*, 704 So. 2d at 1233; *see also Pitre v. Opelousas Gen. Hosp.*, 530 So. 2d 1151, 1156 (La. 1988) (“The framers conceived of fault as a breach of a preexisting obligation . . . , and they left it to the court to determine in each case the existence of an anterior obligation which would make an act constitute fault.”); *Grigsby v. Coastal Marine Serv., Inc.*, 412 F.2d 1011, 1026-27 (5th Cir. 1969) (“‘Fault’ . . . may be succinctly defined as a breach of duty or a want of that degree of care required in a given case.”).

In soliciting and answering the calls of women seeking abortions and then asserting to those women that he will arrange for abortions for them, Graham undertakes a duty to act honestly and in good faith on his promises. Graham breaches this duty with every misrepresentation that he makes to the women who call his “service,” from claiming to be something he is not, to offering false medical advice and setting up fake appointments for abortions for them. Such blatant breach of a preexisting obligation is clearly what the framers of the Louisiana Civil Code had in mind when they enacted a broad article “to hold people accountable for their harmful actions.” *Bethea*, 704 So. 2d at 1233.

II. PLAINTIFFS ARE SUFFERING AND WILL CONTINUE TO SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION

The second requirement for obtaining preliminary injunctive relief is a threat of irreparable harm. *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989). Similarly, under Louisiana law, injunctive relief is available for tort claims where a plaintiff suffers irreparable injury. La. Code Civ. Pro. art. 3601. “Irreparable injury means the applicant cannot be adequately compensated in money damages for his injury or suffers injuries which cannot be measured by pecuniary standards.” *Boutte v. Lawrence*, 724 So. 2d 250, 252 (La. Ct. App. 1998).

Graham’s deceitful acts have caused Plaintiffs irreparable harm not capable of monetary compensation. Absent a court order enjoining Graham’s unlawful conduct, Plaintiffs will continue to suffer such irreparable harm.

A. Plaintiff Causeway Is Suffering Irreparable Harm

Having established a likelihood of confusion, Plaintiff Causeway is entitled to a presumption of irreparable injury. *See Better Bus. Bureau, Inc. v. Medical Dirs., Inc.*, 681 F.2d 397, 403 (5th Cir. 1982) (affirming issuance of preliminary injunction where “significant likelihood” of consumer confusion “poses a threat of irreparable injury”); *Bayer Corp. v. Custom Sch. Frames, LLC*, 259 F. Supp. 2d 503, 510 (E.D. La. 2003) (under both the Lanham Act and Louisiana state law, “[t]rademark infringement, unfair competition, and dilution by their very nature result in irreparable injury since the attendant loss of goodwill, reputation and business cannot adequately be quantified and the trademark owner cannot adequately be compensated”); *Miss Universe, Inc. v. Pitts*, 714 F. Supp. 209, 219 (W.D. La. 1989) (“Irreparable injury . . . ordinarily flows where there is a substantial probability of confusion because of the defendants’ use of a similar name.”); *see also Hasbro, Inc. v. Lanard Toys, Ltd.*, 858 F.2d 70, 73 (2d Cir.

1988) (“In a Lanham Act case a showing of likelihood of confusion establishes both a likelihood of success on the merits and irreparable harm, assuming that the plaintiff has a protectible mark.”) (citations omitted).

Even without such a strong showing of consumer confusion, however, it is clear that Graham’s fraudulent actions pose an irreparable threat to Plaintiff Causeway’s ability to provide safe abortions and other reproductive health care services to the women of New Orleans and the surrounding states. Further, Graham’s unlawful actions pose an irreparable threat to Plaintiff Causeway’s reputation as a provider of safe abortions. In the absence of an injunction, such harm would be ongoing.

B. Dr. DeGueurce’s Patients And The Plaintiff Class Will Suffer Irreparable Harm

Dr. DeGueurce’s patients and the Plaintiff class will suffer irreparable harm if Graham is permitted to continue his deception and lies, for the conclusion that a woman’s ability to exercise her right to obtain an abortion “is either threatened or in fact being impaired . . . mandates a finding of irreparable injury.” *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); *see also Planned Parenthood v. Citizens for Cmty. Action*, 558 F.2d 861, 867 (8th Cir. 1977) (finding of irreparable harm supported by showing of adverse effect on abortion provider’s business and revenue, and interference with the exercise of constitutional right of patients to choose an abortion); *Pilgrim Med. Group v. New Jersey State Bd. of Med. Exam'rs*, 613 F. Supp. 837, 848-49 (D.N.J. 1985) (concluding that harm that results from interference with the ability to exercise reproductive choice “is as irreparable as any that can be imagined: not only does it flow from the deprivation of constitutional rights, but it also creates a situation which is irreversible and not compensable”).

The emotional, physical, and financial harm suffered by women who fall prey to

Graham's fraudulent scheme cannot be measured by any pecuniary means. Women who are deceived by Graham feel violated, manipulated, and distraught. The invasion into their private lives cannot be compensated by any amount of money. Being deceived into yielding control of their own bodies similarly causes immeasurable harm. And women who do not realize Graham's fraud until their pregnancies have advanced to the point where a later-term abortion is necessary, or to the point where abortion is no longer an option, suffer irreparable physical and emotional damage. *See also supra* Part 1, Section II(C); Part 2, Sections I(C)(4)(ii), I(D)(2). Such irreparable harm will continue unless Graham's fraud is enjoined.

III. DEFENDANT WILL SUFFER NO HARM IF INJUNCTIVE RELIEF IS GRANTED

To satisfy the third prong of the preliminary injunction standard, Plaintiffs must demonstrate that their threatened injury outweighs any damage Graham faces as a result of the grant of a preliminary injunction. *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989). Graham will suffer no harm should a preliminary injunction be granted, whereas the threatened injury to Plaintiffs should Graham's conduct continue is great and irreparable. An injunction will place no financial burden on Graham, as he receives no pecuniary benefit from his "service." Graham's business will not be harmed, because he does not have a legitimate business.

IV. THE PUBLIC INTEREST FAVORS INJUNCTIVE RELIEF

The final factor to be considered in issuing a preliminary injunction is whether the public interest favors the requested relief. *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989). The public has no interest in furthering confusing and fraudulent conduct that interferes with a woman's medical care and constitutional right to obtain an abortion. On the other hand, the public has a strong interest in ensuring that advertisers in the yellow pages and

other telephone directories provide the services they purport to provide and that pregnant women are not given false medical information. Further, the public has a strong interest in ensuring that women are not subjected to invasive fraudulent behavior aimed solely at preventing them from exercising their constitutionally protected right to a safe and legal abortion and exposing them to grave harm to their health and to the health of the babies they are forced to carry to term.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court to grant their motion for a preliminary injunction (1) preventing Graham from using a name that is confusingly similar to Plaintiff Causeway's marks, CAUSEWAY and CAUSEWAY MEDICAL CLINIC; (2) preventing Graham from making false and misleading statements about Plaintiff Causeway; (3) preventing Graham from falsely holding himself out as a provider of medical services, abortions, referrals for abortions, or financial assistance for any of the aforementioned services, be it orally, in advertising, in any form of telephone directory, or otherwise; (4) preventing Graham from advertising, under any name, be it in the yellow pages, online directories, or otherwise, under the headings "Abortion," "Abortion Services," "Abortion Provider," "Abortion Referrals," "Abortion Information & Services," or substantially similar heading language, unless he is licensed as an outpatient abortion facility or approved as a health care facility or service that provides or refers for abortions under applicable state law; (5) ordering Graham to take all steps necessary to put an intercept operator or similar device or service in place to ensure that persons intending to call "Causeway Medical Clinic" or "Causeway" do not reach Graham; and (6) preventing Graham from offering medical advice without a valid license or authorization to practice medicine issued by the appropriate state authority.

Respectfully Submitted,

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