

CAUSE NO. 21-CV-1108

LARRY MAXWELL,	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
	§	Galveston County - 10th District Court
v.	§	
	§	_____ JUDICIAL DISTRICT
Blimp Base Interest Inc., and	§	
	§	
JOE WILBURN, individually and	§	
in his official capacity for Blimp Base	§	
Interest Inc.,	§	
	§	GALVESTON COUNTY, TEXAS
Defendant		

**PLAINTIFF'S VERIFIED ORIGINAL PETITION FOR DECLARATORY JUDGMENT AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY AND
PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Larry Maxwell ("Maxwell") who files this Verified Original Petition in the interest of justice and fairness, and for common law fraud, and for a Declaratory Judgment as stated herein, and asks this Honorable Court to grant the Application for Temporary Restraining Order and Temporary and Permanent Injunction ("the Petition"), against Defendants Blimp Base Interest, Inc. ("Blimp Base") and Joe Wilburn ("Wilburn"), collectively ("Defendants"). Maxwell would respectfully show the Court as follows:

Status Conference set for 10/28/2021

I.

PARTIES

1. Plaintiff Larry Maxwell is an individual whose domiciliary address is 2122 Tower Bridge Rd., Pearland, Texas 77581.
2. Defendant Blimp Base Interest Inc. is a Texas Corporation whose domiciliary address is 7526 Blimp Base Rd, Hitchcock, TX 77563
3. Defendant Joe Wilburn is an individual whose domiciliary address is 5720 Forest Cove Drive, Dickinson, TX.

II.

JURISDICTION AND VENUE

4. Maxwell's claims for declaratory and injunctive relief are brought pursuant to the laws of the State of Texas and are properly founded upon the subject matter jurisdiction of this Court.
5. Venue is proper in the State District Court because this suit contains actions, subject matter, and property located in Galveston County.
§15.001 TCPRC; §17.56 TBCC

III.

DISCOVERY CONTROL PLAN LEVEL

6. Maxwell moves the Court to order that discovery in this matter be conducted in accordance with a Level 2 discovery control plan tailored by the court to the circumstances of the suit. *See* TEX. R. Civ. P. 190.3
7. Maxwell formally requests that Defendants disclose, within fifty (5) days of service of this request, the information or material described in Rule

194.2(a) – (l). Copies of any documents produced in response to these requests must be produced before the expiration of fifty days of the service hereof at the home of Maxwell or at a place otherwise agreed upon by counsel.

IV.

MAXWELL APPEARING PRO SE

8. Maxwell owns EARTHLOC ENGINEERING, a dba under the assumed name Larry Maxwell dba EarthLoc Engineering, a Texas Professional Engineering Firm, TBPE #21037. Maxwell brings this cause of action in his individual capacity.
9. Maxwell also owns EARTHLOC which is a dba under the assumed name Larry Maxwell dba EarthLoc. Maxwell, therefore, and can prosecute this action in his individual capacity regarding the issues outlined herein.
10. Maxwell is also Managing Member of EarthLoc LLC that only controls licensing rights to manufacture and sell EarthLoc parts as directed by EarthLoc Engineering. EarthLoc LLC is not a party to this lawsuit. There is no action in controversy regarding EarthLoc LLC or any legal fiction requiring that a bar licensed attorney provide representation.

V.

STATEMENT OF CLAIM

11. This lawsuit relates to fraudulent inducement, creation of fraudulent debt with intent to extort, breach of contract and non-performance. Maxwell

seeks declaratory judgment for the victimization, injury and damage to Maxwell that has been proximately caused by Defendant's, fraudulent inducement, breach of contract — all losses herein described directly caused thereby.

12. Because this action is both for judgment for actual and punitive damages, but also the urgent action for TEMPORARY INJUNCTION to protect Maxwell from additional harm, the detail of this Statement of Claim and Summary of events will be far more than a typical petition, as it will be the basis for Maxwell's claim for Temporary Injunction. Maxwell must lay a foundation for understanding how the harm he is now facing could have come about and in such a short window since this relationship with Wilburn began.
13. Maxwell is being harmed by Wilburn, without explanation or notice, demanding that Maxwell vacate the warehouse that Wilburn provided Maxwell for long-term storage of his equipment and property.
14. Maxwell seeks a Temporary Injunction enjoining Wilburn from evicting Maxwell from the warehouse without basis and without proper notice, and in violation of the agreement by Wilburn to provide Maxwell the long-term use of the warehouse (for the reasons that will be shown hereinbelow).
15. Maxwell seeks an award for the damages proximately caused by Wilburn's actions.
16. Wilburn sought to force Maxwell to give him valuable property that Maxwell had no obligation to provide, and, when Maxwell refused to capitulate to Wilburn's demands, Wilburn told Maxwell to vacate the

warehouse by August 1, 2021 . . . less than two months after he had provided the warehouse to Maxwell “indefinitely” to provide both storage for Maxwell’s equipment and property and for Maxwell to have a welding shop and work space to help Wilburn build a bulkhead to stop erosion on his lakefront property.

VI.

FACTS AND HISTORY OF THE CASE

17. Defendant Joe Wilburn contacted Plaintiff Larry Maxwell by phone on Monday, May 24, 2021 at 6:30 PM and spoke with Maxwell for 6 minutes, agreeing to talk again the next day. Wilburn said he wanted Maxwell to build him a bulkhead on his lakefront property, 207 Andrew Jackson Circle, Hemphill, Texas, on the West band of Toledo Bend Reservoir (“TBR”).
18. Maxwell, as agreed, contacted Wilburn the following morning, Tuesday, May 25, 2021, and Wilburn provided tremendous detail about the erosion issues on his property and neighboring properties and represented that he had a coalition of people needing bulkheads installed to save their properties from falling into the Toledo Bend Reservoir. The phone conversation lasted 27 minutes.
19. Wilburn was quite frantic for a solution to his erosion issues and was pushing Maxwell hard to come up with a solution.
20. Maxwell informed Wilburn that at the moment he was required to spend a few weeks getting moved out of a warehouse where his lease had ended.

Wilburn immediately told Maxwell that he had hundreds of thousands of feet of empty warehouse space at the Blimp Base and that he would provide Maxwell ample warehouse space to move and store his equipment at no charge. Wilburn did not draw up a lease agreement. To this date Wilburn has never asked anything of Maxwell regarding paperwork for a lease, a lease term or payment for the warehouse space.

21. Wilburn repeatedly stated that he was supremely confident that he and Maxwell could work together to both fix his erosion problem on his TBR property and also, even before he and Maxwell met Wilburn face to face, Wilburn expressed an intense desire to have an exclusive to install Maxwell's EarthLoc FRP Parts to create bulkheads on the TBR, representing that hundreds of miles of shoreline were eroding and needed immediate attention.
22. Within just a few days of Maxwell's first meeting with Wilburn, Wilburn asked Maxwell to consider providing Wilburn an exclusive to install EarthLoc in all of Southeast Texas. Wilburn was more than willing to demonstrate to Maxwell his ability to make such a relationship profitable to Maxwell and showed Maxwell that he owned a considerable amount of equipment and had the manpower and means to become a viable installer of EarthLoc, as well as being a seasoned salesman who could close deals and sell millions of dollars of EarthLoc material.
23. Wilburn represented that he had close relationships with the Sabine River Authority and was going to immediately tell them about the EarthLoc

bulkhead solution. Wilburn continuously demonstrated to Maxwell that he had multiple contacts, that he had equipment, resources and the wherewithal to “make millions” selling Maxwell’s product and induced Maxwell in every way possible to move his equipment and property to the Blimp Base so he could begin to work directly with Wilburn to build bulkheads on TBR.

24. Maxwell agreed to meet with Wilburn. The first meeting was the following day, Wednesday, May 26, 2021, at Wilburn’s office located at 7526 Blimp Base Rd, Hitchcock, TX 77563. Maxwell was accompanied in this meeting by his wife, Angela Maxwell. The only people in the meeting were Wilburn, Maxwell and his wife. Cassandra “Sandy” Prater, Wilburn secretary, was introduced to Maxwell and his wife, and sat at a desk about 20’ from where Maxwell and Wilburn’s discussion occurred, so it is likely that Sandy could easily hear what was being discussed.
25. Maxwell had spent a considerable part of the previous day looking at Google Earth Images of Wilburn’s property and of six other properties that Wilburn represented that he was in direct contact with the owners and said they too would likely want bulkheads. Wilburn’s property was, he said, 160’ of shoreline and Maxwell confirmed this with tools on Google Earth.
26. At the meeting Maxwell gave Wilburn a preliminary price of \$81,000.00 to install 160’ of bulkhead with and bulkhead wall of 13’ height, to be driven to 3’ below the bottom of the lake. Wilburn thought that figure was high, and design changes were discussed. Wilburn said he wanted to personally

do the installation and use his equipment so he could learn the business and how everything worked. Maxwell agreed to back out installation and equipment cost and provide Wilburn with a written proposal after he had put eyes on the property and made proper assessments.

27. The focus of that first meeting then turned to warehousing, because Maxwell's immediate priority was moving over \$150,000.00 in equipment and property to a new location by June 15th. The party left the office to look at warehouse space. Wilburn got in the back seat of Maxwell's truck, Maxwell and wife in the front seats, as Wilburn directed Maxwell to drive roads within the Blimp Base as he contemplated which warehouse he wanted to provide to Maxwell. Wilburn repeatedly stated that his business was way down, about 30% occupancy, so he had hundreds of thousands of feet of empty warehouse space. Within a few minutes Wilburn directed Maxwell to the only building shown to Maxwell, a very nice building on Blimp Base Rd. that Wilburn said had recently been vacated by a client, ENEOS. Wilburn did not have a key to the building, but he said it was empty and ready for move in immediately.
28. Maxwell specifically asked about the long-term use of the warehouse and specifically stated that he did not want to be having to move everything again anytime in the near future. Wilburn emphatically reassured Maxwell, in the presence of Maxwell's wife, that "the warehouse is yours to use indefinitely as well as laydown yard adjoining the warehouse and for building prototypes." There is no way Maxwell would have moved ten

trailer loads of property and equipment from Springbranch, Houston, to Hitchcock without solid assurances that his warehouse space was secure and under his control for a long term. Wilburn's word for the term of use was "indefinitely."

29. Over the following weeks Wilburn repeatedly suggested that Maxwell move \$300,000.00 of inventory that Maxwell has stored at 5714 Delaney Rd., Hitchcock, Texas 77563 to the Blimp Base. Maxwell told Wilburn it was not necessary to move all of the inventory at this time, but that materials would be brought over and used for prototypes as needed.
30. Maxwell specifically told Wilburn about the immediate need to build a prototype of the TEXAS BORDER WALL that was to be shown to the governor and legislators. Wilburn assured Maxwell that his location would be "perfect" for that to occur and that there would be no issues with the multiple people coming out to view the prototypes. Wilburn had gone to Maxwell's Delaney Rd. location and entered that property unannounced and unaccompanied and looked at Maxwell IKE DIKE prototypes there, so he knew exactly what Maxwell needed and required for an area to build prototypes for clients to come view. It was also from looking at Maxwell's Delaney Rd. prototypes that Wilburn became convinced that EarthLoc's Modular Grid design could be used to build a strong and beautiful bulkhead to protect his property.
31. Maxwell spent the next day working with his engineering team on a design and creating renderings so Wilburn would have some idea of what a

finished bulkhead would look like on his property. The drawings, created at considerable time and expense, were provided to Wilburn via email.

32. The next morning, Friday, May 28, 2021, Maxwell and his oldest son, Stephen left Pearland at 5 AM and drove 220 miles to Wilburn's property on TBR to look at the erosion issue and consider what could be built using EarthLoc's FRP Parts to stop the erosion and secure the shoreline of the property. Maxwell and his son spent four hours at the property and looked at an immediately adjacent property that Wilburn represented he, personally, had just recently sold to his neighbor, and this property too had horrific erosion issues that Wilburn repeatedly and frantically said could result in the home toppling off a 35' bluff into the TBR. It was projected that the emergency installation to save these properties would be in excess of \$150,000.00, collectively, and Wilburn repeatedly assured Maxwell that getting it done was paramount and that costs was not a concern.
33. Because of the provision of warehousing and what appeared to be a solid growing relationship with Wilburn, Maxwell not only did not invoice Wilburn for engineering and design, but Maxwell was willing to discuss deep discounts to both help Wilburn save his property and also to provide a prototype of an EarthLoc bulkhead in that region thus leading to a considerable amount of work for Maxwell/EarthLoc.
34. On that Friday morning during our first site visit, Wilburn provided a pontoon boat on which multiple parties boarded, and we drove the TBR shoreline for several miles looking at properties that Wilburn represented

that he believed could be saved using EarthLoc's products and solutions and that he was in contact with Sabine River Authority to show them the EarthLoc solution.

35. Maxwell and his son captured considerable digital images of Wilburn's property on May 27, 2021.



- 36.
37. The following morning, Saturday, May 29, 2021, Maxwell and his wife met Sandy Prater, Wilburn's secretary, at the designated warehouse building on Blimp Base Road and Sandy (and her husband) provided Maxwell with keys to enter the building. Maxwell had with him a 22' trailer with a Bobcat T650 skid steer. Maxwell proceeded to open the building and unload the Bobcat for storage in the warehouse. The first contents moved into the warehouse were only a few days from the initial phone call by Wilburn to Maxwell and the day after Maxwell's first site visit to Wilburn's property. The relationship was growing quickly (four days in) and Wilburn

appeared to Maxwell to be a man of his word and that he could be trusted to make good on each and every promise he was making.

38. By providing the warehouse space and the hundreds of additional actions, phone calls, emails, text messages and provisions to Maxwell over the next 7 weeks, Wilburn demonstrated that he was fully *adhering to the verbal contract* that he sought to make and did enter into with Maxwell.
39. In view of the verbal contract and the continuous evidence of Wilburn's adherence to the contract, Maxwell invested approximately \$50,000.00 in engineering, consulting, expense, trucking, labor and installation costs to build Wilburn's bulkhead.
40. For purposes of this initial Petition Maxwell provision of detail (though quite lengthy to provide a solid picture of what occurred) is not nearly representative of the voluminous evidence of Wilburn's scheme to defraud Maxwell. Additional detail that will outlined by daily time charts and fully supported by video evidence, digital images, emails, text messages and phone calls will be presented in evidentiary hearing and/or at trial as evidence supporting Maxwell allegations.
41. Maxwell greatly reduced the price to \$68,000.00 for Wilburn's 160' bulkhead. A proposal was presented to Wilburn. Wilburn said he read the proposal but never offered and opportunity to discuss the detail or merits of the proposed contract.
42. Maxwell employed his engineering team to design and draw the bulkhead installation for Wilburn's property. The engineering drawings were

presented to Wilburn along with the proposal. Wilburn took the engineering and drawings to the Sabine River Authority and presented the plans to SRA. Wilburn, using Maxwell's work product — engineering and sheet plans in an EarthLoc Engineering Title Block — was awarded a PERMIT for the project by SRA.

43. Maxwell did not invoice Wilburn the \$15,000.00 that would normally be charged for the work that went into the design, engineering, drawing and sheet plans.
44. Wilburn stated, in the presence of others, that he would give Maxwell the \$68,000.00 for the material to build 160' of bulkhead. Maxwell told Wilburn that he was providing materials at a zero-profit price and that he could not and would not cut materials to specified lengths unless and until he received full payment up front.
45. Wilburn, for reasons unbeknownst to Maxwell, appeared to start getting cold feet (after he had already told a large number of people that he expected to be installing EarthLoc bulkheads in large volume on TBR), and over the next few days Wilburn decided he only wanted to “test” the installation process. He asked Maxwell if he would be willing to just provide enough material to build 20' of bulkhead and come to the site to provide supervision to show Wilburn the installation process.
46. Maxwell agreed. Wilburn paid Maxwell 1/8th of the reduced 160 linear feet price which was \$7,500.00. The purchase price was for *material only*.

47. Maxwell went by Wilburn's office to pick up the check on a day he (Maxwell) was down in Hitchcock moving equipment into the warehouse. Wilburn directed Sandy Prater to cut the check and Wilburn signed the check providing the funds to Maxwell.
48. Maxwell hired workers and obtained the tools necessary to cut the FRP materials. Just the diamond bit chain on the Rock Boss chain saw required to cut the materials costs \$588.00. Though Maxwell was not obligated to haul materials or equipment, scheduling issues with Wilburn's trailers and ability to move the materials to the job site resulted in Maxwell loading his trailer and hauling the initial 8000 lbs. of FRP materials the 220 miles to the job site.
49. During the first two weeks of June, Maxwell moved into the warehouse space.
50. Maxwell, with Wilburn's approval, hired an electrician to come to the warehouse and repair wiring and to install new wire, breakers, and receptacles to set up a welding shop for Maxwell to build the drive plates that would be needed in the installation. Maxwell also had to obtain steel plates and welding materials for the construction of the drive plates. The costs to Maxwell for electrical installation in the building was considerable, and was done at Maxwell's expense, no questions asked, because of the long-term arrangement for use of the warehouse. Wilburn was full well knowledgeable of Maxwell setting up the warehouse for welding and

visited the warehouse on multiple occasions while Maxwell was under the welding hood and fabricating the build plates.

51. Wilburn moved an excavator and a skid steer to his TBR property and, on Saturday morning, June 19, 2021, met Maxwell at the Blimp Base warehouse and loaded Maxwell's Montana Hammer onto his trailer to transport it to his TBR property to be used for installing the first 20 linear feet of bulkhead. One month later, Maxwell's \$8000.00 Montana Hammer is still at Wilburn's property as well as other pieces of equipment and tools.
52. From the very first discussions of how to install EarthLoc's parts, Maxwell described to Wilburn that the installation was done with an excavator-mounted vibrodriver. Maxwell directed Wilburn to his website where the video of the TEXAS BORDER WALL had some video of EarthLoc parts being installed with a 75-ton vibrodriver mounted to an 80,000 lb excavator. Wilburn assured Maxwell that he owned both an 80,000 lb excavator and an 18,000 lb excavator and that leasing a vibrodriver and mounting it on either machine could and would be done for the installation.
53. However, for what had evolved into a TEST for installing the first 20' of bulkhead, Maxwell agreed to allow Wilburn to use his Montana Hammer knowing the extreme limitations of the Montana Post Driver Hammer because of reach, height to get on top of the panels coupled with the near-zero possibility of driving the parts perfectly vertical is mandated for proper installation.

54. Essentially, all we planned to do with the Montana Hammer was to see if we could get the part into the ground to the depth demanded by Wilburn. Maxwell assured Wilburn that the likelihood of getting the modules 5' deep and the panels 14' deep was very small.
55. Maxwell left Pearland at 5 AM on June 21, 2021 with his two sons and a loaded trailer of the FRP parts for the first 20' section of bulkhead. Maxwell's truck was loaded with power tools. The crew was headed to TBR for the first day of installation.
56. Wilburn had said he would have operators and labor at the site to assist in the install. When Maxwell arrived, only Wilburn was present. It soon became clear that no other help was coming and that Wilburn was expecting Maxwell and his sons to do the lion's share of the hard work on the ground. The conditions were both horrific due to the steepness of the slope and the heat. Maxwell and his sons soon learned that things could get a lot worse when a storm blew in bringing high winds and heavy rains that quickly shut us down. Maxwell and sons, for the first of many times, packed up all of the tools and carried them into a boat house shed to prevent them from being swept into the lake. What also was not known was that these storms and rains come in almost daily.
57. From the moment of beginning the project, Wilburn directed every facet of the installation. Wilburn decided where the first modules and panels would be installed. Wilburn operated the equipment – an excavator to lift and move modules and the skid steer to hammer modules into the ground or

pull modules out of the ground. Until this project Maxwell had *never* had to pull a module out of the ground, and actually did not believe it could be done. However, a module or panel that is driven into the ground, and then removed, is severely compromised and usually damaged beyond being able to reuse the part.

58. To unload the materials, Wilburn, operating one of his skid steers, lowered Maxwell's trailer down the long, steep slope to an area near the water's edge where Maxwell and his sons offloaded the materials for the 20' section of bulkhead to be installed.
59. The slopes were exceptionally steep, and the area was wet from earlier rains, much different than it had been a few weeks earlier when Maxwell was there for the site visit. It became quickly apparent that the equipment provided by Wilburn would NOT work (as projected by Maxwell before the project ever began) and discussions throughout those first three days centered on locating and leasing a vibrodriver so the EarthLoc parts could be properly installed.
60. Wilburn repeatedly talked about a barge with a excavator on the barge and hiring them to come over and install the EarthLoc parts from the water instead of up on the steep slopes. On the second day Wilburn lowered his boat in the water and Maxwell, with oldest son, accompanied Wilburn across the lake to a cove where the barge was docked, hoping to find someone to talk to about hiring them to do the installation. No one was available to talk to, but the barge excavator only had a vibrating plate, not

a vibrodriver, so it would not have provide nearly enough force to drive the EarthLoc parts.

61. On the first day of installation a huge issue arose when Wilburn could not drive the modules more than 3' into the ground. The panels would not go into the ground more than five or six feet. Wilburn pulled the modules and panels that had been installed and then used his excavator to being digging deep into the ground to try to discover what was preventing the installation.
62. To the amazement of Maxwell, his sons and Wilburn, a huge number of concrete blocks were buried in rows 3 to 4 feet below the surface. Apparently, before Wilburn bought the property, a previous owner had stacked bags of concrete behind the bulkhead, 2 and 3 rows deep and several rows high.
63. Wilburn proceeded to dig out the volumes of concrete blocks and stack them up the hill in front of the second bulkhead:



64.

65. It is readily apparent to most anyone that it is impossible to drive piles of any kind through concrete blocks.
66. The discovery of these concrete blocks completely changed the dynamic of the project. The soil what was once firm and compacted was excavated and then put back into the hole. The soil then was immensely loose because it was sifted for concrete blocks. Wilburn did not compact the replaced soil. Therefore, once the insitu soil was disturbed, removed, sifted and replaced in an uncompacted state, that was nothing meaningful into to which to lock the EarthLoc modules and panels.
67. Even so, Wilburn became convinced he had figured out the issues (by digging out the concrete blocks) and by the third day of fighting the battles, Wilburn said, "I've got this. You guys look worn out and ready to head out. Why don't y'all pack it in and head home. I will finish installing the rest of this section and we can get a vibrodriver if we decide to continue." This position, halfway through the first week of installation, is evidence that Wilburn knew full well that the installation was on him to complete, and that Maxwell intended to provide only initial supervision and minimal labor to get the project kicked off. When Maxwell and his family left to head home on June 22, 2021, Maxwell didn't expect to return until the project was finished.
68. The next morning, June 23, 2021, just as Maxwell and his sons were loaded out and ready to head home, Wilburn called Maxwell and said he needed to further discuss installation, and asked Maxwell to come down to

the site before leaving for home. Maxwell ended up staying several hours while discussing the challenges of using the skid steer to hammer the panels and modules. It was fully agreed that finding a vibrodriver was the only solution. Wilburn spent that day with an assistant working the ground, attempting to drive modules and panels in the area he had dug up the day before. Nothing Wilburn did was successful or in alignment.

69. Wilburn also said he was confident with the right equipment (excavator-mounted vibrodriver that EarthLoc's Modular Grid Wall would provide the bulkhead he wanted. So Wilburn said he wanted Maxwell to cut enough material to build another 40' of bulkhead to shore up the area immediately behind the boat house. Maxwell measured that area and it came to about 42 feet. Wilburn said that upon returning with the other material, now giving us enough to build 60' of bulkhead (less the modules and panels that had been damaged and likely could not be reinstalled), we would begin where we left off, where he had driven modules and panels and work our way West.
70. On the 220-mile drive home, Maxwell contacted David Fortenberry of Hammer and Steel in Dayton, Texas and told him of the need for small vibrodriver. Within an hour David called back to say he had found a 29-ton (driving force) vibrodriver in St. Louis, Missouri and quoted lease pricing and shipping. Maxwell told Fortenberry we needed the vibrodriver in Hemphill Texas at the site by July 12, 2021.

71. Maxwell then called Wilburn and told him about the vibrodriver that he located and that he needed to get the specs for the excavator to Hammer & Steel (Fortenbery) to ensure there was sufficient hydraulic flow for his machine to run the vibrodriver.
72. Maxwell told Wilburn that he (Wilburn) had to rent the vibrodriver and put it on his insurance, etc. Wilburn wanted Maxwell to rent the vibrodriver and said, "You can just add it to what I will pay you for the materials." Maxwell wouldn't agree that arrangement. Wilburn was vacillating, so Maxwell offered to incur even more costs and expense and said he would pay ½ of the vibrodriver costs so Wilburn could get it there and finish the project quickly.
73. Wilburn contacted David Fortenberry, Hammer & Steel, at the number Maxwell provided. Fortenberry had sent the required documents to Maxwell, and Maxwell forwarded those documents to Wilburn who in turn, forwarded the documents to his secretary, Sandy Prater. Sandy completed the forms and emailed the necessary, completed documents to David Fortenberry/Hammer & Steel to lease the vibrodriver. The price to lease the Muller 3 vibrodriver was \$1500 per week for three weeks and \$5000 for a month. Shipping was estimated to be \$200.00.
74. Maxwell agreed to pay ½ of whatever the vibrodriver costs.
75. However, when Sandy emailed the specs on the excavator to Hammer & Steel, David Fortenberry got back with Sandy to tell her that the hydraulic flow on the excavator was insufficient. Because Wilburn was unreachable

and Sandy, knowing that Maxwell was in a joint venture of sorts with Wilburn on this project, forwarded the email responses to Maxwell and asked Maxwell to get back to Fortenberry to resolve the capability issues. It turned out that Wilburn thought he had a Kubota KX80-3 excavator when in fact he owns a KX80-4 (mini) excavator, the primary difference being significantly less hydraulic flow for auxiliary implements such that Wilburn's excavator would not work with either the Mueller 3 or Mueller 2 vibrodriver.

76. Rather than agree to just rent a larger excavator (probably \$1500 a week), Wilburn flip-flopped on getting the vibrodriver and sought to convince Maxwell that he would dig out all of the area behind the boat shed so that there would not be any concrete blocks or cables to prevent driving the parts into the ground, and that we should give it another shot with the Montana Hammer. Maxwell begrudgingly conceded, knowing all the obstacles that we had already faced but willing to try it for another week. Maxwell felt that Wilburn just had not seen enough to know that the Montana Hammer was never going to get this work done — no height, no reach, no verticality!
77. After delaying for a few days to ponder the plan going ahead, Wilburn wrote Maxwell a check for \$15,000.00 to cover Maxwell's cost of the FRP material for another 40 linear feet of bulkhead. Maxwell and his sons spent three days cutting the materials. Wilburn brought his trailer to Maxwell's laydown site on Delaney Rd., Hitchcock, and Maxwell and his sons loaded

Wilburn's trailer. On Friday, July 9, 2021, Sandy Prater came to Maxwell's laydown yard and hooked onto the trailer and took it back to the Blimp Base from which it was driven to the TBR job site. Maxwell and his sons unloaded Wilburn's trailer at the job site the following Monday morning.

78. Maxwell spent Saturday and Sunday, July 10 and 11, in the welding shop building another set of drive plates because the Montana Hammer had demolished the first set of drive plates. Cost to Maxwell for materials and labor, \$1,200.00.
79. On Thursday, July 9, 2021, Maxwell was working in the warehouse building drive plates for Wilburn's project. Wilburn pulled into the warehouse with his truck (it was raining hard outside so he pulled inside so as not to get drenched) and he had with him Hitchcock Mayor Chris Armacost whom he wanted to introduce to Maxwell and show Chris the EarthLoc FRP parts being used in his bulkhead on TBR. Wilburn also wanted Maxwell to talk to the Mayor about repairing or replacing the bulkheads at HarborWalk on the north side of the intercoastal canal across from Galveston Island. Wilburn's enthusiasm for EarthLoc was significant and Wilburn's actions seemed on some level, to demonstrate to Maxwell his full commitment to drumming up business for EarthLoc and pushing forward in the business relationship.
80. Maxwell and his sons returned again on July 12, 2021 and Maxwell, out of his own pocket, cut enough material to take to the site to replace all of the modules that had been damaged two weeks prior. Maxwell didn't invoice

Wilburn or suggests he needed to pay for the material. Maxwell also knew the material was needed to form a barrier out in an area huge crater that had already fallen into the lake and washed away. Maxwell told Wilburn that he had brought another trailer load of materials and if his idea to boom the modules out into the water and form the barrier worked as planned, Wilburn could immediately begin to backfill the huge hole (and no longer be stressed about losing more of that shoreline to horrific erosion). Maxwell told Wilburn that if it worked, he could pay Maxwell for the materials that would have been cut for that section in the next phase. Wilburn nodded agreement. Maxwell was simply making another GOOD FAITH action trying to help his new “friend” get his bulkhead installed and get his property protected. Maxwell still had every reason to believe Wilburn intended to bulkhead the entire 160’ of his property. To do otherwise would have been pointless — a fact Wilburn pointed out on numerous occasions, also stating that his neighbors also needed to put in EarthLoc bulkheads so his installation would survive if erosion began coming from the sides of his property.

81. However, when Maxwell arrived, Wilburn directed Maxwell to begin installing on the far West end of the boat shed, far away from where they had worked before . . . a considerable distance from the big hole where Wilburn has been so fretful just the last trip out . . . and was so emphatic that the erosion of the part of the property already falling into the lake had

to be corrected first (which was completely logical). Maxwell's opportunity to install the water barrier in the big hole never came to fruition.

82. So, in a completely new, pristine area, again, not knowing what lies beneath, Maxwell and his sons assembled a modular grid and prepared to drive the modules into the undisturbed soil.



- 83.
84. And as Wilburn drove the modules with the Montana Hammer, he hit concrete blocks. A mountain of concrete blocks! All the modules had to be pulled (again) and they were clearly too damaged to be reused.
85. Wilburn then began to dig . . . and dig . . . and dig. After pushing a lot of sifted dirt back into the holes, Wilburn decided he wanted to dig out just enough to install one module and one panel and then dig some more . . . a process that would have taken ten times longer than what is expected to drive EarthLoc parts with a vibrodriver into good soil. That process would also virtually assure that there would be no continuity in the modular grid

and alignment would be impossible. The frustration by this point was at a peak, but again Maxwell conceded.

86. This entire process, with good soil and a vibrodriver, would likely be complete, easily, in one 8 to 10 hour day. At this point during the second week of installation, absolutely nothing was installed that would meet quality standards for the bulkhead.
87. Wilburn dug a deep hole and put the dirt back into the hole uncompacted (just like was done 60' further west two weeks prior) and Maxwell brought in yet more modules and set a second grid to be installed. Early the second day the new (second set) of modules were driven to grade and ready for panels to be assembled in the channels so they could be driven next to the bulkhead just behind the boat shed. But as the first panel got down to around 8' deep resistance was very apparent. A wing on the panel began to twist and force the panel out of the module channels. The "Loc-Channels" are specifically designed and engineered to both guide the panel as it is being installed, and to secure it when all the channels are bolted to make the modular grid monolith.
88. So, Wilburn, again, began to pull the panel (probably the sixth or seventh panel by that point that had been driven until it hit something and then was pulled, damaged, out of the ground and discarded to the "bone pile." Except Wilburn found out this panel would not come out of the ground. The other panels that he had previously pulled using the excavator were demolished in the process, but this panel simply would not budge. So

Wilburn used the bucket with the grappled and crushed the panel in the jaws and ripped it to shreds . . . leaving the bottom five or six feet deep into the very location that a new panel would have to be driven if we could ever get to that point. Video shows that panel came out piece by piece, torn to shreds, but a large part of it was left seven or eight feet below grade.

89. What was discovered as Wilburn dug deeper and deeper was that there was yet another ½” steel tie-back cable eight feet below grade. That 8’ deep cable was cutting up into the panels that were to be driven 12.5 feet into the ground. The cut on one panel was 4’ up into the panel.
90. Now Wilburn realized he would have to dig out the entire area down to eight feet . . . to remove the concrete blocks and cut all of the cables that were encumbrances to driving the bulkhead panels.
91. Maxwell and his sons headed back to the guest house while the excavation was ongoing. Then the rains came. Tons of water flowed down from the hills and off the roof of the boat shed right into the holes that had just been opened up 8’ deep. That week of attempted installation ended on a Thursday and literally . . . after expending over 100 man-hours of labor (portions of two weeks). . . nothing permanent was in the ground.
92. Maxwell and crew went home . . . to build yet more drive plates (the others being destroyed trying to drive through concrete and cables). Before leaving Maxwell expressed, again, that a vibrodriver was an absolute necessity.

93. Maxwell's pleas continued to fall on deaf ears. Had Wilburn's excavator been a KX80-3 instead of a KX80-4, the entire 60' of bulkhead could have been installed and the ground re-compacted using EarthLoc "confined compaction" tool. But Wilburn wouldn't agree to get the excavator necessary to do the job properly. Wilburn, though he was no longer going to be at the site, was convinced Maxwell could finish the 60' of bulkhead with Maxwell's Montana Hammer because Wilburn had now dug out and removed what he believed were all obstacles that could prevent modular parts from being driven into the ground.
94. Maxwell returned the next week with his sons and yet another set of drive plates, the newest drive plate weighing in at 110 lbs, built completely from 1" thick 90 KSI steel. Each time new drive plates were built, Maxwell was spending 15 to 20 hours in the welding shop to fabricate the plates, usually on Friday, Saturday and Sunday to get up at 3 AM on Monday to return to the job site.
95. On Sunday afternoon, July 18, 2021, Maxwell was at the warehouse loading out tools and the new drive plate he had just spent 18 hours building over the previous few days, and Wilburn drove up and came inside to ask Maxwell, "When are y'all headed back up to work in the bulkhead?" Maxwell suggested he might just head home to Pearland, load up and go up that evening to get a very early start the next morning. Wilburn said, "Well that won't work because I brought the skid steer back here with me and you don't have equipment up there right now. Plus, I

have someone staying in the guest house.” Maxwell told Wilburn he would wait until the next morning and Wilburn said he would load up the skid steer right then and drive it up that evening, and that the people in the guest house would move down the hill to his house before we arrived.

96. Wilburn then proceeded to ask Maxwell if he would be interested in selling Wilburn his (Maxwell’s) skid steer, a Bobcat T650 (low hours 609, mint condition) as well as Maxwell’s 2018 Yamaha Mule (like new, 47 hours). Wilburn said he could really use the Bobcat right then for a project, and Wilburn proffered that if Maxwell would agree to sell him the Bobcat that anytime Maxwell needed a skid steer that Wilburn had multiple machines available, and Maxwell could use one anytime Maxwell needed it (which certainly aligns itself with the long-term warehouse and business relationship Wilburn had promised as part of the verbal warehouse agreement). Maxwell told Wilburn he would give it some thought, and later that evening Maxwell messaged him with prices for the Bobcat (\$31,500), the Mule (\$18,500). Maxwell also quoted him a price of \$5000.00 for the Montana Post Driver Hammer that Wilburn had mounted on his skid steer at his (Wilburn’s) property and had been using for a month on his bulkhead project. Wilburn responded to my providing this the prices with a text message: “Ty” i.e. “Thank You”.
97. The next morning at 4 AM, Monday, July 19, 2021, Maxwell left Pearland to return to the job site. In tow were Maxwell’s youngest son and the super heavy-duty drive plates he just spent 3 days building (the prior Thursday

through Saturday; costs \$1400.00). When Maxwell arrived early that Monday morning the site was very wet. Moving the equipment was very precarious. Maxwell attempted to drive panels but since the soil was so loose, and the Hammer on the skid steer was so limited with reach, driving the panels proved impossible. Because of limited height and reach, the tracks of the skid steer were on the modules that were securing the panels. The 12,000 lbs of skid steer weight, coupled with the constant requirement to move back and forth to keep the panels vertical while driving compromised the modular grid such that alignment was lost. The uncompacted soil was significantly looser than the week before.

98. Then, more rains came around noon. A deluge. It was clear that we were rained out for days and more rain was forecast. We had managed to get in about 3 hours work that night removing damaged modules, but called it a day after fighting the mud bog and more rain rolling on the horizon.
99. Maxwell and his son went down to the site the next morning to find that it had rained all night and water was standing. Because of all of Wilburn's excavation, the entire site was simply a mess:



100.

101. It was time to make the absolute decision that it was mandatory to have the right tools to get this project finished — an excavator mounted vibrodriver.

102. It is worth noting that after the second week of installation, Wilburn stated that the project was taking too much of his time and he could not be involved in the installation. Of course, Maxwell had no obligation whatsoever to continue the project. Everything Maxwell had given and provided was done out of good will and good faith expecting that the relationship with Wilburn and all that he had promised would soon come back with ample return to compensate for the work Maxwell and his sons were doing. However, the cost were considerable and at this point Maxwell knew they had to get the right tools or he could not continue.

103. Wilburn was in constantly in state of frantic and panic . . . repeating over and over that he was so fearful that his property was going to fall into the lake. Somehow . . . mystically it seemed to fall to Maxwell to fix Wilburn's

problem(s). So in the greatest measure of good faith, and wanting to get the job completed (at least the 60' of bulkhead Wilburn had purchased) Maxwell was committed to forge ahead.

104. However, rained out and knowing the equipment simply could not work, Maxwell returned home on Tuesday, July 20, 2021 and told Wilburn he would call him later that day to discuss what necessary for them to go forward.

105. Late Tuesday the 20th Wilburn and Maxwell spoke by phone. Before Maxwell had any opportunity to lay out the design that could de-water and compact the loose soils help remedy the challenges caused by the excavation, Wilburn, took over the conversation and for the first time ever, began to talk negative about EarthLoc, sounding like EarthLoc was to blame for the issues and suggesting EarthLoc has liability to fix the problem. Maxwell immediately corrected Wilburn that nothing that had occurred was Maxwell's or EarthLoc's fault and that Maxwell/EarthLoc had zero blame, culpability or liability. Wilburn became surprisingly indignant at the very thought that anything that had occurred on his job site, using his equipment, with him as the operator driving most of the modules and panels and him doing 100% of the digging — was on him. Suddenly Wilburn raised his voice and shouted, "This is my fault?!? How is it my fault?!?"

106. That was the first time Wilburn had ever raised his voice to Maxwell or demonstrated on any level that what was wrong with the project was

Maxwell's fault. Every conversation for the previous two months (which were many; both in person and many phone calls) were amenable and professional. Wilburn could not have been more accommodating and continually asked if Maxwell needed anything to make his stay at the job site more comfortable. Wilburn treated Maxwell and his family as close friends and with graciousness and gratitude for everything the Maxwell's were doing to help him. Wilburn came by the shop on multiple occasions to chat. Wilburn called Maxwell to check in several times a week and two or three times a day when Maxwell was on the jobsite. Never had there been a cross word.

107. When Wilburn raised his voice and questioned how he (Wilburn) was to blame for why the project was not moving forward, Maxwell was too surprised to really react. How could Wilburn NOT know that the concrete blocks were HIS and that the cables were HIS and that all of the issues were because of unforeseen obstacles below the soil?
108. Then suddenly, Wilburn said he didn't want to talk anymore and that they could talk the next day . . . and he ended the phone call.
109. Maxwell could sense something was really off.
110. To protect the record and create a history while everything was fresh on his mind, Maxwell wrote a SUMMARY/HISTORY of what had occurred — from Wilburn contacting him back in late May to ask Maxwell to build him a bulkhead, to the challenges that have arisen along the way and the

manner in which Maxwell sought to work with Wilburn to remedy those challenges.

111. Maxwell also outlined the steps he felt could be accomplished and the level of confidence that he had to complete the project using the proper tools.
112. Maxwell emailed Wilburn the summary/history of the project and the proposal to complete the job.
113. Wilburn quickly responded that Maxwell “needed to provide replacement panels for everything that had been destroyed.” Be reminded that Wilburn set on the excavator and beat those panels into the ground (actually trying to drive them through concrete blocks and steel cables) then Wilburn pulled *his* FRP parts (that he had purchased) out of the ground (himself) and destroyed the very panels he was now demanding that Maxwell replace at a cost of around \$8,000.00.
114. Maxwell responded the next morning that it was not his responsibility to replace the panels. Wilburn immediately responded, “I want you out of my building by August 1, 2021” Maxwell was stunned!
115. When Maxwell would not capitulate to be extorted for \$8,000.00, Wilburn said he was kicking Maxwell out of the warehouse. Wilburn knew full well the damage and harm he was causing to Maxwell. That was his intent. Push the thumb screw to see if Maxwell would cave and fork up the valuable EarthLoc parts.
116. To put this in perspective, forty-eight hours earlier, Maxwell and his son had arrived for the fourth time at Wilburn’s guest home that was provided

to them to stay in while working on the project. Wilburn sent people to the house to put sheets on the beds and ensure that every necessity was provided for Maxwell and his sons to have the best possible stay. For Maxwell and his son(s), the house was a place to shower, eat a sandwich, and get a good night's rest to bust butt the next day for 10 hours in the blazing Texas sun. Maxwell and his family were grateful for the hospitality. The relationship with Wilburn seemed strangely perfect.

117. Up until that moment of receiving an eviction notice, Maxwell has no idea whatsoever that Wilburn had any plan to part ways with him. There was never any indication of what Wilburn was about to do.
118. Wilburn repeatedly acknowledged that the unique challenges of his property made installation a nightmare — the steep slopes, wooden stairs that blocked heavy equipment from getting in position to drive EarthLoc modules and panels, the boat shed roof overhang causing tremendous difficulty (because Wilburn insisted on building the new bulkhead close to the existing boat house and inland of the existing bulkhead). Every element of the project was slipping and sliding on wet, steep slopes in tight places. So much of each day powerful equipment was just inches from hitting the metal boat shed roof, hitting the wooden stairs, hitting the second bulkhead, or hitting electrical lines that ran from the house to the boat shed. Some days during the installation the booms of the equipment were literally six inches from the electrical lines — but Wilburn, though asked multiple times, would not disconnect, and remove the lines.

119. If at any time Maxwell or his sons had made contact with any of these obstacles, costly damage would have occurred, and or severe injury, even death. The situation was ridiculous, and Maxwell realized last week that he had to make a change before something bad happened that he would forever regret.
120. Maxwell and his sons didn't damage any property. The element of having to be so careful every minute added tons of wasted hours trying to work around the issues.
121. Wilburn, on the other hand, hit the boat shed roof several times with his excavator bucket. Every inch of soil that was dug out and removed was done by Wilburn. Maxwell made certain to NOT do anything to the property to which it could be claimed that he caused damage of any kind.
122. Maxwell's actions have been fully in keeping with the verbal agreements proffered by Wilburn and accepted by Maxwell.
123. Maxwell has provided extensive consideration for use of the warehouse in an amount far, far in excess of the cost of leasing the warehouse for a year or more (actual lease prices to be determined and final accounting of Maxwell's expenditures to be completed).
124. Maxwell projects he has invested at least \$50,000.00, collectively since May 24th, in repairs and wiring installed in the warehouse, engineering, consultation, construction of drive plates, purchase of tools, blades, screws, bolts, etc., expendable materials, shipping, trucking, labor and supervision

and equipment (the Montana Hammer used to drive the modules and panels) into Wilburn's bulkhead project.

125. Maxwell provided the sole critical tool that drove every module and every panel in the ground, and only by and through the use of Maxwell's hammer does Wilburn NOW know of the concrete blocks that were at the base of his old bulkhead (and likely what was causing so much of the erosion issue) and also the cables that had to be removed for a new bulkhead to be installed. Without Maxwell's equipment, Wilburn would still not know that these issues existed or how to remedy them.
126. Wilburn has not compensated Maxwell, or offered to compensate Maxwell for any of his time, effort and expenditures. Maxwell has a right to be compensated for all that he put into the project.
127. Maxwell traveled to the job site five times and collectively paid for close to 100 man-hours of labor for operator and rigger. Maxwell pulled loaded trailers the 440-mile roundtrip on multiple occasions. Fuel cost and wear and tear on Maxwell's truck is significant. Maxwell's collective costs are considerable.
128. Maxwell should have the right to remain in the warehouse at least equal to the lease value of Maxwell's investment in the bulkhead project.
129. Maxwell has a right to recover damages for Wilburn attempting to extort another \$8,000.00 and then seeking to harm Maxwell for failing to capitulate to his extortion demands.

130. Maxwell has a right to recover rent on his \$8,000.00 hammer that had about 20 hours on it (like new) when it was taken by Wilburn to his TBR home. Now the hammer is broken, and will require a \$1,000.00 part and labor for repairs, and is severely more used now that when it was taken by Wilburn.
131. Maxwell has a right expect compensation for all he will have to incur to find other location(s) for prototyping his product, especially when that work was just days away and the clients have been told where the prototypes will be built and where they would come see the product. Making all new arrangements . . . if even possible . . . causes irreparable harm to Maxwell and his business.
132. Wilburn's vicious and unwarranted actions are the proximate cause of Maxwell's damages and predicament that, without intervention of the Court, will cause Maxwell further harm.
133. Maxwell seeks a Temporary Injunction enjoining Wilburn from forcing him to vacate the warehouse on Blimp Base Rd.
134. Maxwell seeks Temporary and Permanent Injunction enjoining Wilburn from entering the warehouse and doing harm, moving, or doing anything to disturb Maxwell's possessions that are stored inside the warehouse.

VII.

135. Maxwell has no other remedy at law than to bring suit for recovery of his property and damages.

VIII.

CAUSES AND ACTION FOR DECLARTORY JUDGMENT

AND INJUNCTIVE RELIEF

COUNT 1: DECLARATORY JUDGMENT

136. Each and every allegation contained in the above Paragraphs is re-alleged as if fully stated herein.
137. **Common-Law Fraud:** Wilburn knowingly, willingly and intentionally mislead Maxwell into believing he had something of considerable value to offer to Maxwell as an inducement for Maxwell to move his property and equipment to Wilburn's warehouse, to design and engineer a solution for Wilburn's erosion issues at his TBR home, and to get Maxwell to give him EarthLoc Parts and materials at cost with the promise of driving massive volumes of business for Earthloc and Maxwell to do huge sales by building bulkheads in the Sabine County areas of Texas, namely on Toledo Bend Reservoir.
138. It is now apparently that Wilburn's entire scheme was to defraud Maxwell of his time, effort, knowledge, work product, actual materials, cost, and money solely see how far he could push Maxwell, and then, because he refused to obtain the correct equipment to do the installation and because he excavated the entire site making installation a near impossibility, he chose to blame Maxwell and demand that Maxwell give him valuable property.
139. When Maxwell refused to give Wilburn \$8,000.00 of new panels to replace the panels that Wilburn had destroyed, Wilburn chose to do harm to Maxwell

seeking to get Maxwell to change his mind and fork over the EarthLoc parts . . . just to “remain friends.” (Emails support all of these claims).

140. Maxwell seeks actual and punitive damages for Wilburn’s common law fraudulent inducement that is the proximate cause of Maxwell’s damage.

COUNT 2: TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

141. Each and every allegation contained in the above Paragraphs is re-alleged as if fully stated herein.
142. In accordance with the declaratory judgment requested in Count I, Maxwell also petitions the Court for the permanent and final injunctive relief needed to effectuate this Court's binding judgment, Specifically, Maxwell seeks an order permanently enjoining Wilburn from evicting him from the warehouse prior to the time when Maxwell could reasonable expect to have use of the warehouse pursuant to the original verbal agreement proffered by Wilburn.

**COUNT 3: APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND TEMPORARY INJUNCTION**

143. Each and every allegation contained in the above Paragraphs is re-alleged as full stated herein.
144. Larry Maxwell is entitled to a temporary injunction to preserve the status quo of the subject matter of the suit pending a judicial resolution of the merits. See *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198,204 (Tex. 2002). A

plaintiff seeking a temporary injunction must plead and prove three elements: (1) a cause of action against the defendant and a probable right to the relief sought; (2) a probable and imminent injury, and (3) an irreparable injury or inadequate remedy at law. See *id.* As set forth below, Larry Maxwell needs injunctive relief to protect him from the imminent threat of an irreparable injury.

145. In conjunction therewith, Larry Maxwell is entitled to a temporary restraining order because he will suffer immediate and irreparable injury, loss, or damage before a hearing can be held on his request for a temporary injunction.

**A Cause of Action against the Defendant and a
Probable Right to the Relief Sought**

146. The first prerequisite to immediate preliminary injunctive relief is a cause of action against the relevant defendant, pursuant to which the plaintiff also has a probable right to the relief sought.
147. Maxwell has petitioned this Court for declaratory judgment to fully and finally adjudicate his rights to a return of his initial deposit and for award to offset any and all damages proximately caused by Wilburn. The legal principles that govern this dispute are both familiar and well settled. Just as the Court would do in any other property dispute or allegation of fraud, fraudulent inducement or deceptive trade practice, it must now use these neutral principles of state law to determine the merits of Maxwell factual allegations and the remedy necessary to make Maxwell as whole again as

possible.

148. As established by Texas Supreme Court, the factors relevant to this question include the necessity to determine the truthfulness of the factual allegations and to permanently enjoin such illegal behavior that is the causation of irreparable damage and harm to Maxwell.
149. After conducting a neutral and secular examination of the facts and documents, it is unimaginable that the court could make any finding other than that there is absolutely no legal basis on which Wilburn can claim excuse or exemption for his vicious and baseless decision to evict Maxwell with 10 days notice simply because Maxwell would not give him another \$8,000.00 worth of valuable property. Wilburn cannot avoid acknowledgement or disavow the voluminous documentation created by his own hand and substantial additional evidence showing his intent to suck Maxwell into a position of having to fork up large sums to complete Wilburn's project and then to kick Maxwell to the curb the moment he decides, through no fault of Maxwell, that Maxwell is no longer of any use to him.
150. When Texas law is applied to these facts and instruments, there can be no doubt that Wilburn committed fraud, fraudulent inducement, and sought to extort \$8,000.00 from Maxwell to cover his own failures and mistakes.
151. Because Maxwell will almost certainly succeed on the merits of its case, he has shown his probable right to the relief sought herein.

Probable and Imminent Injury

152. The second prerequisite to immediate preliminary injunctive relief is proof of a probable and imminent injury.
153. The infliction of a real and immediate injury is not only possible, but it is actually appears to be the standard operating procedure for Wilburn.
154. The threat of Wilburn's actions are imminent as only weeks ago Wilburn offered everything possible to Maxwell to get him locked into a business deal, then, when Maxwell did not take the bait, he chooses to hurt Maxwell as much as possible by putting \$150,000.00 worth of Maxwell's property in jeopardy. Such actions cause irreparable harm to Maxwell to his property for each and every hour stolen from Maxwell and every moment Maxwell has to experience the extreme stress of moving and securing his property.

Irreparable Injury and Inadequate Remedy at Law

155. The third and final prerequisite to preliminary injunctive relief is proof of an irreparable injury and inadequate remedy at law. Ordinarily, "[a]n injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard." Butnaru, 84 S.W.3d at 204. See also Texas Indus, Gas v. Phoenix Metallurgical Corp., 828S.W.2d 529, 588 (Tex. App - Houston [1st Dist.] 1992) (finding no adequate remedy at law when potential damages cannot be calculated).
156. Because the requested restraining order and injunction is intended to

protect Larry Maxwell's interest in actual property, to prevent additional fraud and deception seeking to injure Maxwell further, and to prevent creation of fake debt and slander of credit that would cause additional irreparable harm to Maxwell, the inadequacy of any legal remedy is presumed. Tx. Civ. Prac. & Rem. Code § 65.011(a).

157. The concerns expressed above easily exceed the type of irreparable injury needed to justify preliminary injunctive relief.
158. In light of the foregoing concerns, likelihood of success, and probability of harm, a temporary restraining order and injunction while this suit is pending is necessary to stay the hand of Wilburn from any action that would adversely affect Maxwell's ability to protect his property and be made whole. Temporary injunctive relief would protect Maxwell from damage by whatever additional scheme can and will likely be executed by Wilburn seeking to further harm Maxwell and to ensure that Maxwell has no ability to full recover.
159. Compared to the immeasurable damages that might be experienced by Maxwell without an injunction, the harm that Wilburn might suffer because of the requested injunction is wholly immaterial. After the eviction notice was sent, Wilburn a day later concocted the lie that he needed the building because now, suddenly, amazingly he "had a paying client." Maxwell will conduct discovery and prove Wilburn's claims are a complete fabrication and patently false. If Maxwell had not pulled off the job and had not refused to fork up \$8,000.00 of material, the status of the

warehouse possession would be just as secure as it was before Wilburn entered into his extortion scheme, just like it was Sunday afternoon a week ago when Wilburn came by the warehouse asking Maxwell if he wanted to sell his equipment. Where was the “paying client” then? Fact is, Maxwell has more than paid for the warehouse for a year or more.

160. A temporary restraining order and temporary injunction are merely needed to preserve the status quo until such time as the merits can be adjudicated and be determined by the civil courts.

161. Due to the risk of immediate and irreparable harm that might result before a hearing can be had on this Application for Temporary Restraining Order, Maxwell has filed this Petition ex parte and without notice to Wilburn.

Tex. R. Civ. Pro. 680

162. Maxwell understands that under the rules the Court may direct him to post a reasonable bond. However, Maxwell requests that the Court take into consideration the heinous nature of Wilburn’s actions that have forced Maxwell to the last resort of seeking this lawful remedy, that Maxwell has already expended enormous time, energy and cost in dealing with Wilburn’s breach of clearly adhered to verbal agreement, to seek sanctuary from Wilburn’s fraudulent practices, Maxwell’s cost and expense to bring this legal action, weighed against the unlikelihood that any actual harm could possibly come to Wilburn. Maxwell, if possible, will do his best to post whatever bond the Court directs.

163. Maxwell respectfully requests a hearing on his Petition for Temporary

Injunction immediately. Harm to Maxwell and his property is imminent.

IX.

PRAYER FOR RELIEF

For the reasons stated above, plaintiff, Larry Maxwell, prays for a declaratory judgment in his favor and injunctive relief as follows:

1. Declaratory Judgment finding that Defendant Wilburn breached the oral agreements to provide Maxwell with warehouse space indefinitely while building a business relationship to market Maxwell's products, did knowingly and intentionally engage in and perpetuate fraud, fraudulent inducement and multiple misrepresentations to Maxwell with the express intent to cause Maxwell to act based on the misrepresentation for the unlawful enrichment of Defendant Wilburn, said unlawful acts being the proximate cause of damage and injury to Maxwell;
2. Injunctive relief both temporary and permanent as listed, defined and set forth hereinabove;
3. Award of actual damages in the amount of Maxwell's costs thought presently to be approximately \$50,000.00;
4. Award for economic damages for an amount to be determined but not less than \$100,000.00;
5. Award of exemplary damages in an amount of no less than \$250,000.00 to send a message to Wilburn that his unconscionable acts to prey on people, and to make grossly negligent and intentionally false misrepresentations to induce someone,

namely Maxwell, to make huge commitments and take advantage of their good will and attempt to profit from their efforts, knowing the scheme is to cause harm to them the moment they refuse to capitulate to Wilburn's unlawful demands, is intolerable in a civilized society and must be eliminated from the marketplace;

6. All reasonable attorney's fees;
7. All costs of suit; and
8. For all such other further general and equitable relief to which Plaintiff Maxwell may be entitled.

Respectfully submitted,



07/26/2021

Larry Maxwell
2122 Tower Bridge Rd.
Pearland, Texas 77581
Mobile: 713-816-2942
Fax: 832-201-6728

Filename: 210726_Original Petition and Application for Temporary
Injunction.docx
Directory: /Users/larrymaxwell/Library/Containers/com.microsoft.Wor
d/Data/Documents
Template: /Users/larrymaxwell/Library/Group
Containers/UBF8T346G9.Office/User
Content.localized/Templates.localized/Normal.dotm
Title:
Subject:
Author: Larry Maxwell
Keywords:
Comments:
Creation Date: 7/25/21 7:04:00 PM
Change Number: 8
Last Saved On: 7/26/21 12:31:00 PM
Last Saved By: Larry Maxwell
Total Editing Time: 110 Minutes
Last Printed On: 7/26/21 12:31:00 PM
As of Last Complete Printing
Number of Pages: 47
Number of Words: 11,138
Number of Characters: 54,519 (approx.)