

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

DR. MICHAEL MOATES

(b) County of Residence of First Listed Plaintiff **TARRANT**  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

## DEFENDANTS

STATE OF TEXAS, NORTH CAROLINA, NEVADA, AND VIRGINIA

County of Residence of First Listed Defendant **TARRANT**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

US CONSTITUTION

Brief description of cause:

FORCED ASSOCIATION WITH THIRD PARTY TO ENJOY LICENSURE AND PRACTICE PROFESSION

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

Jul 25, 2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ MICHAEL MOATES, EDD, PRO SE

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT

for the

Northern District of Texas

DR. MICHAEL MOATES

Plaintiff(s)

v.

STATE OF NORTH CAROLINA
STATE OF TEXAS
STATE OF NEVADA
STATE OF VIRGINIA

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

DR. MICHAEL MOATES
MIKE@CPMHT.COM (WILL ACCEPT SERVICE VIA EMAIL)
5764 N Orange Blossom Trl PMB 61546
Orlando, FL 32810

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiff Michael Moates, EdD, Pro Se, hereby moves this court for a Preliminary Injunction against the Defendants States of North Carolina, Texas, Virginia, and Nevada (collectively states) and in support thereof, states as follows:

### **INTRODUCTION**

The Plaintiff is challenging the mandatory certification requirement imposed by the states as an unconstitutional violation of the First Amendment rights of behavior analysts to freedom of speech and association.

### **ARGUMENT**

#### ***I. Likelihood of Success on the Merits***

Plaintiff contends that the mandatory BACB certification requirement violates the First Amendment, which safeguards an individual's right to associate and not to associate as an aspect of "freedom of speech." The requirement compels behavior analysts to join and financially support the BACB in violation of their freedom of association and speech, regardless of whether they agree with or wish to support its views, goals, or methods.

Additionally, Plaintiff alleges the certification requirement violates the Sherman Antitrust Act, which prohibits activities that restrict competition and monopolize trade. The

BACB's monopoly over certification for behavior analysts restricts competition, controls prices, and suppresses innovation in the field.

## ***II. Threat of Irreparable Harm***

The Plaintiff faces immediate and irreparable harm without preliminary injunctive relief. The BACB's certification requirement currently limits the Plaintiff's and similarly situated behavior analysts' right to practice their profession. This requirement results in a loss of livelihood, professional reputation, and potentially, clientele - harm that cannot be compensated by damages alone.

An essential aspect of obtaining a preliminary injunction is demonstrating that there would be irreparable harm without it. In this case, the harm is not only to the plaintiff and other behavior analysts but also to the consumers of their services.

The enforcement of the new law requiring BACB certification in North Carolina would result in the immediate cessation of services for hundreds, potentially thousands, of clients. This sudden stop in services would significantly impact clients, including those exhibiting high-risk behaviors such as self-injurious behaviors, sexual behaviors, aggression towards others, and more.

These individuals, often among the most vulnerable in our society, rely on the continuity of therapeutic services provided by behavior analysts for their well-being and progress.

The immediate discontinuation of these services poses a serious risk to their safety and health and impedes their ability to live fulfilling and productive lives.

The harm to these consumers is not merely economic but includes the deterioration of their mental health, loss of progress, and potential escalation of harmful behaviors. Courts have recognized that such harms qualify as irreparable injury warranting preliminary injunctive relief because of their irreversible nature. See, e.g., *Rodriguez v. DeBuono*, 175 F.3d 227, 234–35 (2d Cir.1999) (finding irreparable harm in the context of mental health services).

Further, this immediate cessation of services undermines the fundamental purpose of state regulation – to protect consumers. The Supreme Court of North Carolina, in *North Carolina State Board of Dental Examiners v. FTC*, highlighted the necessity of state regulation to be driven by public welfare and not by a protectionist agenda for select market participants.

Therefore, enforcing the law mandating BACB certification in North Carolina violates constitutional and antitrust laws. It brings immediate and severe harm to consumers, the people the regulations aim to protect. For these reasons, the court must grant the preliminary injunction to prevent the grave and irreparable harm that would otherwise result from the enforcement of this new law.

### ***III. Balance of Harms***

The harm Plaintiff will suffer without the injunction significantly outweighs any potential harm to Defendants. The BACB will continue to operate and may certify willing behavior analysts. In contrast, without an injunction, the Plaintiff and others will be prevented from practicing their profession, and current patients will find an immediate cessation of services.

### ***IV. Public Interest***

The granting of a preliminary injunction serves the public interest. It would ensure respect for constitutional rights, uphold antitrust laws, encourage competition in the professional sector, and protect the public from potential monopolistic practices that could increase costs or limit access to services.

### **CONCLUSION**

Wherefore, Plaintiff, Dr. Michael Moates, respectfully requests that the Court grant this Motion for Preliminary Injunction, enjoin the enforcement of the BACB certification requirement, and issue a declaratory statement that the mandatory certification requirement by the BACB is unconstitutional and violates the First Amendment rights of behavior analysts. We ask that this injunction be a nationwide injunction that blocks the enforcement of a BACB certification requirement to be licensed, regardless of if a

statutory requirement or an administrative rule. In the alternative, we request a preliminary injunction to block the enforcement of any law requiring BACB certification.

Respectfully submitted,

/s/ Michael Moates, EdD, Pro Se

4501 Nautilus Circle #710

Fort Worth, Texas

254-966-2837

mike@cpmht.com