

restrain, by temporary restraining order, temporary injunction, or permanent injunction, the use of any method, act or practice declared to be unlawful by TEX. BUS. & COM. CODE § 17.46 (Vernon 2002), where such proceedings are in the public interest.

Discovery shall be conducted under LEVEL 2 of Rule 190.3 of the Texas Rules of Civil Procedure. The County Attorney and the Attorney General file this suit against Gayln Pat Davis, Pamela J. Davis and David Moran, each in his or her individual and representative capacity, and Texas Police Officers Alliance, a Texas Corporation (sometimes referred to collectively herein as “Defendants”) on the grounds that:

a.) Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined herein and as declared unlawful pursuant to the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41 *et seq.* (Vernon 2002) (“DTPA”) and also in violation of TEX. OCCUPATIONS CODE ANN. § 1803.103 (Vernon Pamphlet 2003);

b.) Defendants Gayln Pat Davis, Pamela J. Davis, and David Moran failed to renew the registration of Texas Police Officers Alliance with the Secretary of State, pursuant to TEX. OCCUPATIONS CODE ANN. §1803.051 (Vernon Pamphlet 2003). This section requires public safety entities and public safety publications to register with the Texas Secretary of State and pay the required registration fee. All public safety solicitors employed by the organizations are also required to register with and pay a fee to the Secretary of State, and each must post a \$10,000 bond; and

c.) Defendants have failed to make the solicitation disclosure required by TEX. OCCUPATIONS CODE ANN. § 1803.101 (Vernon Pamphlet 2003).

1.2 This suit is brought against Defendants for injunctive relief, actual damages, penalties, costs, and attorney's fees as a result of their false, misleading and deceptive acts and practices in the course of trade and commerce, as well as their fraud and failure to register and make the required disclosures under Chapter 1803 of the TEXAS OCCUPATIONS CODE.

II. DEFENDANTS

2.1 Gayln Pat Davis ("Pat Davis") is an individual and resident of Texas. He is also the president of the non-profit corporation known as "Texas Police Officers Alliance." He may be served with process at 7135 Louetta Road, Suite T, Spring, Texas 77379, or at 4306 Valley Branch Drive, Kingwood, Texas 77339.

2.2 Pamela J. Davis ("Pam Davis") is an individual and resident of Texas. She is also a director of the non-profit corporation known as "Texas Police Officers Alliance." She may be served with process at 7135 Louetta Road, Suite T, Spring, Texas 77379, or at 4306 Valley Branch Drive, Kingwood, Texas 77339.

2.3 David Moran ("Moran") is an individual and resident of Texas. He is also an employee of the non-profit corporation known as "Texas Police Officers Alliance." He may be served with process at 7135 Louetta Road, Suite T, Spring, Texas 77379.

2.4 Texas Police Officers Alliance ("TPOA") is a Texas corporation and may be served by serving its registered agent for service of process, Gayln P. Davis at 4306 Valley Branch Drive, Kingwood, Texas 77339.

III. JURISDICTION

3.1 This Court has jurisdiction over this action pursuant to § 17.47 of the DTPA.

IV. VENUE

4.1 Venue is proper in Harris County pursuant to § 17.56 of the DTPA, because all or part of the action arose in Harris County, and the alleged acts or practices occurred in Harris County. Specifically, Defendants and/or their authorized agent(s) solicited the transactions which are the subject of the action at bar from within Harris County.

V. ACTS OF AGENTS

5.1 Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that such act was performed by the Defendants or by Defendants' officers, agents or employees, and in each instance, the acts of the officers, agents or employees of Defendants were authorized and ratified by Defendants pursuant to a common scheme and design of Defendants to engage in unlawful acts as hereinafter set forth, so that Defendants should be held jointly and severally liable in their individual and/or representative capacities.

VI. PUBLIC INTEREST

6.1 By reason of the institution and operation of the unlawful practices set forth herein, Defendants have caused, and will continue to cause, immediate and irreparable injury, loss and damage to the State of Texas, adversely affecting legitimate business enterprises which conduct trade and commerce in a lawful manner in this State. Therefore, the County Attorney and the Attorney General believe, and are of the opinion, that these proceedings are in the public interest.

VII. TRADE AND COMMERCE

7.1 Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by § 17.45 of the DTPA.

VIII. NOTICE

8.1 Pursuant to §17.47(a) of the Deceptive Trade Practices Act, contact has been made with the Defendant herein to inform him in general of the unlawful conduct alleged herein.

IX. STATEMENT OF FACTS

9.1 On February 4, 2002, Gayln Pat Davis and Pamela J. Davis filed a Public Safety Organization, Independent Promoter, or Public Safety Publication Registration Statement with the Secretary of State. They executed this document as president and director, respectively, of TPOA. A copy of this Statement is attached hereto and incorporated herein as Exhibit A. Paragraph 2 of this document requested the name, street address, and telephone number of each solicitor that would be soliciting on behalf of TPOA. The response indicated there would be none. In response to the query requesting a description of how contributions would be used, the Defendants responded, “Texas Police Officers Alliance.” This document further requested, in query number 8, information about for whom contributions were to be solicited, and the Defendants’ response was, “All Texas Police Officers.” This document expired February 19, 2003 and has not been renewed by Defendants, as shown by the Certificate of No Record attached hereto and incorporated herein by reference as Exhibit B.

9.2 Defendants operate a telemarketing business known as “Texas Police Officers Alliance,” whereby they solicit donations from Texas consumers and businesses,

ostensibly for the purpose of providing death benefits to families of slain officers and scholarships to their children. Defendants also purport to award an annual “Distinguished Officer Award” for bravery in the line of duty, as well as scholarships for law enforcement education. These purposes are set out in literature distributed by Defendants to those who donate funds. Copies of these documents are attached hereto and incorporated herein by reference as Exhibits C and D.

9.3 Defendants employ between 10 and 12 people, mostly high school students from nearby Klein High School, to solicit funds for TPOA statewide via telephone. These solicitors are neither registered nor bonded. *See* Sworn Statement of Gayln P. Davis, pages 18-19, attached hereto and incorporated herein as Exhibit E.

9.4 In their solicitations, telemarketers are directed to use scripts prepared by Defendants. Solicitors train by running these scripts with the manager. These scripts ask for donations to a foundation that would assist Texas police officers who have been injured or killed, and their families. At least one of these scripts states that this foundation is like “The 100 Club,” only better, because it would serve the entire state, not just the Houston area. *See* Affidavit of Oscar Burnias, Exhibit F, attached hereto and incorporated herein by reference.

9.5 According to bank statements obtained by subpoena from Klein Bank covering the period from January 1, 2002 through January 31, 2003, copies of which are attached hereto and incorporated herein by reference as Exhibit G, Defendant Davis deposited \$290,834.58 into the TPOA account. Of that amount, only \$6,333.58 remained on January 31, 2003.

9.6 Defendant TPOA has written only one check purporting to be for death benefits since its inception. That check, in the amount of \$500.00, was written to a benefit being held on behalf of three deputies. A copy of that check is attached hereto and incorporated herein by reference as Exhibit H. It is dated May 9, 2002, **after** law enforcement had contacted Defendant Gayln Davis regarding TPOA and its activities. *See* pages 27 and 28, Exhibit E.

9.7 Defendants have given no money for scholarships. No Distinguished Officer Award has been given. No scholarships for law enforcement education have been given. No such programs have even been established. Defendants have not set up any application procedure for these funds, nor have they notified any police departments about these “programs.” Defendant Gayln Davis admits Defendants knew when they started soliciting funds that no money would be used for these programs for at least one year. He now estimates it will be another two years before any such scholarships or awards will be given. *See* pages 27-32, Exhibit E. Defendants assert there is no money for these programs, but Defendants continue to solicit money by telling consumers it will be used for those purposes. *See* Exhibits C, D, and F. Defendants Gayln Davis and Moran each draw salaries of \$700.00 per week from TPOA. *See* pages 28 and 33, Exhibit E. Checks were also written out of the TPOA account totaling over \$17,000 to AOL, and Defendant Gayln Davis could not identify a business purpose for these checks. *See* pages 11 and 12, Exhibit E.

9.8 Despite receiving notice that they are operating in violation of both the DTPA and the Occupations Code, Defendants are apparently still operating their telemarketing business.

X. CAUSES OF ACTION

10.1 Defendants have solicited funds from the public allegedly for the purpose of assisting the families of officers killed in the line of duty by providing immediate death benefits and scholarships. Defendants have also solicited funds allegedly for an annual “Distinguished Officer Award” to recognize exceptional bravery, and a scholarship to assist in furthering law enforcement education. Such inexcusable misrepresentations have led, and will continue to lead, the public to believe that this money is being used to educate and assist the local law enforcement community, when in reality the money is primarily, if not exclusively, solicited for the pecuniary benefit of the individual Defendants. Such acts by Defendants violate the common law and statutes of the State of Texas. As a result, Defendants have caused, and continue to cause, immediate and irreparable harm to the State of Texas.

Violations of the DTPA

10.2 Defendants, as alleged in paragraphs 9.1 through 9.8 above and as detailed below, have in the course of trade and commerce, engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA. Such acts include:

- a) Causing confusion or misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of § 17.46(b)(3) of the DTPA;
- b) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, in violation of § 17.46(b)(5) of the DTPA; and
- c) The failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into

which the consumer would not have entered had the information been disclosed, in violation of § 17.46(b)(24) of the DTPA.

10.3 Defendant has, by means of the unlawful acts and practices described in paragraphs 9.1 through 9.8 above, obtained money or other property from identifiable persons to whom such money or property should be restored.

Violations of Chapter 1803 of the TEXAS OCCUPATIONS CODE

10.4 Defendants have solicited, and continue to solicit, funds in violation of Chapter 1803 of the TEXAS OCCUPATIONS CODE. Specifically, Defendants have violated Chapter 1803 by engaging in the following conduct:

- a) Engaging in solicitation by telephone without filing a registration statement in accordance with § 1803.053, in violation of §1803.051(a)(1);
- b) Engaging in solicitation by telephone without paying the \$250.00 registration fee required by § 1803.054, in violation of § 1803.051(a)(2);
- c) Using a public safety solicitor who has not complied with the registration requirements under § 1803.055, and who has not filed the \$10,000 bond required under § 1803.056, in violation of § 1803.051(b);
- d) Failing to provide the name, street address, and telephone number of any public safety solicitor on Defendants' registration statement in violation of § 1803.053(b)(1);
- e) Failing to disclose to contributors the name of any public safety solicitor employed, as required by § 1803.101(c)(3);
- f) Failing to provide a general statement of the use of net funds received, as required by § 1803.101(c)(4);
- g) Knowingly representing or implying that the solicitation proceeds are being used for a purpose other than the purpose for which the funds are actually used, in violation of § 1803.103(3);
- h) Knowingly filing incomplete, false, or misleading information in a document required to be filed with the secretary of state under this chapter, in violation of § 1803.103(6); and

- i) Committing other unfair or deceptive acts or practices, as enumerated above, in violation of § 1803.103(10).

Fraud

10.5 Defendants, by and through their intentional acts and omissions described in paragraphs 9.1 through 9.8 above, have made repeated and materially false representations to the public concerning their solicitation of funds for the purported purposes as described herein, which were known to be false when made or were made without knowledge of the truth of the matter asserted. Such false representations were made with the intention that they be acted upon by the parties to whom the representations were made. Reliance upon these false representations has resulted in injury to the individual consumers located in the State of Texas.

Conspiracy to Defraud

10.6 Defendants, in concert with their agents/employees, agreed to willfully and fraudulently obtain funds from the public by engaging in the course of conduct complained of herein, which course of conduct Defendants knew had the tendency and capacity to deceive.

Breach of Fiduciary Duties

10.7 By soliciting and collecting funds from the general public under the guise of providing scholarships and death benefits to families of slain law enforcement officers, as well as providing awards and continuing education scholarships to the law enforcement community, Defendants owe a fiduciary duty to the individuals to use the funds collected from them in a way that fulfills their intent. Thus, all money, pledges and other property received by Defendants as a result of their solicitations constitute charitable trusts to be used for the charitable purposes for which they were solicited. As

a result of their oral and written solicitations, Defendants are the trustees of such charitable trusts and are charged with fiduciary duties with regard to said trusts. Defendants, by their actions as described above, have breached and will continue to breach their fiduciary duty in this regard, and have caused and will continue to cause immediate and irreparable harm by failing to administer these charitable trusts in a prudent and reasonable manner to assure that the funds will be used to the maximum efficiency toward the purposes for which they were solicited by Defendants.

Violation of Constructive Trust

10.8 Members of the public of the State of Texas paid money to Defendants for the benefit of worthy charitable causes such as providing death benefits and scholarships to the families of slain law enforcement officers, providing continuing education scholarships to officers, and awarding those officers who exhibit extraordinary bravery. Acceptance of such funds pursuant to such representations established a constructive trust for the benefit of the public. Defendants owe a duty to the contributors and the public to ensure that funds raised be used for the specific purposes for which they were paid. Defendants have, by the actions described above, breached that duty by failing to use the funds collected for the express purposes for which they were contributed. Defendants have thereby violated the constructive trust.

XI. DISGORGEMENT

11.1 All of Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting fraudulently converted property to a profitable use. Defendants

should be ordered to disgorge all monies fraudulently taken from individuals, together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

XII. APPLICATION FOR RESTRAINING ORDER, AND REQUEST FOR TEMPORARY AND PERMANENT INJUNCTIONS

12.1 Due to the funds Defendants have obtained through their solicitations, and the fact that much of this money is unaccounted for, the County Attorney and Attorney General are of the opinion that Defendants will destroy relevant records, evade service or flee the jurisdiction if contact is made prior to the issuance of a Temporary Restraining Order, resulting in irreparable injury, loss and damage to the public's interest. Therefore, pursuant to § 17.47(a) of the DTPA, the County Attorney and Attorney General request this Court to issue a Temporary Restraining Order without notice to Defendants.

12.2 If Defendants are allowed to continue raising funds by using the name "Texas Police Officers Alliance," the damage to other similar entities will be irreparable with regard to present and future legitimate activity by such entities.

12.3 This Court is requested to find that there exists an imperative and immediate necessity to restrain Defendants, without notice, from engaging in unlawful acts in violation of the DTPA and Chapter 1803 of the TEXAS OCCUPATIONS CODE and enter a Temporary Restraining Order restraining and enjoining Defendants, their officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with Defendants, from engaging in the following acts or practices:

- a) Transferring, concealing, destroying, or removing from the jurisdiction of the Court any books, records, documents, invoices, or other written materials relating to Defendants' business, currently or hereafter in their

possession, custody or control except in response to further orders or subpoenas in this cause;

- b) Transferring, spending, hypothecating, concealing, encumbering, or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal, or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by Defendants;
- c) Soliciting funds on behalf of Texas Police Officers Alliance, or any other entity or publication, within the State of Texas or from businesses or persons situated in Texas;
- d) Soliciting funds on behalf of Texas Police Officers Alliance, or any other entity or publication, from businesses or persons outside the boundaries of Texas;
- e) Representing to any person or entity, expressly or by implication, orally or in writing, that either Defendants or Texas Police Officers Alliance is affiliated with, endorsed by, authorized by, supported by, associated with, or in any way related to any law enforcement group;
- f) Mailing, faxing or forwarding any invoice to any person wherein such invoice seeks, demands, or requests any type of payment for a donation allegedly made by that person; and
- g) Telephoning or calling on any person for the purpose of seeking or requesting a donation from said person.

12.4 This Court is requested to set a hearing on this request for Temporary Injunction granting the same relief as that requested in the Plaintiff's request for a Temporary Restraining Order above.

12.5 After trial, Plaintiff prays that the Court grant their request for a Permanent Injunction granting the same relief as that requested in their request for Temporary Restraining Order above.

XIII. TRIAL BY JURY

13.1 Plaintiff herein requests a jury trial and pursuant to TEX. R. CIV. P. 216 and TEX. GOV'T CODE ANN. § 51.604 (Vernon 1998 and Supp. 2001), and would show that it is exempt from the payment of a jury fee pursuant to TEX. CIV. PRAC. & REM. CODE § 6.01 (Vernon 1986 and Supp. 2001).

XIV. REQUEST TO CONDUCT EXPEDITED DISCOVERY PRIOR TO HEARING ON TEMPORARY INJUNCTION

14.1 The County Attorney and Attorney General request leave of this Court to conduct depositions of witnesses prior to any scheduled temporary injunction hearing. Many of the witnesses necessary for any temporary injunction hearing reside outside Harris County, Texas. There are large numbers of out-of-county witnesses who may need to be telephonically deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted upon reasonable shortened notice provided to Defendants and their attorneys, if known.

XV. PRAYER

WHEREFORE, the State of Texas prays:

15.1 That the Court issue a TEMPORARY RESTRAINING ORDER restraining and enjoining Defendants, their agents, servants, employees, and attorneys,

and any other persons acting in active concert or participation with Defendants, from engaging in the following acts or practices:

- a) Transferring, concealing, destroying, or removing from the jurisdiction of the Court any books, records, documents, invoices, or other written materials relating to Defendants' business, currently or hereafter in their possession, custody or control except in response to further orders or subpoenas in this cause;
- b) Transferring, spending, hypothecating, concealing, encumbering, or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal, or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by Defendants;
- c) Soliciting funds on behalf of Texas Police Officers Alliance, or any other entity or publication, within the State of Texas or from persons situated in Texas;
- d) Soliciting funds on behalf of Texas Police Officers Alliance, or any other entity or publication, from persons outside the boundaries of Texas;
- e) Representing to any person or entity, expressly or by implication, orally or in writing, that either Defendants or Texas Police Officers Alliance is affiliated with, endorsed by, authorized by, supported by, associated with, or in any way related to any law enforcement group;

- f) Mailing, faxing or forwarding any invoice to any person wherein such invoice seeks, demands, or requests any type of payment of a donation allegedly made by that person; and
- g) Telephoning or calling on any person for the purpose of seeking or requesting a donation from said person.

15.2 That the Court grant leave for the County Attorney and the Attorney General to conduct expedited discovery via telephonic and/or other depositions prior to the Defendants' answer date and prior to any scheduled temporary injunction hearing;

15.3 That the Court set a hearing on the County Attorney's and Attorney General's request for a Temporary Injunction granting the same relief as that requested in the request for a Temporary Restraining Order above;

15.4 That, after trial, the Court grant the County Attorney's and Attorney General's request for a Permanent Injunction granting the same relief as that sought in the County Attorney's and Attorney General's request for a Temporary Restraining Order above;

15.5 That this Court enter an Order requiring Defendants to make a full and complete accounting, performed by an independent accountant to be approved by the Court, to the State of all funds raised by or for the Defendants, the cost of which is to be assessed against the Defendants;

15.6 That a judgment be rendered in favor of the State of Texas for all fines and penalties under any statute or law to which the State of Texas may show itself entitled from the Defendants;

15.7 That the Court adjudge against the Defendants exemplary damages in favor of the State in an amount sufficient to punish Defendants for their conspiracy to defraud consumers in the State of Texas;

15.8 That the Court order Defendants to pay the County Attorney's and the Attorney General's reasonable attorneys' fees; all costs incurred in this proceeding, including investigative costs; and costs of court;

15.9 That the Court order Defendants to pay pre-judgment and post-judgment interest on all award of damages, civil penalties, and other recoveries as provided by law;

15.10 That the Court order disgorgement of all sums of money received as payment for advertisements by Defendants by means of deceptive practices;

15.11 That the Court order Defendants to repatriate to the United States and to the jurisdiction of this Court any and all property located outside the United States; and

15.12 That the Court grant the County Attorney and the Attorney General such further relief at law and in equity to which they may show themselves justly entitled, on behalf of the State of Texas and the interest of the general public of this State.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

VERIFICATION

STATE OF TEXAS

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COUNTY OF HARRIS

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Before me, the undersigned Notary Public, on this day personally appeared Suzanne Bradley, known to me by her Texas Driver's License, and after being duly sworn stated under oath that she is one of the attorneys for the Plaintiff in this action, that she has read the above Petition, and that every statement contained in the Petition is true and correct to the best of her personal knowledge and belief.

SUZANNE BRADLEY

SUBSCRIBED AND SWORN TO BEFORE ME by Suzanne Bradley on the _____ day of July 2003, to certify which witness my hand and official seal.

NOTARY PUBLIC
State of Texas