



## **DISCOVERY CONTROL PLAN**

1. The discovery in this case is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.4.

## **JURISDICTION AND AUTHORITY**

2. Under TEX. FIN. CODE § 156.103, Powers of Commissioner,

In addition to any other action, proceeding or remedy authorized by law, the commissioner may institute an action in the commissioner's name to enjoin a violation of this chapter or a rule adopted under this chapter.

3. Commissioner Payne seeks in this lawsuit to enforce Chapter 156 of the Texas Finance Code, and regulations issued thereunder. Chapter 156 is in Subtitle E, OTHER FINANCIAL BUSINESSES, under Title 3, FINANCIAL INSTITUTIONS AND BUSINESSES, of the Finance Code.

4. Under § 17.47 of the DTPA, the Consumer Protection and Public Health Division of the Office of the Attorney General may bring an action whenever it has reason to believe that any person is engaging in, has engaged in, or is about to engage in any false, misleading or deceptive act or practice in the conduct of any trade or commerce.

5. Under § 17.47(d) of the DTPA the Court may make such orders or judgments as are necessary to compensate identifiable persons for damages or to restore money or property acquired by means of any unlawful act or practice.

## **VENUE**

6. Venue of this suit lies in El Paso County, Texas for the following reasons:

a. Under the DTPA § 17.47(b), venue is proper because Defendants have done business in El Paso County, Texas; and

b. Under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1) venue is proper in El Paso County, Texas because all or a substantial part of the events or omissions giving rise to the claims

occurred in El Paso County, Texas.

### **PARTIES**

7. Plaintiff COMMISSIONER DANNY PAYNE is charged with enforcing the Texas Mortgage Broker License Act.

8. The Attorney General is authorized by the Texas Constitution, Art. 4, § 22, to enforce the laws of Texas. Section 17.47 of the DTPA authorizes the attorney general to bring enforcement actions under the DTPA.

9. Defendant EDWARD ALEXANDER ROMO is a resident of El Paso County, Texas, who may be served with process at his business address, 3737 N. Mesa, Suite F, El Paso, Texas 79902.

10. Defendant MELISA SIMPSON is a resident of El Paso County, Texas, who may be served with process at her business address, 3737 N. Mesa, Suite F, El Paso, Texas 79902.

11. Defendant GRACE HERNANDEZ is a resident of El Paso County, Texas, who may be served with process at her business address, 3737 N. Mesa, Suite F, El Paso, Texas 79902.

12. Defendant AMANDA GONZALES is a resident of El Paso County, Texas, who may be served with process at her business address, 3737 N. Mesa, Suite F, El Paso, Texas 79902.

13. Defendant PASSLINE MORTGAGE, L.P. is a Texas limited partnership, which may be served with process by serving its registered agent, William Ehrlich, at 109 N. Oregon, 12<sup>th</sup> Floor, El Paso, Texas 79901.

### **EXHIBITS**

14. The factual allegations in this pleading relating to unauthorized mortgage broker activity are supported and sworn to in an affidavit by Douglas B. Foster, Director of Examinations with the Savings and Loan Department of Texas, in Certificates of Licensure and Non-licensure by

Sandra Weller, Director of Licensing with the Savings and Loan Department of Texas, and in affidavits by Mario Erives and Josefina Erives, consumers who dealt with Defendants. The affidavits are attached as Exhibits A, B, C, D, E, F and G.

### **PUBLIC INTEREST**

15. The Attorney General has reason to believe that Defendants have engaged in the unlawful practices described below. The Attorney General also has reason to believe that Defendants has caused and will continue to cause injury, loss and damage not only to Texas consumers, but also to legitimate businesses which lawfully conduct trade and commerce in Texas, including those which make authorized mortgage broker transactions. The Consumer Protection Division of the Office of the Attorney General believes that this action is in the public interest.

### **TRADE AND COMMERCE**

16. Defendants have, at all time described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by § 17.45(6) of the DTPA.

### **ACTS OF AGENTS**

17. Whenever it is alleged in this Petition that Defendants did any act, it is meant either that the Defendants performed or participated in the act, or that the Defendants’s officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

### **NOTICE**

18. The Consumer Protection Division did not inform Defendants of the alleged unlawful conduct prior to filing suit because immediate and irreparable injury, loss or damage will occur as a result of such delay in obtaining a Temporary Restraining Order.

## SUMMARY OF THE CASE

19. Defendant EDWARD ALEXANDER ROMO holds an active mortgage broker license, and operates a business known as Mortgage Loans of El Paso, at 3737 N. Mesa, Suite F, El Paso, Texas 79902. However, when he applied for and obtained this license, he notified the Commissioner in writing of his use of the assumed name E.A.R. Enterprises, at the address 2101 Sea Cove, El Paso, Texas 79936. He has not notified the Commissioner in writing of the other assumed name(s) that he is using, nor of the address where it is located.

20. Defendants MELISA SIMPSON, GRACE HERNANDEZ and AMANDA GONZALES are or were employed by EDWARD ALEXANDER ROMO.

21. Defendants receive applications from prospective borrowers for the purposes of making a mortgage loan from Defendant EDWARD ALEXANDER ROMO's own funds or from the funds of another person.

22. Defendant EDWARD ALEXANDER ROMO advertises and holds himself out as engaging in or conducting the business of a mortgage broker in this state.

23. Defendant EDWARD ALEXANDER ROMO employs MELISA SIMPSON, GRACE HERNANDEZ and AMANDA GONZALES, who are sponsored by Defendant EDWARD ALEXANDER ROMO for the purposes of performing the acts of a mortgage broker.

24. Defendants SIMPSON, HERNANDEZ and GONZALES do not hold active loan officer licenses.

25. Defendants fail to prominently display a loan officer license for each person acting as a loan officer.

26. Defendant EDWARD ALEXANDER ROMO has failed and refused, and continues to fail and refuse, to file an Annual Report with the Savings and Loan Department.

27. At the time an applicant submits an application to Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES, Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES fail to provide to the applicant a disclosure that specifies the nature of the relationship between applicant and Defendants, the duties Defendants have to the applicant, and how Defendants will be compensated.

28. Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES receive money, or the equivalent of money, as a fee or profit because of or in consequence of Defendants SIMPSON, HERNANDEZ and GONZALES acting as loan officers for consumer loans.

29. In addition, Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES are engaging in false, misleading or deceptive acts or practices in the conduct of their business, in that Defendants SIMPSON's, HERNANDEZ' and GONZALES' operating as loan officers constitutes a representation that they are authorized to do so, when that is not the case.

30. Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES are engaging in false, misleading or deceptive acts or practices in the conduct of their business, in that they fail to disclose that SIMPSON, HERNANDEZ and GONZALES are not authorized to operate as loan officers in the State of Texas, or to accept fees as a mortgage broker or loan officers in the State of Texas.

31. In at least one instance, Defendants EDWARD ALEXANDER ROMO, through his employees MELISA SIMPSON and AMANDA GONZALES, closed a loan transaction before the 12th day after the later of the date that the owner of the homestead submitted an application to the lender for the extension of credit or the date that the lender provided the owner a copy of the notice prescribed by TEX. CONST. Art. XVI §50(g); failed to provide to consumers the notice required by TEX. CONST. Art. XVI §50(g); asked a consumer to forge a signature; had consumers sign a false

Affidavit of Non-Homestead; had the consumers sign a Deed of Trust that stated that the property securing a loan was not their homestead; charged to and collected from the consumers for an appraisal that was not performed; and charged to and collected from the consumers, in addition to interest, fees that were necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceeded, in the aggregate, three percent of the original principal amount of the extension of credit.

32. Defendant PASSLINE MORTGAGE, L.P., is not a person licensed to make regulated loans, as provided by statute of this state. Nevertheless, it extended credit to at least one consumer in a transaction involving a homestead: (1) that closed before the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by TEX. CONST. Art. XVI §50(g); (2) which required the consumer to pay, in addition to any interest, fees to MORTGAGE LOANS OF EL PASO that were necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceeded, in the aggregate, three percent of the original principal amount of the extension of credit; (3) which had a security instrument securing the extension of credit that did not contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution; (4) that did not allow the consumer to rescind the transaction within three days of closing; and (5) in which the owner of the homestead and the lender did not sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit was made.

#### **APPLICABLE LAW**

33. Under § 156.002, TEX. FIN. CODE,

(5) “Loan Officer” means an individual sponsored by a licensed mortgage

broker for the purposes of performing the acts of a mortgage broker.

(9) "Mortgage broker" means a person who receives an application from a prospective borrower for the purposes of making a mortgage loan from that person's own funds or from the funds of another person.

34. Under § 156.004, TEX. FIN. CODE,

At the time an applicant submits an application to a mortgage broker, the mortgage broker shall provide to the applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated. The finance commission, by rule, shall promulgate a standard disclosure form to be used by the mortgage broker.

35. Under § 156.201, TEX. FIN. CODE,

(a) A person may not act in the capacity of, engage in the business of, or advertise or hold that person out as engaging in or conducting the business of a mortgage broker in this state unless the person holds an active mortgage broker license or is exempt under Section 156.202

(b) An individual may not act or attempt to act as a loan officer unless the individual at the time is:

(1) licensed under this chapter;

(2) sponsored by a licensed mortgage broker and acting for the mortgage broker; or

(3) exempt under Section 156.202.

(c) Each mortgage broker licensed under this chapter is responsible to the commissioner and members of the public for any act or conduct performed under this chapter by the mortgage broker or a loan officer sponsored by or acting for the mortgage broker

36. Under TEX. FIN. CODE, § 156.204(b),

A mortgage broker may conduct business under a corporate structure, partnership, or any other business form or as an independent contractor for a corporation, partnership, or any other business entity. Before conducting mortgage broker activities under, through, or for a corporation, partnership, or other business entity, a mortgage broker must notify the commissioner, in writing, of any corporate name, partnership

name, assumed name, or any other name under, through, or for which the mortgage broker conducts activities for which a license is required under this chapter. The corporation, partnership, or other business entity under, through, or for which the mortgage broker conducts business is not required to be separately licensed as a mortgage broker provided that all individuals who perform mortgage broker activities are licensed as mortgage brokers or loan officers. The commissioner shall require proof of compliance with this subsection at the time the mortgage broker applies for and renews a license

37. Under TEX. FIN. CODE, § 156.212,

(c) The license certificate of a mortgage broker shall be at all times prominently displayed in the mortgage broker's place of business. The branch office certificate shall be at all times prominently displayed in the mortgage broker's branch office.

(d) A loan officer license certificate shall be at all times prominently displayed in the office of the mortgage broker for whom the loan officer primarily conducts business.

38. Under TEX. FIN. CODE, § 156.213,

(a) Each licensed mortgage broker shall file an annual report with the Savings and Loan Department.

39. Under TEX. FIN. CODE, § 156.406,

(b) A person who received money, or the equivalent of money, as a fee or profit because of or in consequence of the person acting as a mortgage broker or loan officer without an active license or being exempt under this chapter is liable for damages in an amount that is not less than the amount of the fee or profit received and not to exceed three times the amount of the fee or profit received, as may be determined by the court. An aggrieved person may recover damages under this subsection in a court.

40. Under TEX. FIN. CODE, § 156.402,

(b) The commissioner, the attorney general, or a mortgage applicant may bring an action to enjoin a violation of this chapter.

41. Under TEX. ADMIN. CODE, § 80.10,

No Mortgage Broker or Loan Officer may:

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a Mortgage Loan;

42. Under TEX. ADMIN. CODE, § 80.12,

(a) Each application for a license under the Act requires the applicant to indicate the location(s) at which he or she proposes to conduct the licensed activity. A separate license is required for each specified location. When issued, each license will indicate the location for which it is issued.

(b) Each required license issued pursuant to the Act and this Chapter must be prominently displayed at the location indicated thereon....

(c) Before the tenth day preceding the effective date of any change in address, a Mortgage Broker shall notify the Commissioner in writing of the proposed new address of that Mortgage Broker or, as applicable, a Loan Officer sponsored by that Mortgage Broker. A new license certificate, reflecting the new address, must be obtained prior to a Mortgage Broker or Loan Officer conducting business at a new address.

43. Under TEX. BUS. & COMM. CODE § 17.46(a),

False, misleading or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful;”

44. Under TEX. BUS. & COMM. CODE § 17.46(b)(3),

“Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification of goods or services” is a false, misleading or deceptive act or practice;

45. Under TEX. BUS. & COMM. CODE § 17.46(b)(5),

“Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not” is a false, misleading or deceptive act or practice;

46. Under TEX. BUS. & COMM. CODE § 17.46(b)(24),

“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” is a false, misleading or deceptive act or practice;

47. Under TEX. CONST. Art. XVI, § 50,

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(6) an extension of credit that:....

(E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;...

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section;...

(P) is made by one of the following...

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

- (iii) a person licensed to make regulated loans, as provided by statute of this state;
- (iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase;
- (v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or
- (vi) a person regulated by this state as a mortgage broker; and

(Q) is made on the condition that:...

- (vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;
- (viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;
- (ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made;

### **VIOLATIONS**

48. By engaging in the above described conduct, Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES have violated and are continuing to violate the following laws:

(a) § 156.004, TEX. FIN. CODE, by failing to deliver to each applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated;

(b) § 156.201, TEX. FIN. CODE, by acting in the capacity of, engaging in the business of, or advertising or holding that person out as engaging in or conducting the business of a mortgage broker in this state when the person does not hold an active loan officer license;

(c) § 156.201, TEX. FIN. CODE, by employing persons and being persons who act

or attempt to act as a loan officer when the individual at the time is not licensed but is acting for the mortgage broker;

(d) § 156.204(b), TEX. FIN. CODE, by utilizing an assumed name under, through, or for which he conducts activities for which a mortgage broker license is required under Texas law, without notifying the commissioner, in writing, of such assumed name.

(e) § 156.212, TEX. FIN. CODE, by failing to prominently display the license of each loan officer in each place of business operated by them;

(f) §156.213, TEX. FIN. CODE, by failing to file an annual report with the Savings and Loan Department;

(g) §156.406, TEX. FIN. CODE, by receiving money, or the equivalent of money, as a fee or profit because of or in consequence of the person acting as a mortgage broker or loan officer without an active license;

(h) §80.10(4), TEX. ADMIN. CODE, by receiving applications from consumers and otherwise acting as loan officers when they do not hold an active loan officer license;

(i) §80.10(4), TEX. ADMIN. CODE, by submitting false or misleading information of a material nature to consumers in connection with a decision by that person whether or not to make or acquire a Mortgage Loan;

(j) §80.12, TEX. ADMIN. CODE, by failing to notify the Commissioner in writing of his new address, and failing to obtain a new license certificate for that address;

(k) § 17.46(b)(3) of the DTPA , as to ROMO by employing and as to SIMPSON, HERNANDEZ and GONZALES by operating as loan officers without holding an active loan officer license, thereby causing misunderstanding as to certification by the Savings and Loan Department;

(l) § 17.46(b)(5) of the DTPA as to ROMO by employing and as to SIMPSON,

HERNANDEZ and GONZALES by operating as loan officers without holding an active loan officer license, thereby representing that the services provided have approval or characteristics which they do not have;

(m) § 17.46(b)(24) of the DTPA as to ROMO by employing and as to SIMPSON, HERNANDEZ and GONZALES by failing to disclose that they are not authorized to operate as loan officers in the State of Texas;

(n) § 17.46(b)(24) of the DTPA by failing to disclose that they are not authorized to receive money, or the equivalent of money, as a fee or profit because of or in consequence of acting as a mortgage broker;

(o) TEX. CONST. Art. XVI §50, by:

- i. closing a loan transaction before the 12th day after the later of the date that the owner of the homestead submitted an application to the lender for the extension of credit or the date that the lender provided the owner a copy of the notice prescribed by TEX. CONST. Art. XVI §50(g);
- ii. failing to provide to consumers the notice required by TEX. CONST. Art. XVI §50(g);
- iii. asking a consumer to forge a signature;
- iv. having consumers sign a false Affidavit of Non-Homestead;
- v. having the consumers sign a Deed of Trust that stated that the property securing a loan was not their homestead;
- vi. charging to and collecting from the consumers for an appraisal that was not performed;
- vii. charging to and collecting from the consumers, in addition to interest, fees

that were necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceeded, in the aggregate, three percent of the original principal amount of the extension of credit.

- (o) §§ 17.46(a), (b)(5) and (b)(24) of the DTPA by:
  - i. asking a consumer to forge a signature;
  - ii. having consumers sign a false Affidavit of Non-Homestead;
  - iii. having consumers sign a Deed of Trust that stated that the property securing a loan was not their homestead;
  - iv. charging to and collecting from the consumers for an appraisal that was not performed;

44. By engaging in the above described conduct, Defendant PASSLINE MORTGAGE, L.P. has violated and is continuing to violate the following laws:

(a) TEX. CONST. Art. XVI §50, by extending credit to at least one consumer in a transaction involving a homestead that closed before the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by TEX. CONST. Art. XVI §50(g);

(b) TEX. CONST. Art. XVI §50, by extending credit to at least one consumer in a transaction involving a homestead which required the consumer to pay, in addition to any interest, fees to MORTGAGE LOANS OF EL PASO that were necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceeded, in the aggregate, three percent of the original principal amount of the extension of credit;

(c) TEX. CONST. Art. XVI §50, by extending credit to at least one consumer in a transaction involving a homestead which had a security instrument securing the extension of credit

that did not contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution

(d) TEX. CONST. Art. XVI §50 by extending credit to at least one consumer in a transaction involving a homestead that did not allow the consumer to rescind the transaction within three days of closing; and

(e) TEX. CONST. Art. XVI §50 by extending credit to at least one consumer in a transaction involving a homestead in which the owner of the homestead and the lender did not sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit was made.

### **EQUITABLE RELIEF**

45. Commissioner Payne asks that the Court temporarily restrain and permanently enjoin Defendants SIMPSON, HERNANDEZ and GONZALES from operating as loan officers, as defined by Texas law, without being licensed as such.

46. Commissioner Payne further asks that the Court temporarily restrain and permanently enjoin Defendant EDWARD ALEXANDER ROMO from employing loan officers, as defined by Texas law, without the loan officer being licensed as such.

47. Commissioner Payne further asks that the Court temporarily restrain and permanently enjoin Defendants from advertising or offering services that would cause people to believe that Defendants SIMPSON, HERNANDEZ and GONZALES are loan officers, as defined by Texas law, unless and until Defendants hold active loan officer licenses.

48. Commissioner Payne further asks that the Court temporarily restrain and permanently enjoin Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES from failing to deliver to each applicant a disclosure that specifies the nature of the relationship between applicant and broker,

the duties the broker has to the applicant, and how the mortgage broker will be compensated.

49. Commissioner Payne asks further that the Court temporarily restrain and permanently enjoin Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES from failing to prominently display the license of each loan officer in each place of business operated by them.

50. Commissioner Payne asks further that the Court temporarily restrain and permanently enjoin Defendant ROMO from failing to file an annual report with the Savings and Loan Department.

51. Commissioner Payne asks further that the Court temporarily restrain and permanently enjoin Defendant ROMO from utilizing an assumed name, corporate name, partnership name or any other name, under, through, or for which he conducts activities for which a mortgage broker license is required under Texas law, without notifying the commissioner, in writing, of such name.

52. Commissioner Payne asks further that the Court temporarily restrain and permanently enjoin Defendant ROMO from failing to notify the Commissioner in writing of his new address, and failing to obtain a new license certificate for that address.

53. Commissioner Payne and the State of Texas further ask that the Court temporarily restrain and permanently enjoin Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES from charging, receiving, or contracting for any money, or the equivalent of money, that is in any way related to their services as a mortgage broker or loan officers until and unless Defendants obtain licenses to be loan officers.

54. Commissioner Payne and the State of Texas further ask that the Court temporarily restrain and permanently enjoin Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES from:

- i. closing a loan transaction before the 12th day after the later of the date that

the owner of the homestead submitted an application to the lender for the extension of credit or the date that the lender provided the owner a copy of the notice prescribed by TEX. CONST. Art. XVI §50(g);

- ii. failing to provide to consumers the notice required by TEX. CONST. Art. XVI §50(g);
- iii. asking a consumer to forge a signature;
- iv. having consumers sign a false Affidavit of Non-Homestead;
- v. having consumers sign a Deed of Trust that state that the property securing a loan is not their homestead when it is;
- vi. charging to and collecting from consumers for any goods or services that are not delivered or performed;

54. Commissioner Payne and the State of Texas further ask that the Court temporarily restrain and permanently enjoin Defendant PASSLINE MORTGAGE, L.P. from the following:

(a) extending credit to consumers in a transaction involving a homestead that closed before the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by TEX. CONST. Art. XVI §50(g);

(b) extending credit to consumers in a transaction involving a homestead which requires the consumer to pay, in addition to any interest, fees to any mortgage broker that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

(c) extending credit to consumers in a transaction involving a homestead which had a security instrument securing the extension of credit that does not contain a disclosure that the

extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution

55. Commissioner Payne and the State of Texas further ask that the Court, under its equity powers, to order Defendants to make restitution and disgorge not less than, and no more than three times, the sum of all money, or the equivalent of money, paid by consumers to Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES as a fee or profit because of or in consequence of Defendants acting as loan officers without an active license;

**NECESSITY OF IMMEDIATE RELIEF  
TO PRESERVE DEFENDANTS' ASSETS**

56. Plaintiff the State of Texas requests immediate relief by way of an Ex Parte Temporary Restraining Order freezing Defendant EDWARD ALEXANDER ROMO's assets to preserve and protect such assets from dissipation so the victims of Defendant's actions can receive the restitution to which they are entitled. Defendant's assets are subject to dissipation for the reason that Defendant misrepresents his business as being authorized as a mortgage brokerage company when in fact it is not. Defendant is not properly licensed or bonded and does not account to the Texas Savings and Loan Department for his activities. He collects large sums of money from consumers without being legally entitled to do so. As a result, all of the money received by Defendant under the guise of being a mortgage broker is contraband

**OTHER RELIEF**

57. The State of Texas asks the Court to order Defendants to compensate all of their customers for actual damages, and to restore any money or property which may have been acquired by means of any unlawful act or practice.

58. The State of Texas asks the Court to order Defendant PASSLINE MORTGAGE, L.P. to forfeit all principal and interest of any extension of credit made in violation of TEX. CONST. Art. XVI §50.

59. The State of Texas asks the Court to order Defendants to pay a civil penalty, to and for the benefit of the State of Texas, in the amount of \$20,000.00 per violation of the DTPA.

60. The State of Texas asks the Court to issue a declaratory judgment that Defendants are engaged in unlawful mortgage brokerage activity because Defendants SIMPSON, HERNANDEZ and GONZALES are not licensed loan officers.

61. The State of Texas asks the Court to order Defendants to pay reasonable attorney fees, pursuant to TEX. GOVT. CODE § 402.006.

### **PRAYER**

62. WHEREFORE, Plaintiffs Commissioner Payne and the State of Texas pray that an Ex Parte Temporary Restraining Order be granted and Defendants be cited according to law to appear and answer herein; that after reasonable notice and hearing a Temporary Injunction be issued; and upon final hearing a Permanent Injunction be issued, restraining and enjoining Defendants, their successors, assigns, officers, agents, servants, employees, attorneys and any other person in active concert or participation with Defendants, whether such acts are performed under his or her own name, under the assumed name “E.A.R. Funding,” “Mortgage Loans of El Paso,” or under any other assumed name or legal entity, from engaging in the following acts or practices:

a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written or computer generated materials relating to the business of Defendants currently or hereafter in Defendants’ possession, custody or control except in response to further orders or subpoenas in this cause;

b. As to Defendant EDWARD ALEXANDER ROMO, transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any bank, savings association, credit union or other financial

institution or from the jurisdiction of this Court any money, stocks, bonds, assets, sports memorabilia, 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 the possession or custody of, standing in the name of, or claimed by such Defendant without further order of this court;

c. Acting in the capacity of a mortgage broker or loan officer unless he or she holds a current license as such;

d. Engaging in the business of a mortgage broker or loan officer unless he or she holds a current license as such;

e. Advertising or holding themselves out as engaging in or conducting the business of a mortgage broker or loan officer unless he or she holds a current license as such;

f. Originating any residential mortgage loan on behalf of any person;

g. Making any misrepresentation to any person, whether directly or indirectly, regarding his or her license status;

h. Displaying or using a previous mortgage broker license certificate, letterhead, or business card in connection with any mortgage broker or loan officer activity unless he or she holds a current license as such;

i. Receiving an application from a prospective borrower for the purpose of making, arranging, or obtaining a residential mortgage loan for the borrower unless he or she holds a current license as a mortgage broker or loan officer;

j. Interviewing any prospective mortgage loan applicant or advising any residential mortgage loan applicant on any matter related to making, arranging, or obtaining a residential mortgage loan, which includes qualifying or pre-qualifying a loan applicant or

quoting or discussing available interest rates, loan products, or loan pricing with any loan applicant unless he or she holds a current license as a mortgage broker or loan officer;

k. Receiving or retaining any funds paid by or on behalf of a residential mortgage loan applicant unless he or she holds a current license as a mortgage broker or loan officer;

l. Completing or assisting in the completion of a residential mortgage loan application for or on behalf of any prospective borrower unless he or she holds a current license as a mortgage broker or loan officer;

m. Receiving or retaining any compensation for loan origination activity, including any loan origination fee, application fee, underwriting fee, or other fee, of whatever type or description unless he or she holds a current license as a mortgage broker or loan officer;

n. Employing, compensating, or associating with any person who is not licensed or exempt under the Mortgage Broker License Act who is expected or required to act as a loan officer or mortgage broker for or on behalf of Defendants ROMO, SIMPSON,, HERNANDEZ and GONZALES.

o. Advertising or offering services that would cause people to believe that Defendants MELISA SIMPSON, GRACE HERNANDEZ and AMANDA GONZALES are loan officers as defined by Texas law, unless and until Defendants hold active loan officer licenses;

p. Failing to deliver to each applicant a disclosure that specifies the nature of the relationship between applicant and broker, the duties the broker has to the applicant, and how the mortgage broker will be compensated;

q. Failing to prominently display the license of each loan officer in each place of business operated by Defendants;

r. As to Defendant ROMO, failing to file an annual report with the Savings and Loan Department;

s. As to Defendant ROMO, utilizing an assumed name, corporate name, partnership name or any other name, under, through, or for which he conducts activities for which a mortgage broker license is required under Texas law, without notifying the commissioner, in writing, of such name.

t. As to Defendant ROMO, failing to notify the Commissioner in writing of his new address, and failing to obtain a new license certificate for that address;

u. Closing a loan transaction before the 12th day after the later of the date that the owner of the homestead submitted an application to the lender for the extension of credit or the date that the lender provided the owner a copy of the notice prescribed by TEX. CONST. Art. XVI §50(g);

v. Failing to provide to consumers the notice required by TEX. CONST. Art. XVI §50(g);

w. Asking a consumer to forge a signature;

x. Having consumers sign a false Affidavit of Non-Homestead;

y. Having consumers sign a Deed of Trust that state that the property securing a loan is not their homestead when it in fact is;

z. Charging to and collecting from consumers for any goods or services that are not delivered or performed;

aa. In a transaction involving a homestead, charging or collecting from a

consumer, in addition to any interest, fees that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

bb. As to PASSLINE MORTGAGE, L.P., extending credit to consumers in a transaction involving a homestead that closed before the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by TEX. CONST. Art. XVI §50(g);

cc. As to PASSLINE MORTGAGE, L.P., extending credit to consumers in a transaction involving a homestead which requires the consumer to pay, in addition to any interest, fees to any mortgage broker that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

dd. As to PASSLINE MORTGAGE, L.P., extending credit to consumers in a transaction involving a homestead which had a security instrument securing the extension of credit that does not contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

ee. Representing, directly or by implication, that this Court or the Office of the Attorney General has approved any good or service sold or offered for sale by Defendants, or has approved any business practice of Defendants.

62. In addition, Plaintiff State of Texas respectfully prays that this Court will:

a. Order Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES to

make restitution and disgorge not less than, and no more than three times, the sum of all money, or the equivalent of money, paid by consumers to Defendants as a fee or profit because of or in consequence of Defendants acting as loan officers without an active license, or, in the alternative, award actual damages and restore any money or property which may have been acquired by means of any unlawful act or practice;

b. Order Defendant PASSLINE MORTGAGE, L.P. to forfeit all principal and interest of any extension of credit made in violation of TEX. CONST. Art. XVI §50.

c. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of \$20,000.00 per violation of the DTPA;

d. Issue a declaratory judgment that Defendants ROMO, SIMPSON, HERNANDEZ and GONZALES are engaged in unlawful mortgage brokerage activity because SIMPSON, HERNANDEZ and GONZALES are not licensed loan officers;

e. Order Defendants to pay Plaintiff State of Texas attorney's fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c);

DATED this \_\_\_\_\_ day of May, 2004.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

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First Assistant Attorney General

EDWARD D. BURBACH  
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