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STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

LEAD CONCEPTS, INC. AND
CHRISTOPHER WEIR,
Defendants.

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiff the STATE OF TEXAS, acting by and through its Attorney General, files this action against LEAD CONCEPTS, INC. and CHRISTOPHER WEIR (collectively referred to as Defendants), and respectfully alleges the following claims:

I

SUBJECT MATTER JURISDICTION AND DISCOVERY CONTROL PLAN

1. This suit is brought against Defendants by the Attorney General, acting through his Consumer Protection and Public Health Division, for violations of the Texas Deceptive Trade Practices--Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41, *et seq.* (the "DTPA"), former TEX. INS. CODE art. 21.21, current TEX. INS. CODE §§ 541.003 and 541.052, and the rules promulgated thereunder. This suit is filed in the name of the State of Texas by the Attorney General acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas. The discovery in this case is intended to be conducted under Level 2, pursuant to TEX. R. CIV. P. 190.2.

II

DEFENDANTS

2. a. Defendant LEAD CONCEPTS, INC. (referred to as LEAD CONCEPTS) is a Texas corporation and may be served with citation by serving its Registered Agent and President CHRISTOPHER WEIR at 1060 E. Northwest Highway, Grapevine, Texas 76051.

b. Defendant CHRISTOPHER WEIR is an individual and President of Defendant LEAD CONCEPTS, INC. and may be served with citation at his business located at 1060 E. Northwest Highway, Grapevine, Texas 76051 or his home located at 4501 Trotter Lane, Flower Mound, Texas 75028.

III

VENUE

3. Venue is proper in Travis County, Texas pursuant to former TEX. INS. CODE art. 21.21 § 15(b) and current TEX. INS. CODE § 541.202(3).

IV

PUBLIC INTEREST

4. The Consumer Protection and Public Health Division of the Office of the Attorney General (the CPD) has reason to believe that Defendants have sent misleading and deceptive mailings to elderly persons in Texas and elsewhere in violation of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE §17.46, former TEX. INS. CODE art. 21.21 § 4(2), current TEX. INS. CODE §§ 541.003 and 541.052, and the rules promulgated thereunder, as set forth below. Therefore, the CPD believes that bringing this claim is in the public interest and, having so concluded, brings this action pursuant to the Texas Deceptive Trade Practices-Consumer

Protection Act § 17.47(a), former TEX. INS. CODE art. 21.21 § 15(a) and current TEX. INS. CODE § 541.201, and seeks injunctive relief against Defendants to restrain the use of such unlawful practices and other remedies specified below.

V

DEFENDANTS HAVE BEEN AND ARE ENGAGED IN “TRADE AND COMMERCE” AND “THE BUSINESS OF INSURANCE” IN TEXAS

5. Each Defendant is a “person,” as defined by the DTPA § 17.45(3), former TEX. INS. CODE art. 21.21 § 2(a), and current TEX. INS. CODE § 541.002(2), and has, at all times as described below, engaged in conduct which constitutes “trade” and “commerce,” as those terms are defined by the DTPA § 17.45(6), and also in conduct which constitutes the “business of insurance” in the State of Texas, as defined by TEX. INS. CODE §§101.051(b)(6) & (9) and 101.051(c). The conduct of Defendants has affected and continues to affect persons in the State of Texas.

VI

DECEPTIVE TRADE PRACTICES ACT NOTICE

6. Defendants have been notified in general of the alleged unlawful conduct described herein in accordance with TEX. BUS. & COM. CODE § 17.47(a).

VII

ACTS OF AGENTS

7. An allegation that Defendants or a Defendant engaged in any act or practice means:

- a. that a Defendant performed, authorized or participated in the act or practice; or
- b. that one or more of Defendant’s officers, agents, representatives or employees performed or participated in the act or practice on behalf of and under the authority or direction of

the Defendants.

VIII

ADDITIONAL FACTUAL ALLEGATIONS

8. LEAD CONCEPTS and CHRISTOPHER WEIR have been in the business of creating, mailing, and processing lead card advertisements for use by insurance agents, insurance companies and others for the purpose of soliciting and selling insurance and other financial products. Defendants solicit business from insurance agents and offer their services in developing lists and obtaining personal information of elderly persons for the purpose of facilitating the agents' soliciting and selling insurance and other financial products. CHRISTOPHER WEIR incorporated the business as LEAD CONCEPTS, INC. on or about February 25, 2000, but this corporation has been using the alias or assumed name REGIONAL REPLY OFFICE in developing lists and obtaining personal information of elderly persons as prospects for the agents to solicit and sell insurance and other financial products.

9. Based on the type of product a customer wishes to sell, Defendants and the customer agree what kind of person is most likely to buy the product. Defendants' customers include agents who seek to market various insurance and other financial products, such as long term care insurance, medicare supplement insurance, funeral expense insurance or annuities. Defendants develop or purchase mailing lists of persons who fit that demographic profile focused on the age, location and telephone number of prospective buyers of these products. Defendants' mailings target elderly persons as the most likely prospective buyers of these insurance and other financial products.

10. Defendants and their customers agree upon the form of the mailing that includes the "lead card" to solicit personal information from elderly persons as leads to facilitate and enable the

insurance agent to solicit and sell insurance and other financial products to elderly persons who respond to the lead card. Defendants' mailings do not disclose the true purpose of the mailings and do not identify an insurance or other financial product or an insurance company or agent who uses the lead cards. Defendants disguise the identity of LEAD CONCEPTS, INC. and the sources of information in the mailings to elderly persons by using the alias or assumed name REGIONAL REPLY OFFICE. LEAD CONCEPTS has not filed a certificate of assumed name to conduct business using the name REGIONAL REPLY OFFICE, as required by the Assumed Business or Professional Name Act, TEX. BUS. & COM. CODE § 36.01, *et seq.* ("the Assumed Name Act").

11. Defendants' mailings contain alarming messages appealing to elderly persons about: (a) **IMPORTANT ELDER LAW CHANGES in legislation that standardizes entitlement provisions for persons 65 and over;** (b) **MEDICARE SUPPLEMENT COVERAGE UPDATE;** and (c) **SENIOR INFORMATION UPDATE** regarding funeral expenses not paid by the government, as set forth below. Defendants' mailers are purposely designed to disguise the fact that the mailers are actually obtaining the personal information for the purpose of leading to soliciting and selling insurance and other financial products, such as long term care insurance, medicare supplement insurance, funeral expense insurance or annuities.

12. Defendants print and mail the solicitations, including a postage-paid postcard return addressed to REGIONAL REPLY OFFICE to obtain personal information of elderly persons. The mailings urge elderly persons to return the postcard with personal information to request free information (the "lead card") about the alarming messages in the mailings.

13. Using the alias or assumed name REGIONAL REPLY OFFICE, Defendants solicit and obtain the personal information of elderly persons contained in these lead cards, without

disclosing the true purpose of the lead card and without identifying an insurance or other financial product or an insurer or agent licensed to engage in the business of insurance. Defendants forward the returned lead cards to the insurance agent or company who sells insurance and/or other financial products.

14. Using the lead cards returned by elderly persons to REGIONAL REPLY OFFICE, Defendants' customers in turn solicit elderly persons to sell them insurance and/or other financial products.

IX

EXHIBITS OF DEFENDANTS' MAILINGS

15. Copies of exemplar mailers by Defendants are attached as Exhibits A, B and C.

(a) Exhibit A is a mailer that states messages of general information about **"IMPORTANT ELDER LAW CHANGES"** in benefits provided by the government. The mailer creates an appearance suggesting that the source of the general information stated in connection with the prominent title **"IMPORTANT ELDER LAW CHANGES"** is approved by, related to or connected with government providing the benefits. The lead card states the following messages:

"IMPORTANT ELDER LAW CHANGES"

"Congress passes legislation that standardizes entitlement provisions for persons 65 and over."

"These changes provide the following benefits:

Seniors may apply to completely avoid all probate and estate taxes.

Reduce or avoid all income taxes on investments and social security.

Exempt assets from collection by government or nursing home if ill.

Increase the income on your IRA 20-40%.

Triple you guaranteed certificate of deposit interest of CD's with no risk."

"As a U.S. citizen 65 and over, you may now learn how to qualify without any cost under federal and state law. For FREE information regarding this important elder law update, return this postage paid card today"

Below these messages, the return postage paid card has blanks prescribing responses of personal information including the name, date of birth, spouse's name, spouse's date of birth and phone number of the elderly persons as conditions of obtaining the "For FREE information regarding this important elder law update." Printed at the bottom of the card is "Not affiliated with or endorsed by any government agency" without any explanation to make clear that the source of the information about "**IMPORTANT ELDER LAW CHANGES**" is not approved by, related to or connected with the federal government and that the source of the information is from an unidentified insurance company or agent who will use the personal information as a lead to sell insurance and/or other financial product to elderly persons. The return address of the postage paid card is REGIONAL REPLY OFFICE, PO Box 2287, Grapevine, Texas 76099-9949.

(b) Exhibit B is a mailer that states messages of general information about "NEW guidelines for Medicare reform" and changes in healthcare benefits provided by the government. The mailer creates an appearance suggesting that the source of the general information stated in connection with the prominent title "**MEDICARE SUPPLEMENT COVERAGE UPDATE**" printed in large, bold letters, is approved by, related to or connected with the government providing the healthcare benefits. The lead card states the following messages:

"MEDICARE SUPPLEMENT COVERAGE UPDATE"

"The President and Congress are preparing the NEW guidelines for Medicare reform.

How will this change your healthcare requirements of HOSPITAL, DOCTOR, PRESCRIPTIONS, HOME HEALTH CARE, AND LONG TERM CARE needs?

Seniors need to understand how these proposals will AFFECT THEM. For information on these changes and how they will AFFECT YOU, complete and return this postage paid card today.

Areas of interest: Long-term care Medigap coverage Final Expense”

Below these messages, the return postage paid card has blanks prescribing responses of personal information of the name, birth date, spouse’s name, spouse’s birth date and phone number of the elderly persons as conditions of obtaining this information. Printed at the bottom of the card is “Not affiliated with or endorsed by any government agency” without any explanation to make clear that the source of the information about “**MEDICARE SUPPLEMENT COVERAGE UPDATE**” is not approved by, related to or connected with the federal government and that the source of the information is from an unidentified insurance company or agent who will use the personal information as a lead to sell insurance and/or other financial product to elderly persons. The return address of the postage paid card is REGIONAL REPLY OFFICE, PO Box 2287, Grapevine, Texas 76099-9949.

(c) Exhibit C is a mailer that states messages of general information about the government’s limited payment of \$255 for funeral expense and a Senior Plan that will pay 100% of all funeral expenses not paid by government funds. The mailer creates an appearance suggesting that the source of the general information stated in connection with the prominent title “**SENIOR INFORMATION UPDATE**” printed in large, bold letters, is approved by, related to or connected with government providing the benefits. The lead card states the following messages:

“SENIOR INFORMATION UPDATE”

“Dear Citizen,

We are pleased to announce a Senior Final Expense Program to help pay what the government does not pay for your funeral expense. At present the government pays \$255. This Senior Plan may pay 100% of all funeral expenses not paid by government funds up to \$15,000 for each Senior Citizen covered. To see if you qualify, mail this postage paid card, you will not be charged for this information! This is a ‘FREE’ Service to you. Check amount Requested: () \$3,000 () \$5,000 () \$7,000 () \$10,000 () \$15,000.”

Below these messages, the return postage paid card has blanks prescribing responses of personal information of the name, date of birth, phone, spouse’s name and spouse’s date of birth as conditions of obtaining this FREE information. Printed at the bottom of the card is “Not affiliated with or endorsed by the Social Security Administration” without any explanation to make clear that the source of the general information stated in the “**SENIOR INFORMATION UPDATE**” is not approved by, related to or connected with the federal government and that the source of the information is from an unidentified insurance company or agent who will use the personal information as a lead to sell insurance and/or other financial product to elderly persons. The return address of the postage paid card is REGIONAL REPLY OFFICE, PO Box 2287, Grapevine, Texas 76099-9949.

In these mailers, Defendants do not disclose the true purpose of the mailings and do not identify an insurance or other financial product or an insurance company or agent who uses the lead cards for soliciting and selling insurance and/or other financial products. Defendants do not disclose that REGIONAL REPLY OFFICE is an alias or assumed name to disguise the true name of LEAD CONCEPTS, INC. and the sources of the information in the mailings, and do not disclose the names of its customers who use the lead cards for soliciting and selling insurance and/or other financial products. Defendants do not disclose that the address of REGIONAL REPLY OFFICE, PO Box

2287, Grapevine, Texas 76099-9949 is not a location where LEAD CONCEPTS, INC. conducts its business or where its customers who use the lead cards conduct their businesses.

16. The appearance of the mailers and references to general information about:

(a) **IMPORTANT ELDER LAW CHANGES in legislation that standardizes entitlement provisions for persons 65 and over;** (b) **MEDICARE SUPPLEMENT COVERAGE UPDATE;** and (c) **SENIOR INFORMATION UPDATE** regarding funeral expenses not paid by the government are all designed to create and do create the false impression that the communications are related to preserving or avoid losing benefits provided for elderly persons by the government. The appearance of an official looking mailer with the name REGIONAL REPLY OFFICE in connection with a prominent title **IMPORTANT ELDER LAW CHANGES, MEDICARE SUPPLEMENT COVERAGE UPDATE** or **SENIOR INFORMATION UPDATE** creates the false impression that the sources of the mailings and/or information related to these matters are approved by, related to or connected with the federal government. The mailers create confusion and alarm and mislead elderly persons into believing that their benefits under Medicare, Social Security and/or other benefits provided by the government are in jeopardy, and that they should return the card for the free information about how to preserve their benefits provided by the government and the exemption of their assets from collection by the government or nursing home if they become ill and how to reduce or avoid taxes on their estate, investments and social security.

17. As stated above, the lead cards are really used for the true purpose of obtaining personal information for creating lists of elderly persons who are thus selected prospects for insurance companies and agents to solicit and sell insurance and/or financial products. The true purpose is not to inform elderly persons about their benefits under any federal or state law, as is

misleadingly stated. The lead cards do not disclose the true purpose and intended use of the personal information by insurance companies and agents. The word “insurance” is not used anywhere in Exhibits A, B and C. Thus, many elderly persons would have no idea that the true purpose and use of the personal information in the lead cards is to sell an insurance and/or other financial product and would have no idea who was trying to sell the product or the locations of the offices of those trying to sell the product.

X

DTPA VIOLATIONS

18. Defendants, as alleged above, have in the course of trade and commerce, engaged in false, misleading or deceptive acts and practices declared unlawful in the DTPA §§ 17.46(a) and (b).

Defendants’ unlawful acts and practices include:

- a. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, as alleged more specifically in paragraphs 8 through 17 above, in violation of DTPA § 17.46(b)(2);
- b. Causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by, another, as alleged more specifically in paragraphs 8 through 17 above, in violation of DTPA § 17.46(b)(3);
- c. Passing off goods or services as those of another, as alleged more specifically in paragraphs 8 through 17 above, in violation of DTPA § 17.46(b)(1);
- d. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have, as alleged more specifically in paragraphs 8 through 17 above, in

violation of DTPA § 17.46(b)(5); and

- e. Failing to disclose information, which was known at the time of the transaction, with the intent to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, as alleged more specifically in paragraphs 8 through 17 above, in violation of DTPA § 17.46(b)(24).

XI

TEXAS INSURANCE CODE VIOLATIONS

19. Defendants have engaged in unfair methods of competition and unfair or deceptive acts and practices in the business of insurance in violation of former TEX. INS. CODE art. 21.21 § 4(2), and current TEX. INS. CODE §§ 541.003 and 541.052 by engaging in one or more of the following acts or practices:

- a. Failing to disclose the fact that insurance is the subject of the solicitation;
- b. Directly or indirectly acting as an agent for or otherwise representing or assisting an insurer or person in soliciting insurance;
- c. Failing to disclose the name of the insurer or agent for whom personal information is being solicited; and
- d. Other acts and practices as more specifically alleged in paragraphs 8 through 17 above.

XII

TEXAS ADMINISTRATIVE CODE VIOLATIONS

20. Defendants have engaged in unfair competition and unfair trade practices in the

business of insurance, in violation of 28 TEX. ADMIN. CODE, Chapter 21, Subchapters A and B. Defendants' mailers are advertisements in the form of lead card solicitations, as defined by 28 TEX. ADMIN. CODE §21.102(1)(F). Defendants' mailers include the following unfair competition and unfair trade practices:

- a. Failing to disclose the fact that insurance is the subject of the solicitation in violation of 28 TEX. ADMIN. CODE §§ 21.3, 21.4, 21.103, 21.104 (d) & (f) and 21.112;
- b. Failing to explicitly and conspicuously disclose that the product being solicited is life insurance or other insurance or an annuity in violation of 28 TEX. ADMIN. CODE §§ 21.3, 21.4, 21.103, 21.104 (d) and 21.112;
- c. Failing to disclose the full name of the insurer as required to be stated in each of its advertisements and the portion of the advertisement to be returned to the insurance company or agent in violation of 28 TEX. ADMIN. CODE §§ 21.104 (a) and 21.112;
- d. Failing to provide information that is sufficiently complete and clear to avoid deception or capacity or tendency to mislead or deceive as to the origin, nature, and purpose of the advertisement in violation of 28 TEX. ADMIN. CODE §§ 21.103 (b) and 21.112;
- e. Using advertisements which contain words, phrases, statements, or illustrations therein or have information omitted therefrom which have the capacity and tendency to mislead or deceive purchasers or prospective purchasers in violation of 28 TEX. ADMIN. CODE §§ 21.103 (d) and 21.112;

- f. Omitting information, or creating a false implication or impression which is misleading or deceptive or has the tendency or capacity to be misleading or deceptive in violation of 28 TEX. ADMIN. CODE § 21.112;
- g. Failing to disclose all information required to be disclosed conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or interrupted with the context of the advertisement so as to be confusing or misleading in violation of 28 TEX. ADMIN. CODE §§ 21.103 (c) and 21.112;
- h. Referring to Medicare without giving the required legal information and/or disclosures in violation of 28 TEX. ADMIN. CODE §§ 21.113 (d)(11)-(14); and
- i. Misleading the recipient to believe the sources of the mailing and/or information referenced in the mailing are approved by, related to or connected with the federal government in violation of 28 TEX. ADMIN. CODE §§ 21.3, 21.4, 21.103, and 21.104 (c).

XIII

REQUEST FOR INJUNCTION

21. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the law as alleged in this Petition. Unless restrained by this Honorable Court, Defendants can continue to violate the laws of the STATE OF TEXAS and cause irreparable injury, loss and damage to the STATE OF TEXAS and to the general public.

22. Plaintiff the STATE OF TEXAS respectfully requests that after notice and hearing

this Court issue a permanent injunction restraining and enjoining Defendants, Defendants' 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, 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, insofar as such property relates to, arises out of or is derived from the business operations of any Defendants within the State of Texas, save and except for reasonable and necessary expenditures in the ordinary course of business;

b. Failing to disclose that the purpose of a communication is a solicitation to sell insurance and/or other financial product;

c. Using the name REGIONAL REPLY OFFICE or any other name, emblem, insignia or text which:

(1) causes confusion or misunderstanding as to the source, sponsorship, or approval of Defendants' goods or services;

(2) causes confusion or misunderstanding as to Defendants' affiliation, connection, or association with unidentified insurance agents or companies for whom personal information is being solicited to sell unidentified insurance and/or other financial products;

(3) represents or implies that Defendants' goods or services have sponsorship, approval, characteristics, uses, or benefits which they do not have;

d. Failing to identify the licenced insurance agent and/or company on whose

behalf the communication is sent or who will be receiving the personal information gathered through the use of the communications to elderly persons;

e. Failing to identify the type of insurance and/or other financial product that may be attempted to be sold by an insurance agent and/or company on whose behalf the communication is sent or who will be receiving the information gathered through the use of the communication; and

f. Using the words “important update,” or similar urgent terms, or otherwise purporting to notify recipients of changes in the law without a specific reference to the law which has changed and the date on which the change became effective.

XIV

REQUEST FOR CIVIL PENALTIES

23. In addition, Plaintiff the STATE OF TEXAS respectfully requests that this Court:

a. Adjudge against each Defendant civil penalties in favor of Plaintiff the STATE OF TEXAS in the amount of not more than \$20,000.00 per violation of the DTPA, plus an additional amount of not more than \$250,000.00 under the DTPA regarding acts or practices calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the acts or practices occurred, pursuant to DTPA §17.47(c);

b. Order Defendants to pay civil penalties of up to \$10,000.00 per violation pursuant to former TEX. INS. CODE art. 21.21 § 15(c), current TEX. INS. CODE §541.204, and the rules promulgated thereunder.

XV

REQUEST FOR ATTORNEY'S FEES AND COSTS OF COURT

In addition, Plaintiff the STATE OF TEXAS respectfully requests that this Court further order Plaintiff the STATE OF TEXAS recover from Defendants, jointly and severally, reasonable attorney's fees and costs of court pursuant to the TEX. GOV'T CODE § 402.006(c).

XVI

PRAYER

Plaintiff the STATE OF TEXAS respectfully prays that Defendants be served with citation as required by law and that this Court grant judgment to Plaintiff against Defendants for all relief requested above and other relief to which Plaintiff may show itself entitled.

Respectfully submitted,

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Attorney General of Texas

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