

NO. \_\_\_\_\_

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	
	§	
ARIE SHALEV, a/k/a ERIC SHALEV,	§	HARRIS COUNTY, TEXAS
A & R DISTRIBUTORS, INC., E.S. AUTO	§	
SALES, INC., BEST BUY MOTORS, INC.,	§	
GIANT MART, INC. and GOLDEN ARIBAH	§	
INVESTMENTS, L.L.C.,	§	
Defendants	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL VERIFIED PETITION AND APPLICATION FOR  
TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND  
PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, (referred to herein as the “Attorney General”) on behalf of the State of Texas and on behalf of the interest of the general public of the State of Texas complaining of A & R Distributors, Inc., a Texas Corporation; E. S. Auto Sales, Inc., a Texas Corporation; Best Buy Motors, Inc., a Texas Corporation; Giant Mart, Inc., a Texas Corporation; Golden Aribah Investments, L.L.C., a Texas Corporation, and Arie Shalev a/k/a Eric Shalev (hereinafter “Defendants”); and would respectfully show the Court the following:

**DISCOVERY**

1. Discovery shall be conducted under LEVEL 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

**JURISDICTION**

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS and in the public interest under

the authority granted him by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41, *et seq.* (Vernon 2006) (hereinafter, the “DTPA”), upon the ground that Defendants have engaged in false, misleading, or deceptive acts and practices in the conduct of trade and commerce as defined in, and declared unlawful by §§17.46(a) and (b) of the DTPA.

### **DEFENDANTS**

3. Arie Shalev a/k/a Eric Shalev, is an individual residing in Houston, Texas, who may be served with process at 1200 Post Oak Boulevard, #2205, Houston, Texas 77056 or at 8335 North Freeway, Houston, Texas 77037.

4. A & R Distributors, Inc., with a mailing address of P.O. Box 701215, Houston, Texas 77270, is a Texas corporation whose registered agent, Arie Shalev, can be served with process at 8335 North Freeway, Houston, Texas 77037.

5. E. S. Auto Sales, Inc., with a mailing address of P.O. Box 701215, Houston, Texas 77270, is a Texas corporation whose registered agent, Arie Shalev, can be served with process at 8335 North Freeway, Houston, Texas 77037.

6. Best Buy Motors, Inc., located at 8335 North Freeway, Houston, Texas 77037, is a Texas corporation whose registered agent, Mark A. Huvad, can be served with process at 2100 West Loop South, Suite 1100, Houston, Texas 77027.

7. Giant Mart, Inc., located at 8335 North Freeway, Houston, Texas 77037, is a Texas corporation whose registered agent, Mark A. Huvad, can be served with process at 2100 West Loop South, Suite 1100, Houston, Texas 77027.

8. Golden Aribah Investments, L.L.C., located at 8335 North Freeway, Houston, Texas 77037,

is a Texas corporation whose registered agent, Mark A. Huvard, can be served with process at 2100 West Loop South, Suite 1100, Houston, Texas 77027.

### **VENUE**

9. Venue of this suit lies in Harris County, Texas, for the following reasons:
  - A. Under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas;
  - B. Venue is also proper in Harris County, Texas, under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(2) because the Defendants were residents of Harris County, Texas at the time the causes of action accrued;
  - C. Venue is also proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(3) because Defendants' principal office is located in Harris County, Texas; and
  - D. Venue is also proper under DTPA §17.47 because the Defendants did business in Harris County, Texas, resided in Harris County, Texas at the time the transaction occurred and have their principal place of business in Harris County, Texas.

### **PUBLIC INTEREST**

10. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff State of Texas has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection and Public

Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

### **TRADE AND COMMERCE**

11. Defendants have, at all times described below, engaged in conduct constituting “trade” and “commerce,” as those terms are defined in §17.45(6) of the DTPA.

### **ACTS OF AGENTS**

12. Whenever in this petition it is alleged that a Defendant did any act, it is meant that:

A. The Defendant performed or participated in the act; or

B. The Defendants’ officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendants.

### **NOTICE BEFORE SUIT NOT GIVEN**

13. Pursuant to §17.47(a) of the Deceptive Trade Practices act, contact has not been made with the Defendants herein to inform them of the unlawful conduct alleged herein, for the reason that the Consumer Protection and Public Health Division is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants would evade service of process and flee the jurisdiction, destroy relevant records and secrete assets if prior notice of this suit were given.

### **SPECIFIC FACTUAL ALLEGATIONS**

14. Defendant Shalev has been operating a weekly auction in the City of Houston for several years where he auctions off vehicles and merchandise to the highest bidder. (Exhibits “1 [p. 2, para. 4], 2, 3, 4, 12, 13, 14 & 15”.) Defendant began his business using the name A & R Distributors and

filed an assumed name certificate for this name in 1992; however, in 1997 he withdrew it and incorporated his business using the same name. (Exhibits “1 [pp. 6-7, para. 18], 5, 6 & 7”.)

15. In addition to A & R Distributors, Inc., Defendant Shalev has used several other names while conducting his auction business including: ES Auto Sales, Inc., Best Buy Motors, Inc., Giant Mart, Inc. and Golden Aribah Investments, LLC., all of which have been incorporated with the Texas Secretary of State. (Exhibits “1 [p. 7, para. 19], 8, 9, 10 & 11”.)

16. Defendant Shalev is currently licensed as an auctioneer and has been licensed since September 2003.<sup>1</sup> (Exhibits “1 [p. 8, para. 24] & 27”.) Over the last several years Defendants’ auction has been held at 5304 N. Main Street, 8150 Long Point and the current location of 8335 North Freeway. (Exhibits “1 [p. 8, para. 22], 2, 3, 4, 12, 13, 14, 15, 17A & 20A”.)

17. Consumers learn of Defendants’ auction through their advertisements in various newspapers and magazines such as Buena Suerte, the Greensheet, Solo Autos, La Voz, The Houston Press, the Houston Chronicle and Auto Mart. (Exhibits “1 [p. 7, para. 20], 2, 3, 4, 12, 13, 14, 15, 17A , 20A, 23 [p. 2], 25 [p. 1] & 26 [p. 1, para. 2]”.) Defendants have been running these ads from as early as 2000. (Exhibit “41”.)

18. In order to enter the auction premises, consumers must first pay an entrance fee ranging from \$5.00 to \$10.00. (Exhibits “1 [p. 2, para. 5], 3, 14, 15, 17, [p. 1, para. 2], 17A, 19 [p. 1, para. 2], 20 [p. 1, para. 3], 24 [p. 4, para. 2], 25 [p. 1] & 26 [p. 1, para. 2]”.) Once the entrance fee is paid, in order to bid on an item, consumers must put down a \$200.00 cash deposit which is refundable if the

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<sup>1</sup> Previous to Defendant Shalev’s Auctioneers license becoming effective in October 2003, a licensed auctioneer named Paul Henry conducted the auction.

consumer does not purchase any items in the auction.<sup>2</sup> (Exhibits “1 [p. 2, para. 5], 2, 3, 4, 12, 13, 14, 15, 16 [p. 1, para. 2], 17 [p. 1, para. 2], 17A, 18 [p. 1, para. 3], 19 [p. 1, para. 2], 20 [p. 1, para. 3], 24 [p. 4, para. 2], 25 [p. 1] & 26 [p. 1, para. 2]”.)

19. In the event that a consumer bids on an item and that bid is accepted, the deposit is applied toward the price of the purchased item. (Exhibits “1 [p. 2, para. 5], 2, 3, 14, 15, 17 [p. 1, para. 2], 17A, 18 [p. 1, para. 3] & 20 [p. 1, para. 3]”.)

20. Once consumers pay their \$200.00 deposit, they are told to sign a pre-printed “Auction Terms and Conditions Registration Form” without being given an opportunity to read it and/or are told the form will be explained to them later. (Exhibits “1 [pp. 2-3, para. 6], 17 [p. 1, para. 2], 17D, 18A, 19 [p. 1, para. 2], 19C, 20D, 24 [p. 5, para. 5], 25 [p. 1] & 26 [p. 1, para. 2]”.) Some consumers, especially those who cannot read English, are told that the form is necessary to enter the auction without any attempt by Defendants to explain what the form says. (Exhibits “1 [p. 3, para. 6], 18 [p. 1, para. 3] & 21 [p. 1]”.) In some cases, consumers are not even asked to sign any forms until after they have won the bid on an item and are filling out their paperwork. (Exhibits “1 [p. 3, para. 6], 16 [p. 1, para. 2] & 20 [p. 1, para. 7]”.)

21. Before the auction begins, Defendant Shalev, who is also the auctioneer, does not explain any of the terms or conditions of the auction, or speaks so quickly and with a heavy accent that it is very difficult to understand what he is saying. (Exhibits “1 [p. 3, para. 7], 16 [p. 1, para. 3], 17 [p. 1, para. 3], 20 [p. 1, para. 4], 21 [p. 1], 25 [p. 1] & 26 [p. 1, para. 3]”.)

22. Once consumers make the winning bid on an item, they are immediately required to pay a

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<sup>2</sup> Defendants’ advertisements indicate deposit is payable in cash or cashier’s check made payable to yourself.

40% or 50% down payment, usually in cash before leaving the auction premises. (Exhibits “1 [p. 4, para. 8], 2, 3, 4, 12, 13, 14, 15, 16 [p. 1, para. 4], 16B, 17 [p. 1, para. 3], 17C, 18 [p. 1, para. 4], 18C, 19 [p. 1, para. 3], 19B, 20 [p. 1, para. 5], 20C, 21 [p. 1] & 26 [p. 1, para. 4]”.) Consumers who try to pay the total amount of the bid are told they cannot and are instructed to return the next day. (Exhibits “1 [p. 4, para. 8], 16 [p. 1, para. 4] & 20 [p. 1, para. 5]”.) When consumers ask what their total will be when they return or how much the tax, title and license fees will be, they are told it will be explained when they come back or they are given an incorrect or vague answer. (Exhibits “1 [p. 4, para. 8], 16 [p. 1, paras. 5 & 6], 20 [p. 1, para. 5] & 25 [p. 2]”.)

23. In most cases consumers are not allowed to inspect or test drive the vehicles before they bid on them and are told they are in good condition. (Exhibits “1 [p. 3, para. 7] & 24 [p. 4, paras. 2 & 4]”.) Some consumers are not even allowed to look at the vehicles even after they have paid a 40% or 50% deposit. (Exhibits “1 [p. 4, para. 9] & 17 [p. 1, paras. 3 & 4]”.) In some cases, consumers discover after they have paid their bid price plus all of the various fees Defendants imposed on them that their vehicles are in such bad condition that they should never have been sold in the first place. (Exhibits “1 [p. 4, para. 9], 22 & 23 [p. 2]”.)

24. All consumers are told to return the following day to pay off the balance on their vehicles. (Exhibits “1 [p. 4, para. 10], 16 [p. 1, para.4], 17 [p. 1, para. 3], 18 [p. 1, para. 4], 19 [p. 1, para. 3], 20 [p. 1, para. 5], 24 [p. 4, para. 5], 25 [p. 2] & 26 [p. 1, para. 4 ]”.) What consumers are not told about are the large amount of fees that they will be required to pay in order to take their vehicles home. (Exhibits “1 [p. 5, para. 13], 16 [p. 2, para. 7], 17 [p. 2, para. 6], 18 [p. 1, para. 5], 19 [p. 1, para. 5], 21 [p. 1], 24 [p. 5, para. 4], 25 [p. 2] & 26 [p. 1, para. 6]”.)

25. Once consumers return to Defendants business, they pay what they believe to be the

remainder of the bid amount for their vehicle. (Exhibits “1 [p. 5, para. 11], 16 [pp. 1 -2, para. 6], 17 [pp. 1 -2, para. 4], 19 [p. 1, para. 4], 20 [p. 1, para. 7] & 26 [p. 1, para. 5]”).) Others pay what they believe to be the remainder of their bid amount and their tax, title and license fees. (Exhibits “1 [p. 5, para. 11], 20 [p. 1, para. 7] & 21 [p. 1]”).) Once consumers pay these fees, they are told to wait to be called or are told to sit in a room to wait to fill out their paperwork for their tax, title and license. (Exhibits “1 [p. 5, para. 11], 16 [pp. 1-2, para. 6], 17 [pp. 1-2, para. 4], 20 [p. 1, para. 7], 26 [p. 1, para. 5] & 26C”).)

26. Once consumers have paid the balance on their vehicles, they meet with Defendants who tell them they must pay additional money for fees which were previously undisclosed. (Exhibits “1 [p. 5, para. 12], 16 [p. 2, para. 7], 17 [p. 2, para. 6], 18 [p. 1, para. 5], 19 [pp. 1-2, para. 5], 20 [p. 2, para. 8], 21 [p. 1], 24 [p. 5, paras. 2, 5 & 6], & 26 [pp. 1-2, paras. 6 & 7]”).) If consumers refuse to pay the additional fees, they lose all the money they have already paid and the vehicle they were expecting to drive home. (Exhibits “1 [p. 5, para. 13], 16 [p. 2, para. 7], 17 [p. 2, para. 6], 18 [p. 1, para. 6], 19 [p. 2, para. 7], 20 [p. 2, para. 9], 21 [p. 1], 24 [p. 5, para. 4], 25 [p. 2] & 26 [p. 2, para. 7]”).)

27. Once consumers refuse to pay the additional fees or ask for a refund, Defendants tell them to leave or have them removed from the premises by the security on site. (Exhibits “1 [p. 6, para. 15], 16 [p. 2, para. 7], 17 [p. 2, para. 6], 19 [p. 2, para. 7] & 20 [p. 2, para. 9]”).) In most cases, consumers are lucky to get any of their paperwork. (Exhibits “1 [p. 6, para. 15], 16 [p. 2, para. 7], 17 [p. 2, para. 6] & 19 [p. 2, para. 7]”).)

28. Defendants tell consumers that since they signed the “Auction Terms & Conditions Registration Form”, they have no right to complain and they do not owe them anything. (Exhibits

“1 [p. 6, para. 15], 18 [p. 1, para. 6], 21 [p. 1], 24 [p. 5, para. 4], 25 [p. 2] & 26 [p. 2, para. 7]”).)

29. Some consumers, reluctant to lose all the money they have already paid, feel they have no choice but to pay the exorbitant fees. (Exhibits “1 [p. 6, para. 14], 22, 24 [pp. 1, 6 & 5, para. 6] & 26 [p. 2, para. 7]”).)

30. Consumers state that security guards and police officers are constantly present at Defendants’ location, surrounding Defendant Shalev from upset consumers, taking reports or escorting people off the property at Defendant Shalev’s request. (Exhibits “1 [p. 6, para. 16], 16 [p. 2, para. 7], 17 [p. 2, para. 6], 18 [p. 2, para. 8], 19 [p. 2, para. 7], 20 [p. 2, para. 9] & 24 [p. 5, para. 3, p. 6, para. 1]”).)

31. Defendants sometimes do refund the money that they unfairly obtain from consumers, but only after intervention from law enforcement, the courts or other agencies. (Exhibits “1 [p. 6, para. 17], 19 [p. 2, para. 7], 20 [p. 2, para. 10] & 21 [p. 1]”).)

32. Defendants have shredded documents in the presence of consumers and employees thereby leaving no evidence of the number of times they re-sell one vehicle or the amount of money that they pocket from selling the same vehicle numerous times. (Exhibits “1 [p. 10, para. 35] & 16 [p. 2, para. 7]”).)

33. Defendants keep few, if any documents on any of the transactions with consumers, particularly those that do not complete the transaction, thereby leaving no way to know the amount of money that they retain unjustly.

34. Defendants keep hundreds and sometimes thousands of dollars which consumers pay them before they learn of the excess fees which they cannot afford. (Exhibits “1 [p. 10, para. 34], 16 [pp. 1-2, paras. 6 & 7 ], 17 [p. 1, para. 4], 18 [p. 1, paras. 5 & 6], 19 [p. 1, para. 4], 20 [pp. 1-2, paras. 7

& 8 ], 21 [p. 1], 24 [p. 5, para. 2] & 25 [p. 2]”).)

35. Defendants’ business is run to obtain as much cash up front from consumers before they learn of the excess fees. (Exhibits “1 [p. 9, para. 32], 16 [pp. 1-2, paras. 6 & 7], 17 [pp 1-2, paras. 4 & 6], 18 [p. 1, paras. 5 & 6 ], 19 [p. 1, paras. 4 & 5], 20 [pp. 1-2 , paras. 7 & 8], 21 [p. 1], 24 [p. 5, paras. 5 & 6], 25 [p. 2] & 26 [p. 1, paras. 5 & 6]”).)

36. Defendants do not allow consumers to read the auction forms and intentionally mislead consumers about the significance of the document they are signing. (Exhibits “1 [pp. 2-3, para. 6], 17 [p. 1, para. 2], 18 [p. 1, para. 3], 19 [p. 1, para. 2], 21 [p. 1], 24 [p. 5, paras. 5 & 6], 25 [p. 1 ] & 26 [p. 1, para. 2]”).)

37. Defendants’ have spent over \$200,000.00 advertising in Spanish language newspapers to attract Spanish speaking consumers, but until recently have failed to provide Spanish speaking consumers with an Auction Terms and Conditions Form in Spanish.<sup>3</sup> (Exhibits “1 [pp. 7-8, para. 21], 24 [p. 6, para. 3] & 28 [pp. 2-3]”).)

38. Defendant Shalev surrounds himself and his business with police and security guards due to the large number of angry and disgruntled consumers.<sup>4</sup> (Exhibits “1 [p. 10, para. 36], 16 [p. 2, para. 7], 17 [p. 2, para. 6], 18 [p. 2, para. 8], 19 [pp. 1-2, paras. 4 & 7], 20 [p. 2 , para. 9], 24 [pp. 5-6, paras. 3 & 1], 25 [p. 2] & 29”).)

## **VIOLATIONS OF THE DTPA**

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<sup>3</sup> This office is aware of only two Spanish speaking consumers that have received the “Auction Terms and Conditions Form” entirely in Spanish. Over the past several years, various versions of the Auction Terms and Conditions Form range from being completely in English to having one or at most two paragraphs of the form in Spanish.

<sup>4</sup> There have been numerous police calls to Defendants’ place of business over the last several years, many dealing with complaints and disagreements with Defendant Shalev.

39. Defendants in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA §17.46(a) and DTPA §17.46(b), to wit:

A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of DTPA §17.46(b)(2);

B. 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 have, in violation of DTPA §17.46(b)(5);

C. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of the DTPA §17.46(b)(7);

D. Advertising goods or services with intent not to sell them as advertised, in violation of DTPA §17.46(b)(9);

E. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA §17.46(b)(12); and

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

### **DISGORGEMENT**

40. 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 their misrepresentations of the price and quality of the merchandise they sold. Defendants should be ordered to disgorge all monies fraudulently taken from consumers 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.

### **EQUITABLE RESCISSION**

41. All agreements between consumers and Defendants should be subject to the equitable remedy of rescission.

### **REPATRIATION OF ASSETS**

42. After due notice and a hearing, the Court should order that all of Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

### **CONSPIRACY TO DEFRAUD**

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

### **EQUITABLE LIEN**

44. An equitable lien should be placed in favor of the State of Texas and on behalf of all injured consumers on all real and personal property of Defendants which was purchased or acquired,

in whole or in part, from proceeds of Defendants' fraudulent manner of conducting their auction business.

### **CONSTRUCTIVE TRUST**

45. A constructive trust should be placed upon all of Defendants' assets in favor of all consumers victimized by Defendants and in favor of the State of Texas until this Court determines the appropriate amount of restitution and disgorgement.

### **REQUEST FOR FINDINGS OF ACTUAL FRAUD AND FALSE REPRESENTATION**

46. The Court should make findings at the conclusion of this case that all of the Defendants engaged in actual fraud and false representation in that Defendants have made repeated and materially false representations to the public concerning the final price of the auction items which consumers bid on, which were known to be false when made. Such false representations were made with the intention that they be acted upon by the parties to whom the misrepresentations were made. Reliance upon these false representations has resulted in injury to hundreds if not thousands of consumers in the State of Texas.

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

47. Plaintiff requests immediate relief by way of a temporary restraining order and temporary injunction to preserve and protect Defendants' assets from dissipation so that the many victims of Defendants' actions can receive the restitution to which they are entitled. Defendants received large sums of money through their business operations and use fraudulently obtained funds for personal gain. Defendants' assets are subject to dissipation for the following reasons:

A. Defendants obtain hundreds of thousands of dollars from consumers through fraud

and deception by failing to disclose excess fees to consumers. (Exhibits “1 [p. 10, para. 34], 16 [p. 2, para. 8], 17 [p. 2, para. 6], 18 [p. 1, para. 5], 19 [p. 1, para. 5], 21 [p. 1], 24 [p. 4, para. 4], 25 [p. 2] & 26 [p. 1, para. 3]”.)

B. Defendants deal in a cash economy by accepting only cash or cashiers checks from consumers, making them difficult to trace. (Exhibits “1 [pp. 9-10, para. 33], 2, 3, 4, 11, 12, 13, 14, 15, 16 [p. 1, paras. 2, 4, 5, 6 & 7 ], 17 [p. 1, paras. 2, 3 & 4], 17A, 18 [p. 1, paras. 5 & 6 ], 19 [p. 1, paras. 2, 3 & 4], 20 [p. 1, paras. 3, 5 & 7], 21 [p. 1], 24 [p. 4, paras. 2 & 4], 25 [pp. 1-2] & 26 [p. 1, paras. 2, 4 & 5]”.)

C. Defendants deposit hundreds of thousands of dollars monthly into local banks. (Exhibits “1 [p. 9, para. 28] & 30 [pp. 1-12]”.)

D. Defendant Shalev is the sole signatory on the accounts where he is depositing the funds he has fraudulently and illegally taken. (Exhibits “1 [p. 9, para. 27] & 31 [pp. 1-20]”.)<sup>5</sup>

E. A large part of Defendants’ deposits consist of cash. (Exhibits “1 [p. 9, para. 28] & 32 [pp. 1-15]”.)

F. Defendants’ cash deposits into the local banks are in the hundreds of thousands and in some cases in the millions. (Exhibits “1 [p. 9, para. 28] & 33 [pp. 1- 26]”.)<sup>6</sup>

G. Over the past six years, Defendants have deposited over \$27,000,000.00 into various accounts and at least \$7,866,000.00 of that has been in cash deposits. (Exhibits “1 [p. 9, para. 29],

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<sup>5</sup> Defendant is the sole signatory on all the accounts this investigation has revealed with the exception of one account at Bank of America (Exhibit “31 [p. 20]”.)

<sup>6</sup> The \$7,866,000.00 in total cash deposits does not accurately reflect the total amount of cash deposits which Defendants have deposited into their Wells Fargo Accounts. As of this date, the State of Texas is still awaiting documents to verify the amount of cash actually deposited into the Arie Shalev account; the Best Buy, Inc. account; the Giant Mart, Inc. account and the Golden Aribah Investments, LLC account.

34 & 35”).<sup>7</sup>

H. Defendants transfer hundreds of thousands of dollars between various accounts. (Exhibits “1 [p. 9, para. 30] & 36 [pp. 1-9]”).)

I. Defendants deal and live in a cash economy and do not own any property in their name nor are there any vehicles registered to them; however, one of the Defendant corporations has purchased an 8.59 acre property for \$1,125,000.00 which is the current auction site. (Exhibits “1 [p. 8, para. 23], 37 [pp. 1-10] & 40 [pp. 1-3]”).)

J. Although Defendants spend hundreds of thousands of dollars in advertising, much of the cash Defendants take in is unaccounted for which makes it possible for Defendants to keep large amounts of cash and secrete money through the use of cashier’s checks.

K. Defendants withdraw the monies they put into their accounts as quickly as it is deposited. (Exhibits “1 [p. 9, para. 31] & 38 [pp. 1-17]”).)

For these reasons, the assets of Defendants are subject to dissipation and secretion and therefore should be frozen pending final trial so restitution can be made and full and final relief can be awarded at final trial.

**REQUEST TO CONDUCT DISCOVERY PRIOR  
TO TEMPORARY INJUNCTION HEARING**

48. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendants’ answer date. There are a number of victims and other witnesses who may need to be deposed prior to any

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<sup>7</sup> These summaries of total deposits and total cash deposits only cover the accounts that the State became aware of through its investigation. The summaries do not reflect any accounts Defendants may have at other banks across the state or the United States. The cash summary only reflects that cash which was actually deposited and not what Defendants may have retained personally or converted into cashier’s checks.

scheduled temporary injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

### **TRIAL BY JURY**

49. Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and the TEX. GOV'T CODE ANN. §51.604 (**Vernon 2006**).

### **APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

50. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public.

### **PRAYER**

51. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, 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:

1) Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written 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;

2) Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any financial institution or 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 the possession or custody of, standing in the name of, or claimed by Defendants' without further order of this court;

3) Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants or any of his aliases, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;

4) Making, expressly or by implication, false, untrue, or misleading statements of fact to consumers concerning the quality of any merchandise sold;

5) Advertising goods with intent not to sell them as advertised;

6) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

7) Representing that goods or services have sponsorship, approval, characteristics or benefits which they do not have;

8) Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

9) Failing 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 which the consumer would not have entered had the information been disclosed;

10) Refusing to allow consumers an opportunity to read any auction conditions or terms prior to accepting any money from consumers and prior to signing said conditions and terms;

11) Telling consumers that any forms they signed will be explained to them later prior to accepting any money from consumers, without actually explaining the forms to them later;

12) Telling consumers that forms that they are initialing and signing have no significance other than a requirement to enter the auction or receive a bid number;

13) Failing to provide forms in Spanish for consumers who do not read or understand the English language prior to accepting any money from consumers;

14) Failing to inform consumers that there are any conditions to the auction prior to consumers bidding and winning the bid on any auction items and prior to accepting any money from consumers;

15) Failing to inform consumers of the terms and conditions of the auction prior to consumers paying any deposits or down payments for auction items;

16) Failing to explain the terms and conditions of the auction prior to the auction beginning and prior to accepting any money from consumers;

17) Failing to provide consumers with a copy of the terms and conditions of the auction prior to requiring them to sign said forms or prior to requiring them to pay any money;

18) Failing to provide consumers with a copy of the terms and conditions of the auction after consumers have signed said forms;

19) Failing to explain the terms and conditions of the auction slowly and clearly or in a

manner that can be understood by consumers and prior to accepting any money from consumers;

20) Failing to explain the terms and conditions of the auction completely in Spanish for the benefit of Spanish speaking consumers and prior to accepting any money from consumers;

21) Failing to disclose the total amount of all fees in English and Spanish which will be assessed against each consumer that wins a bid on an auction item prior to accepting any money from consumers;

22) Failing to disclose any auctioneers' fees, in English and Spanish, which consumers are required to pay if they win a bid on an auction item before the auction begins and prior to accepting any money from consumers;

23) Failing to disclose any buyers premiums in English and Spanish before the auction begins and prior to accepting any money from consumers, which will be assessed against consumers if they win the bid on any auction item;

24) Failing to disclose to consumers the total price of their auction item, including taxes and fees prior to the close of business;

25) Failing to allow consumers to inspect or test drive vehicles to be auctioned before the auction begins and prior to accepting any money from consumers;

26) Failing to allow consumers to inspect or test drive vehicles after the consumer wins the bid on an auction item;

27) Failing to disclose to consumers that the vehicles they are bidding on or that they have won the bid on were flood damaged, salvaged or possibly stolen prior to consumers bidding on them and prior to accepting any money from consumers;

28) Telling consumers that their vehicles are in good condition when they are not;

- 29) Failing to refund money to consumers when they are not informed of any additional fees, terms or conditions which are being imposed;
- 30) Failing to inform consumers that they will lose any money paid if they fail to pay the additional fees prior to accepting any money from them;
- 31) Failing to provide consumers with a copy of all paperwork which was filled out by consumers prior to accepting any money from them;
- 32) Failing to keep copies of all paperwork where consumers have put down deposits or down payments but did not complete the sale;
- 33) Refraining from shredding documents which have been filled out by consumers who paid money on an auction item but did not complete the sale;
- 34) Failing to provide terms and conditions of the auction in any advertising material;
- 35) Failing to provide information on any excess fees in any advertising material;
- 36) Failing to provide information in their advertising material to consumers on the name and address of the agency which consumers can complain to in the event they have a complaint;
- 37) Representing to consumers, expressly or by implication, that a product will cost one price and then charging a higher price;
- 38) Failing to inform consumers of any and all additional fees applicable to auction purchases at the time the consumer agrees to participate in the auction prior to accepting any money from consumers;
- 39) Failing to provide to each consumer a written record of each specific charge incurred and the amounts paid by the consumer for the purchase; and
- 40) Failing to keep accurate, detailed records of all sales made by Defendants.

52. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

A. Adjudge against each Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in an amount up to \$20,000 per violation;

B. Adjudge against each Defendant additional civil penalties in favor of Plaintiff STATE OF TEXAS in an amount not to exceed \$250,000.00 allowed by law under the DTPA, if the act or practice was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act occurred pursuant to §17.47(c)(2) of the Texas Business and Commerce Code;

C. Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or, in the alternative, award judgment for damages in an amount within the jurisdictional limits of this Court to compensate for such losses;

D. Order equitable rescission of contracts between Defendants and consumers whereby consumers receive all of the money back that they paid to Defendants;

E. Order Defendants to pay Plaintiff State of Texas attorney fees and costs of court pursuant to TEX. GOV'T CODE §402.006;

F. Order the disgorgement of all sums taken from consumers by means of deceptive trade practices, together with all proceeds, interest, income, profits and accessions thereto;

G. Grant leave to the Plaintiff to conduct telephonic, oral and other depositions prior to the Defendants answer date and any Temporary Injunction hearing pursuant to TEX. R. CIV. P. 199 and 200; and

H. Grant all other relief to which the Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

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Attorney General of Texas

KENT C. SULLIVAN  
First Assistant Attorney General

EDWARD BURBACH  
Deputy Attorney General for Litigation

PAUL CARMONA  
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**SPIN NO. 99999928**  
**ATTORNEYS FOR PLAINTIFF**  
**STATE OF TEXAS**

**VERIFICATION**

**STATE OF TEXAS**

§

**COUNTY OF HARRIS**

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Before me, the undersigned Notary Public, on this day personally appeared Cathryn Haynes, who, after being duly sworn, stated under oath that she is the lead investigator for Plaintiff in this action, that she has read the above petition, and that every statement contained in the petition is true and correct and within the personal knowledge of all of the affiants as indicated in the affidavits attached to Plaintiff's Original Petition.

\_\_\_\_\_  
CATHRYN HAYNES

SUBSCRIBED AND SWORN TO BEFORE ME, on the \_\_\_\_ day of June, 2006, to certify  
which witness my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC  
State of Texas