

CAUSE NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
AMERICAN HERITAGE LIFE	§	
INSURANCE COMPANY,	§	
Defendant.	§	____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, and complains of AMERICAN HERITAGE LIFE INSURANCE COMPANY (“Defendant”), and for cause of action alleges the following:

**I.
NATURE OF CLAIM**

1. This suit is brought against Defendant for violations of the Texas Deceptive Trade Practices -- Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41, *et seq.* (the “DTPA”) and TEX. INS. CODE § 541.001, *et seq.* (formerly TEX. INS. CODE art. 21.21). This claim is brought 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.

**II.
DISCOVERY**

2. The discovery in this case is intended to be conducted under Level 3, pursuant to TEX. R. CIV. P. 190.3.

**III.
SERVICE OF PROCESS**

3. Defendant, AMERICAN HERITAGE LIFE INSURANCE COMPANY, is an insurance company doing business and licensed to write insurance in Texas, and may be served with process by serving its Attorney for Service, CT Corporation System, 350 North St. Paul St., Dallas, Texas 75201, with citation and a copy of the petition attached thereto.

**IV.
VENUE**

4. Venue is proper in Travis County, Texas pursuant to TEX. INS. CODE § 541.202.

**V.
PUBLIC INTEREST**

5. The Consumer Protection and Public Health Division of the Office of the Attorney General Attorney General has reason to believe that Defendant has engaged in, and will continue to engage in, unlawful practices in violation of the DTPA and TEX. INS. CODE § 541.001, *et seq.*, as set forth below. Therefore, the Attorney General concludes that bringing this action is in the public interest and, pursuant to TEX. INS. CODE Chapter 541, and TEX. BUS. & COM. CODE § 17.47, seeks injunctive and other remedial relief against the Defendant, as set forth below.

**VI.
DECEPTIVE TRADE PRACTICES ACT NOTICE**

6. Defendant has been notified in general of the alleged unlawful conduct described below 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 the 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 Defendant.

**VIII.
TRADE AND COMMERCE**

8. Defendant is a "person," as defined by the DTPA § 17.45(3) and TEX. INS. CODE § 541.002, and has, at all times as described below, engaged in conduct that constitutes "trade" and "commerce," as those terms are defined by § 17.45(6) of the DTPA, and also in conduct that constitutes the "business of insurance" in Texas under TEX. INS. CODE Chapter 541. The unlawful conduct of Defendant has affected and continues to affect persons in the State of Texas.

**IX.
STATEMENT OF FACTUAL ALLEGATIONS**

9. Defendant, AMERICAN HERITAGE LIFE INSURANCE COMPANY, is an insurance company that writes credit life and credit accident and health insurance (hereafter collectively referred to as "credit insurance") in the State of Texas through a network of motor vehicle dealers that are appointed as its agents. Virtually all policies sold by Defendant to motor vehicle buyers are "single premium policies" where the entire period of insurance coverage, which can be as much as six years, is paid for in one payment and added to the insured's retail installment contract for the purchase of a motor vehicle.

10. The Texas Insurance Code requires that each individual or group policy issued in Texas "shall provide that if the underlying debt or the insurance terminates before the scheduled maturity date of the debt, including the termination of a debt by renewing or refinancing the debt,

the refund of any amount paid by or charged to the debtor for insurance shall be paid or credited promptly to the person entitled to the refund.” TEX. INS. CODE § 1153.202.

11. In selling single premium credit insurance policies, Defendant represents that if an insured’s underlying debt is paid off early or their insurance terminates, Defendant will refund the unearned portion of the credit insurance premium.

12. Defendant has refused or failed to promptly refund unearned credit insurance premiums to insureds and has unlawfully retained these premiums, unjustly enriching itself.

13. Defendant maintains business policies and practices that require insureds to fulfill conditions not required by their insurance policies or by law as a precondition to obtaining refunds of unearned credit insurance premiums.

14. Defendant has failed to establish procedures that are sufficient to ensure that it will receive timely notifications from creditors holding motor vehicle retail installment contracts that the loans of the Defendant’s insureds have terminated early.

15. Defendant delegates premium intake and refund functions to its agents, but fails to implement any meaningful audit procedures to ensure that its agents are making timely refunds owed to insureds.

**X.
TEXAS DECEPTIVE TRADE PRACTICES --
CONSUMER PROTECTION ACT VIOLATIONS**

16. Sections V through IX are incorporated herein by reference. Defendant has violated and continues to violate TEX. BUS. & COM. CODE § 17.41, *et seq.* by engaging in one or more of the following acts or practices:

- a. engaging in false, misleading, or deceptive acts or practices in the conduct of trade and commerce, in violation of TEX. BUS. & COM. CODE § 17.46(a);

- b. representing that its goods or services have characteristics, uses or benefits which they do not have, in violation of TEX. BUS. & COM. CODE § 17.46(b)(5); and
- c. representing that an agreement confers or involves rights, remedies, or obligations which it does not have or which are prohibited by law, in violation of TEX. BUS. & COM. CODE § 17.46(b)(12).

**XI.
TEXAS INSURANCE CODE VIOLATIONS**

17. Sections IV through X are incorporated herein by reference. Defendant has violated TEX. INS. CODE Chapter 541 by engaging in one or more of the following acts or practices:

- a. Engaging in unfair or deceptive acts or practices in the business of insurance, in violation of TEX. INS. CODE § 541.003;
- b. Making, issuing, or circulating, or causing to be made, issued or circulated, a statement misrepresenting the benefits or advantages of credit insurance policies, in violation of TEX. INS. CODE § 541.051(1)(B);
- c. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, a statement containing an untrue, deceptive, or misleading assertion, statement, representation or statement regarding the business of insurance, in violation of TEX. INS. CODE § 541.052;
- d. Making an untrue statement of material fact in violation of TEX. INS. CODE § 541.061(1);

- e. Failing to state a material fact necessary to make the other statements made not misleading, considering the circumstances under which the statements were made, in violation of TEX. INS. CODE § 541.061(2);
- f. Making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of a material fact, in violation of TEX. INS. CODE § 541.061(3);
and
- h. Making a material misstatement of law in violation of TEX. INS. CODE § 541.061(4).

**XII.
TEXAS ADMINISTRATIVE CODE VIOLATIONS**

18. Sections IV through XI are incorporated herein by reference. Defendant has engaged in trade practices in the business of insurance which are unfair or deceptive, in violation of 28 TEX. ADMIN. CODE § 21.203.

**XIII.
REQUEST FOR INJUNCTION**

19. Because the Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as set forth herein. Unless restrained by this Honorable Court, Defendant may continue to violate the laws of the State of Texas and cause additional injury, loss and damage to its Texas insureds and to prospective Texas customers.

20. Plaintiff, the State of Texas respectfully requests that after notice and hearing this Court issue a permanent injunction restraining and enjoining Defendant, Defendant's agents, servants, employees, attorneys, and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

- a. refusing or failing to refund unearned credit insurance premiums to its insureds when its insureds' underlying debts are paid off early or their insurance otherwise terminates before the maturity date of the motor vehicle contract or loan;
- b. representing to insureds that affirmative actions are required on their part in order to receive refunds of unearned credit insurance premiums;
- c. requiring notice from insureds that their automobile contracts have been paid off as a precondition for receiving refunds of unearned credit insurance premiums; and
- d. unlawfully retaining unearned credit insurance premiums to which its insureds are entitled.

**XIV.
CIVIL PENALTIES AND RESTITUTION**

21. In addition, Plaintiff, the State of Texas, respectfully requests that this court:
 - a. Adjudge against the Defendant civil penalties in the amount of not more than \$20,000 per violation of the DTPA, pursuant to TEX. BUS. & COM. CODE § 17.47(c);
 - b. Adjudge against Defendant civil penalties of up to \$10,000 per violation of Chapter 541 of the Texas Insurance Code, and the administrative rules promulgated under thereunder, pursuant to TEX. INS. CODE § 541.204; and
 - c. Enter additional orders and judgments against the Defendant as are necessary to compensate identifiable persons for restoration of money which may have been acquired by the Defendant by means of any act or practice restrained, as authorized by TEX. INS. CODE § 541.205 and TEX. BUS. & COM. CODE § 17.47(d).

**XV.
PRAYER**

22. Plaintiff, the State of Texas respectfully prays that Defendant, American Heritage Life Insurance Company, be served with citation as required by law and that this court grant judgment to Plaintiff against Defendant for all relief requested herein and to all other relief to which Plaintiff may show itself entitled.

Respectfully submitted,

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