

THE STATE OF TEXAS,

Plaintiff,

v.

CNG FINANCIAL CORPORATION,  
CHECK 'N GO OF TEXAS, INC., and  
SOUTHWESTERN & PACIFIC SPECIALTY  
FINANCE, INC.,

Defendants.

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EL PASO COUNTY, TEXAS

CAUSE NO. 2007- 2248

**PLAINTIFF'S ORIGINAL PETITION  
AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT (hereinafter "Attorney General"), complaining of CNG FINANCIAL CORPORATION, CHECK 'N GO OF TEXAS, INC., and SOUTHWESTERN & PACIFIC SPECIALTY FINANCE, INC., all d/b/a CHECK 'N GO (hereinafter "Defendants") and would respectfully show the court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Discovery in this case should be conducted under Level 2 pursuant to Tex. R. Civ. P. 190.3.

**II. JURISDICTION**

2.1. Attorney General Greg Abbott, 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, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against Defendants for violations of the Texas Identify Theft Enforcement and

Protection Act, Chapter 48<sup>1</sup> of the Tex. Bus. & Com. Code Ann. §§48.001, *et seq.*, and Tex. Bus. & Com. Code Ann. §35.48.

2.2. This action is also brought by the Attorney General 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 §§17.41, *et seq.* (hereafter the “DTPA”) upon the grounds that Defendants have engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b) of the DTPA.

2.3. Additionally, this action is also brought by the Attorney General pursuant to the Texas Credit Services Organizations Act, Tex. Fin. Code §§393.301, *et seq.* (hereafter the “CSOA”), upon the grounds that Defendants directly or indirectly engaged in a fraudulent or deceptive act, practice, or course of business relating to the offer or sale of the services of a credit services organization, as declared unlawful by §393.305 of the CSOA.

### **III. DEFENDANTS**

3.1. Defendant CNG FINANCIAL CORPORATION is an Ohio Corporation, doing business in the State of Texas through its wholly owned subsidiaries CHECK ‘N GO OF TEXAS, INC. and SOUTHWESTERN & PACIFIC SPECIALTY FINANCE, INC. Its principal office is located at 5155 Financial Way, Mason, Ohio 45040, and it may be served with process by serving its registered agent for service of process, National Registered Agents, Inc., 145 Baker Street, Marion, Ohio 43302.

3.2. Defendant CHECK ‘N GO OF TEXAS, INC., is a Texas corporation whose principal

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<sup>1</sup> In 2005, the Texas Legislature enacted three Chapters 48. The chapter cited above was titled “Identity Theft Enforcement and Protection Act” by Tex. S.B. 122, 79<sup>th</sup> Leg. R.S. (2005).

office is located at 5155 Financial Way, Mason, Ohio 45040, and which may be served with process by serving its registered agent for service of process, CT Corporation System, at 350 North St. Paul Street, Dallas, Dallas County, Texas 75201.

3.3. Defendant SOUTHWESTERN & PACIFIC SPECIALTY FINANCE, INC. is a Texas corporation whose principal office is located at 5155 Financial Way, Mason, Ohio 45040, and which may be served with process by serving its registered agent for service of process, CT Corporation System, at 350 North St. Paul Street, Dallas County, Dallas, Texas 75201.

#### **IV. VENUE**

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

A. Under Tex. Bus. & Com. Code Ann. §48.201(c)(1), venue is proper in El Paso County because it is a county in which the violations occurred;

B. Under Tex. Bus. & Com. Code Ann. §48.201(c)(2), venue is proper in El Paso County because it is a county in which the victims reside;

C. Under Tex. Civ. Prac. & Rem. Code §15.002(a)(1), venue is proper in El Paso County because it is the county in which a substantial part of the events or omissions occurred giving rise to the claim; and

D. Under Tex. Bus. & Com. Code Ann. §17.47(b), venue is proper in El Paso County because Defendants have done business in that county.

#### **V. PUBLIC INTEREST**

5.1. 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 DTPA, upon the grounds that Defendants have engaged

in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b) of the DTPA.

5.2. Additionally, the Texas Attorney General has evidence that Defendants are engaging in, have engaged in, or are about to engage in acts and practices which violate the State of Texas' identity theft prevention laws, as set forth below. Specifically, Defendants fail to protect and safeguard from unlawful use or disclosure, consumers' sensitive personal information which is collected or maintained by Defendants in the regular course of business. Because these unlawful practices expose Defendants' customers to the risk of identity theft, these proceedings are in the public interest.

5.3. In 2005, the Texas Legislature amended §35.48, and also enacted the Identity Theft Enforcement and Protection Act to protect citizens from identity theft. In so doing, the Legislature noted that identity theft is one of the fastest growing crimes in the country, and that Texas has one of the highest rates of identity theft in the United States.<sup>2</sup> Moreover, victims of identity theft spend an average of 600 hours over a two to four year period, as well as \$1,400.00 or more, trying to clear their names.<sup>3</sup> Identity theft also imposes a substantial cost on businesses—in 2002 the total cost of losses to businesses due to identity theft in the United States was estimated at almost \$50 billion.<sup>4</sup> The Legislature specifically recognized “dumpster diving” for discarded business records as a significant means through which identity theft is committed.<sup>5</sup>

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<sup>2</sup>See Tex. C.S.H.B. 698, 79th Leg. R.S. (2005) (Committee Report Substituted), and Tex. S.B. 122, 79th Leg. R.S. (2005) (Committee Report Unamended).

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>See Tex. C.S.H.B. 698, 79th Leg. R.S. (2005) (Committee Report Substituted).

## **VI. ACTS OF AGENTS**

6.1. Whenever in this petition it is alleged that Defendants did any act it is meant that:

A. Defendants performed or participated in the act; or

B. Defendants' officers, agents, employees, representatives, or successors performed or participated in the act on behalf of and under the authority of the Defendants.

## **VII. NATURE OF DEFENDANTS' OPERATION**

7.1. Defendants represent that they operate 1400 Check 'N Go stores in 35 states and the District of Columbia, and that "providing superior service is their choice." In Texas, Defendants operate using a "credit service organization" model and accordingly, Defendants CHECK 'N GO OF TEXAS, INC. and SOUTHWESTERN & PACIFIC SPECIALTY FINANCE, INC. are registered as credit services organizations with the Texas Secretary of State. Defendants have reported to the Texas Secretary of State that they operate 243 locations throughout the State, including six locations in El Paso County, Texas. As credit service organizations, Defendants assist consumers in arranging for loans from third party lenders. The loans which Defendants advertise and process are considered cash advances, commonly referred to as payday loans, payday advances, payday advance loans, and fast cash loans. These are unsecured short-term loans that are repaid to the lenders via pre-authorized electronic withdrawal from the customers' checking account on the next payday after the loan is given.

## **VIII. FACTUAL ALLEGATIONS**

8.1. In the regular course of their business operations, Defendants collect a large amount of personally identifiable information from their customers. For example, Defendants' web site sets

forth an application form which requires customers to provide personal information, including the applicant's address, date of birth, Social Security number, and driver's license number. In addition, Defendants require applicants to provide details of their employment as well as their bank checking account number and bank routing number. Correspondingly, Defendants maintain copies of loan applications, Truth in Lending Disclosure Statements, and customers' checks and other documents, which contain, among other things, the customers' names, addresses, telephone numbers, dates of birth, social security numbers or other government-issued identification numbers, financial institution account numbers and other financial information, and the customers' thumbprints.

8.2. Defendants represent to customers that they "are committed to protecting our customers' privacy and security" and further represent that:

A. they "restrict access to nonpublic personal information about you to those of our employees who need to know such information in order to provide a product or service to you";

B. they "maintain physical, electronic, and procedural safeguards...designed to safeguard your nonpublic personal information"; and

C. they "prevent unauthorized access to your nonpublic personal information by regularly assessing our security standards and privacy policies, and by regularly training our employees and requiring our vendors to comply with those standards and policies."

8.3. In truth and in fact, Defendants fail to safeguard sensitive personal information. In stores located in five cities in Texas, Defendants dumped scores of documents containing sensitive personal identifying information of hundreds of Defendants' customers into publicly accessible dumpsters.

8.4. When specifically asked what would happen to their checks by at least two customers,

Defendants represented to them that the checks would be shredded. In truth and in fact, the checks were dumped into the trash without even being torn.

8.5. On or about April 30, 2007; May 2, 2007; and again on May 16 and 17, 2007, Defendants' business records containing sensitive personal information of their customers, including personal identifying information, were found in publicly accessible trash dumpsters located next to Check 'N Go stores in five Texas cities. These records and the sensitive personal identifying information they contained included the following:

1. Checks from customers' bank accounts which bore the customers' signatures and thumb prints;
2. Customers' bank account statements;
3. Federal Truth-in-Lending Disclosure Statements which contained customers' names, addresses, telephone numbers, and all information regarding the loan they intended to make;
4. The company's insufficient funds (NSF) history report, which contained 64 customers' names, social security numbers, home phone numbers, check numbers and amounts;
5. The company's phone logs for insufficient funds follow-up, which contained customers' names, bank name, and account status;
6. The company's daily phone call report, which contained customers' names, check numbers and amounts, due dates, appointment times, and home, work and mobile phone numbers;
7. Customers' receipts, which contained names, addresses, check numbers, dates and amounts paid;
8. Held Check Summary, which contained 78 customers' names and bank account numbers;

9. Collection account sheet with several bank names and account numbers;
  10. Loan Processing Checklist, which contained customers' names and thumbprints.
- 8.6. Although the dumped business records bore sensitive personal information that could be used to steal the identities of their customers, Defendants failed to shred, erase, or otherwise make the sensitive personal information unreadable or undecipherable. Instead, these business records were placed in trash dumpsters that were readily accessible to the public.

### **IX. BUSINESS & COMMERCE CODE VIOLATIONS**

9.1. Plaintiff hereby incorporates the preceding paragraphs I through VIII as if fully set out herein.

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

A. By representing to consumers that “[w]e restrict access to nonpublic personal information about you to those of our employees who need to know such information in order to provide a product or service to you....” it misled consumers and caused confusion regarding the protection and security used to protect the sensitive and personal identifying information which Defendants required customers to provide to them, as alleged more specifically in paragraphs 7.1 through 8.6 above, in violation of §§17.46(a), (b)(5) and (b)(7) of the DTPA;

B. By representing to consumers that “[w]e are committed to protecting our customers' privacy and security....” and then dumping its customers' sensitive and personal identifying information into trash receptacles, thus making it easily accessible to the public, Defendants violated §§17.46(a), (b)(5) and (b)(7) of the DTPA as alleged more specifically in paragraphs 7.1 through 8.6 above;

C. By representing to consumers that “[w]e also maintain physical, electronic, and procedural safeguards...designed to safeguard your nonpublic personal information....” and then dumping its customers’ sensitive and personal identifying information into trash receptacles, thus making it easily accessible to the public, Defendants’ violated §§17.46(a), (b)(5) and (b)(7) of the DTPA, as alleged more specifically in paragraphs 7.1 through 8.6 above; and,

D. By representing to consumers that “[w]e prevent unauthorized access to your nonpublic personal information by regularly assessing our security standards and privacy policies and by regularly training our employees and requiring our vendors to comply with those standards and policies,” and then dumping their customers’ sensitive and personal identifying information into trash receptacles, thus making it easily accessible to the public. Defendants violated §§17.46(a), (b)(5) and (b)(7) of the DTPA, as alleged more specifically in paragraphs 7.1 through 8.6 above;

E. By failing to disclose that the sensitive and personal identifying information that it required customers to provide before proceeding with the transaction would be discarded into trash receptacles, as alleged more specifically in paragraphs 7.1 through 8.6 above, Defendants failed to disclose information concerning goods or services that was known at the time of the transaction, and Defendants’ failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of §§17.46(a) and (b)(24) of the DTPA.

## **X. IDENTITY THEFT PREVENTION VIOLATIONS**

10.1. Plaintiff hereby incorporates the preceding paragraphs I through IX as if fully set out herein.

10.2. Defendants, as alleged above and detailed below, have engaged in practices declared

unlawful as follows:

A. Defendants failed to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information that it collected or maintained in the regular course of business, as alleged more specifically in paragraphs 7.1 through 8.6, in violation of Tex. Bus. & Com. Code Ann. § 48.102(a).

B. Defendants failed to destroy or arrange for the destruction of its customer records containing sensitive personal information within its control that were not retained by it, as alleged more specifically in paragraphs 7.1 through 8.6, in violation of Tex. Bus. & Com. Code Ann. § 48.102(b).

C. Defendants failed to safeguard sensitive personal identifying information by shredding, erasing, or by other means making it unreadable or undecipherable, before disposing of its business records, as alleged more specifically in paragraphs 7.1 through 8.6, in violation of Tex. Bus. & Com. Code Ann. § 35.48(d).

## **XI. CREDIT SERVICES ORGANIZATIONS ACT VIOLATIONS**

11.1. Plaintiff hereby incorporates the preceding paragraphs I through IX as if fully set out herein.

11.2. Defendants, as alleged above and detailed below, have in the course of selling credit services, engaged in deceptive acts declared unlawful in the CSOA, as follows:

A. By misrepresenting the quality and degree of security and protection afforded to the sensitive personal identifying information that customers provided to Defendants in order to purchase credit services, Defendants directly and indirectly engaged in a fraudulent or deceptive act, practice, or course of business relating to the offer or sale of the services of a credit services organization, as alleged more specifically in paragraphs 7.1 through 8.6 above, in violation of

CSOA §§393.305, 393.504 and DTPA §17.46(a).

B. By representing to consumers in Defendants' privacy policy that Defendants were “committed to protecting our customers’ privacy and security,” and that they “restrict access to nonpublic information about you....” in selling credit services to customers, and then dumping such information into trash receptacles, making it easily accessible to the public, Defendants engaged in false or misleading representations in their offer or sale of the services of the organization, as alleged more specifically in paragraphs 7.1 through 8.6 above, in violation of CSOA §§393.304(1), 393.504 and DTPA §17.46(a);

C. By representing to consumers in Defendants’ privacy policy that “[w]e...protect...our customers’ privacy and security....” that “[w]e also maintain physical, electronic, and procedural safeguards...designed to safeguard your nonpublic personal information....” and that “[w]e prevent unauthorized access to your nonpublic personal information by regularly assessing our security standards and privacy policies and by regularly training our employees and requiring our vendors to comply with those standards and policies,” and then dumping such information into trash receptacles making it easily accessible to the public, Defendants made false or misleading representations in the offer or sale of the services of the organization, as alleged more specifically in paragraphs 7.1 through 8.6. above, in violation of CSOA §§393.304(1), 393.504 and DTPA §17.46(a).

## **XII. INJURY TO CONSUMERS**

12.1. Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored or who, in the alternative, are entitled to an award of damages.

### **XIII. PRAYER**

13.1 WHEREFORE, Plaintiff requests that Defendants be cited according to law to appear and answer herein; that after due notice and hearing, a TEMPORARY INJUNCTION be issued; and upon final hearing, a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

A. using false, misleading, or deceptive representations to describe its privacy policies or the security measures used to collect, store, maintain, or dispose of sensitive personal information or personal identifying information;

B. disposing of business records containing personal identifying information or sensitive personal information without first shredding, erasing, or by other means making this information unreadable or undecipherable;

C. violating Defendants' duty to protect and safeguard sensitive personal identifying information from unlawful use or disclosure by exposing such data to the risk of identity theft, including but not limited to: disposing of un-shredded records in any kind of waste receptacle which is accessible to the public, allowing computer hard drives or electronic storage devices upon which Defendants store their data to be recycled without first physically destroying the hard drive or bulk storage device; and transmitting such data over telephone lines or satellite communication channels without first encrypting such data; and

D. directly or indirectly engaging in a fraudulent or deceptive act, practice, or course of business relating to the offer or sale of the services of a credit services organization, including but not limited to misrepresenting the quality and degree of security and protection afforded to the sensitive personal identifying information provided by customers.

13.2. As an alternative to the relief requested in Paragraph 13.1, Plaintiff requests that Defendants be ordered to dispose of business records containing sensitive personal identifying information by contracting with a business that is engaged in the disposal of confidential business records.

13.3. Plaintiff further requests that Defendants be ordered to adopt, implement, and maintain a comprehensive information security program that is fully documented and in writing, and which protects and safeguards from unlawful use, disposal, or disclosure, any personal identifying information or sensitive personal information collected, maintained, or accessible by Defendants' employees or agents in the regular course of business.

13.4. Further, the STATE OF TEXAS respectfully requests that this Court:

A. Adjudge civil penalties in favor of Plaintiff STATE OF TEXAS in the amount of up to \$500 against each Defendant for each record containing personal identifying information which was dumped without shredding or making the record undecipherable, pursuant to Tex. Bus. & Com. Code §35.48(f);

B. Adjudge civil penalties in favor of Plaintiff STATE OF TEXAS of at least \$2,000, but not more than \$50,000, against each Defendant per each violation of the Texas Identity Theft Enforcement and Protection Act, pursuant to Tex. Bus. & Com. Code §48.201(a);

C. Adjudge civil penalties in favor of Plaintiff STATE OF TEXAS of not more than \$20,000 against each Defendant per each violation of the DTPA pursuant to Tex. Bus. & Com. Code §17.47(c);

D. Adjudge civil penalties in favor of Plaintiff STATE OF TEXAS of not more than \$20,000 against each Defendant per violation of the CSOA pursuant to Tex. Fin. Code §393.504 and Tex. Bus. & Com. Code §17.47(c);

E. Award judgment for damages to identifiable consumers whose personal identifying information was unlawfully dumped in the amount of not less than the amount the consumer paid the credit services organization pursuant to Tex. Fin. Code §393.503(a)(1), and Tex. Bus. & Com. Code §17.47(d);

F. Order Defendants to pay the State's reasonable attorney's fees, investigatory costs, and court costs pursuant to Tex. Bus. & Com. Code §48.201(e) and Tex. Gov't. Code Ann. §402.006(c); and

G. Order such other relief to which Plaintiff may be justly entitled.

DATED this 24<sup>th</sup> day of May, 2007.

Respectfully submitted,

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