

NO. 153 22638 8 07

STATE OF TEXAS,
Plaintiff

vs.

DTECH BILLING SERVICE, L.L.C.,
Defendant

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IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

_____ JUDICIAL DISTRICT

FILED
TARRANT COUNTY
2017 SEP 18 AM 10:28
TOMAS A. WILDE
DISTRICT CLERK

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

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, acting by and through Attorney General GREG ABBOTT, filing Plaintiff's Original Petition and Application for Temporary and Permanent Injunction, complaining of and against DTECH BILLING SERVICE, L.L.C.

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of the Texas Rules of Civil Procedure 190.

II. AUTHORITY

2. This suit is brought by the ATTORNEY GENERAL through the Consumer Protection Division in the name of the STATE OF TEXAS and in the public interest under the authority granted to him by § 17.47 of the Deceptive Trade Practices-Consumer Protection Act ("DTPA") (TEX. BUS. & COM. CODE ANN. §17.41 *et seq.*), and the Texas Debt Collection Act. (TEX. FIN. CODE

ANN. §342). The DTPA permits the Attorney General's office to bring an action to restrain, by temporary restraining order, temporary injunction, or permanent injunction, the use of any method, act or practice declared to be unlawful by Texas Deceptive Trade Practices Act, Tex. BUS. & COM. CODE ANN. §17.46, where such proceedings are in the public interest.

III. DEFENDANT

3. DTECH BILLING SERVICE, L.L.C. is a domestic limited liability company that engages in business in the State of Texas. Service of process on Defendant may be accomplished by serving the company's registered agent, Danny W. Duke, at 5605 E. Loop 820 South, Fort Worth, Texas 76119.

IV. VENUE

4. Venue of this action lies in Tarrant County pursuant to § 17.47(b) of the DTPA because the transactions and events giving rise to this action occurred in Tarrant County and/or because Defendant has done or are doing business in Tarrant County.

V. ACTS OF AGENTS

5. Whenever in this Petition it is alleged that Defendant DTECH BILLING SERVICE, L.L.C. (hereinafter "DTECH") did any act or thing, it is meant that Defendant performed or participated in such act or thing or that such act was performed by the officers, agents or employees of said Defendant, and in each instance, the officers, agents or employees of said Defendant were then authorized to and did in fact act on behalf of Defendant or otherwise acted under the guidance and direction of the Defendant.

VI. PUBLIC INTEREST

6. By reason of the institution and operation of the unlawful practices set forth herein,

Defendant has caused and will continue to cause immediate and irreparable injury, loss and damage to the STATE OF TEXAS and its citizens, and will also cause adverse effects to legitimate business enterprises that conduct trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

VII. TRADE AND COMMERCE

7. Defendant is engaged in “trade” and “commerce” as defined by §17.45(6) of the DTPA, in that Defendant is engaged in debt collection.

VIII. NOTICE BEFORE SUIT

8. Plaintiff provided notice inform Defendant herein at least seven (7) days before instituting this action, on or about September 7, 2007, of the alleged unlawful conduct of which complaint is now made, pursuant to Section 17.47(a) of the Texas Deceptive Trade Practices Act. Tex. BUS. & COM. CODE ANN. §17.47(a).

IX. DEFENDANT’S ILLEGAL COLLECTION PRACTICES

9. DTECH collects bills on behalf of companies that provide payphone services to inmates and other persons who place collect telephone calls using payphones. Those companies include but are not limited to Public Communication Systems (“PCS”), TIP Systems (“TIP”), NCIC Operator Services (“NCIC”) and Con Tel. DTECH submits bills directly to consumers on behalf of PCS, TIP, NCIC, and Con Tel when a billing relationship between the local telephone company and DTECH and/or the creditors does not exist and/or when the consumer has severed his relationship with the telephone company that handled the original service. Because DTECH engages in the practice of collecting and soliciting for collection, consumer debts that are due or alleged to

be due to PCS, TIP, NCIC, and Con Tel, DTECH engages in “debt collection” as defined in the Texas Finance Code Section 392.001(6).

Consumers have filed more than 45 complaints regarding DTECH’S actions with the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas since September, 2005. Moreover, over 160 consumers have filed complaints against DTECH with the Better Business Bureau since November, 2004.

11. DTECH has harassed consumers by making frequent and/or rude phone calls to consumers even after consumers have told DTECH representatives they had not accepted collect calls from jail or prison inmates.

12. DTECH has misrepresented the character, extent, and/or the amount of a debt to consumers. DTECH writes letters to and speaks to telephones consumers, stating they owe DTECH money when in fact the consumers (1) have not accepted collect telephone calls from inmates and/or (2) have different telephone numbers from the persons who allegedly accepted the collect calls. Moreover, DTECH continues to bill consumers when have already paid their debt in part or in full. DTECH also has failed to provide validation of the debt incurred when consumers who had only been contacted by phone, requested proof of the debt. In addition, DTECH indicates on the back of its bills that “accounts delinquent more than 90 days will be transferred to our **ADVANCED COLLECTIONS DEPARTMENT. DTECH Billing Service is a member of CSCCS, an Equifax credit reporting agent.**” In this way, DTECH threatens to harm consumer’s credit ratings in case of non-payment of the bill regardless of whether the consumer actually accepted the collect call.

13. Finally, DTECH charges consumers late fees/processing fees in the amount of \$29.00

that are added when the consumer does not pay the bill within a two weeks of the billing date. The consumers who are billed for the collect phone call did not agree to the service charge at the time they accepted the collect call. Similarly, consumers do not have notice of the extremely short billing cycle so that they can be alerted to open the billing envelope quickly upon receipt. DTECH also charges the same late fees to consumers who notify DTECH that they have not accepted a collect call from an inmate. DTECH representatives merely inform the consumers that they must pay.

X. TEXAS DEBT COLLECTION ACT VIOLATIONS

14. Defendant, as set out in Paragraphs 1 through 13, in the course and conduct of trade and commerce, has directly and indirectly engaged in and will continue to engage in debt collection practices declared unlawful by Texas Fair Debt Collection Act, including but not limited to:

15. Defendant as alleged, has in the course of debt collection harassed consumers by placing repeated telephone calls with the intent to harass a person at the called number in violation of the Texas Finance Code Section 392.302(4);

16. Defendant as alleged above, has in the course of debt collection employed unfair or unconscionable means that include collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation that has not been authorized by the agreement creating the obligation in violation of the Texas Finance Code Section 392.303(2);

17. Defendant as alleged above, has in the course of debt collection engaged in fraudulent, deceptive, or misleading representation by misrepresenting the character, extent or amount of a consumer debt in violation of the Texas Finance Code Section 392.304(a)(8).

18. Defendant as alleged above, has in the course of debt collection engaged in

fraudulent, deceptive or misleading representation by threatening to take actions against consumers prohibited by law including but not limited to threatening to report a consumer to a consumer credit reporting agency when the consumer has not incurred a debt related to the acceptance of a collect call from a payphone in violation of Texas Finance Code Section 392.301(a)(8).

X. TEXAS DECEPTIVE TRADE PRACTICES ACT VIOLATIONS

19. Defendant, as set out in Paragraphs 1 through 13, in the course and conduct of trade and commerce engaged in false, misleading and deceptive acts and practices in violation of the Texas Deceptive Trade Practices Act. TEX. BUS. & COM. CODE §17.46(a). Section 392.404 of the Texas Debt Collection Act provides that a violation of the Act is a deceptive trade practice and is actionable under the Texas Deceptive Trade Practices Act.

20. Defendant as alleged in paragraphs 1 through 13 has directly and indirectly engaged in false, misleading or deceptive acts or practices by causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services in violation of Section 17.46(b)(2) of the Texas Deceptive Trade Practices Act.

21. Defendant as alleged above, has in the course of trade and commerce engaged in false, misleading or deceptive acts or practices by causing confusion or misunderstanding as to affiliation, connection or association with or certification by another in violation of Section 17.46(b)(3) of the Texas Deceptive Trade Practices Act.

22. Defendant as alleged above, has in the course of trade and commerce engaged in false, misleading or deceptive acts or practices by 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 Section 17.46(b)(12) of the Texas Deceptive Trade Practices Act.

23. Defendant as alleged above, has in the course of trade and commerce engaged in false, misleading or deceptive acts or practices by failing to disclose information concerning goods or services which was known at the time of the transaction and such failure to disclose such information was intended to induce the consumer into a transaction that the consumer would not have entered had the information been disclosed in violation in violation of Section 17.46(b)(24) of the Texas Deceptive Trade Practices Act.

XI. INJURY TO CONSUMERS

24. By means of the foregoing unlawful acts and practices, Defendant has acquired money or other property from identifiable persons to whom such money should be restored, or who in the alternative are entitled to an award of damages.

XII. DISGORGEMENT

25. Plaintiff, **STATE OF TEXAS**, seeks this Court to disgorge all monies received by Defendant from its unlawful debt collection practices. While the State may not be able to identify all of the consumers defrauded by the Defendant, DTECH nevertheless should not be allowed to keep any funds made from its deceptive acts.

XIII. DISCOVERY REQUEST

26. Under Texas Rule of Civil Procedure 194, Defendant DTECH BILLING SERVICE, L.L.C. is requested to disclose, within 50 days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2 (a), (b), (c), (d), (e), (f), (g); (h), (i), and (l). In addition, Defendant is requested to respond to the State's First Request for Production to Defendant DTECH BILLING SERVICE, L.L.C., within 50 days of service of this request.

XIV. PRAYER

27. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon hearing a TEMPORARY INJUNCTION and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendant, DTECH BILLING SERVICE, L.L.C., Defendant's successors, assigns, officers, agents, servants, employees, and attorneys and any other person in active concert or participation with Defendant from engaging in the following acts or practices or making representations including:

- A. Engaging in the practice of phishing in order to obtain payment of consumer debts by a person who did not incur the debt;
- B. Continuing debt collection efforts after receiving notice of the disputed debts from consumers without completing a thorough investigation of the disputed debts;
- C. Continuing debt collection efforts after receiving notice of the disputed debts from consumers and:
 - 1) Determining the debt to be inaccurate;
 - 2) Failing to cease collection efforts no later than the fifth business day after the admission that the debt is inaccurate;
 - 3) Failing to correct the item in the relevant file;
 - 4) Ceasing collection and sending notice of the inaccuracy to each person who has previously received a report from the Defendant containing the inaccurate information;
- D. Attempting to collect an amount greater than the amount that Defendant determines is accurate;

- E. Representing that a consumer debt may be increased by the addition of other charges when the consumer has not agreed to those charges.
 - F. Using false representation or other deceptive means to collect a debt, including but not limited to threatening that nonpayment of the debt may effect the consumer's credit rating when the consumer did not accept the collect phone call in question.
 - G. Misrepresenting the character, extent or amount of a consumer debt, including but not limited to attempting to collect a debt from a person who has not incurred the debt;
 - H. Engaging in false, misleading and deceptive acts and practices in violation of DTPA §17.46(a) by engaging in prohibited debt collection practices;
 - I. Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;
 - J. Causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;
 - K. Concealing, withholding, destroying, mutilating, altering, falsifying or removing from the jurisdiction of this court any books, records, documents, invoices, receipt or other written material relating to the business of Defendant DTECH currently or hereafter in Defendant DTECH'S possession, custody or control except in response to further orders or subpoenas in this cause.
28. FURTHER, THE STATE OF TEXAS prays that the Court:
- A. Adjudge against Defendant civil penalties in favor of Plaintiff in the amount of \$20,000 per violation of the Texas Deceptive Trade Practices Act (TEX. BUS. & COM.

CODE §17.47(c)(1));

- B. Adjudge against Defendant civil penalties in favor of Plaintiff in the amount of \$250,000 for violations of the Texas Deceptive Trade Practices Act if the consumer was 65 years of age or older (TEX. BUS. & COM. CODE §17.47(c)(2));
 - C. Adjudge against Defendant civil penalties in favor of Plaintiff in the amount of \$100 per violation of the Texas Debt Collections Act (TEX. FIN. CODE §392.403(1)(e));
 - D. Order Defendant to restore all money or other property taken from identifiable people by means of unlawful acts or practices, or in the alterative award judgment for damages to compensate for such losses;
 - E. Adjudge against Defendant DTECH reasonable attorneys' fees, investigative fees and court costs pursuant to Section 401.006 of the Texas Government Code and to Section 392.403 of the Texas Finance Code.
 - F. Adjudge against Defendant DTECH prejudgment and post judgment interest at the highest lawful rate;
 - G. Order disgorgement of all monies taken by Defendant as a result of its unauthorized debt collection business;
 - H. Adjudge that all fines, penalties or forfeiture payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to Title 11 of the United States Code, Section 523(a)(7).
29. FURTHER, Plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

GREG ABBOTT

Attorney General of Texas

KENT C. SULLIVAN

First Assistant Attorney General

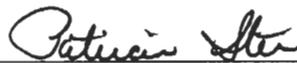
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