

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

STATE OF TEXAS, Plaintiff	§	IN THE DISTRICT COURT
	§	
v.	§	
	§	
	§	_____ JUDICIAL DISTRICT
ABELL MEDIATION, INC.,	§	
ELIZABETH CORY AND	§	
MICHAEL CORY,	§	
INDIVIDUALLY, Defendants	§	NUECES COUNTY, TEXAS

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

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS, acting by and through Attorney General of Texas Greg Abbott, complains of ABELL MEDIATION, INC. (hereinafter referred to as “ABELL”), ELIZABETH CORY and MICHAEL CORY, INDIVIDUALLY, (hereinafter referred to collectively as Defendants) and for cause of action would respectfully show as follows:

**DISCOVERY CONTROL PLAN**

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

**AUTHORITY**

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 to him by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (hereafter the “DTPA”) upon the ground 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 17.46(b) of the DTPA.

### **DEFENDANTS**

3. Defendant, ABELL MEDIATION, INC., an Arizona corporation whose registered office is 240 E. Coury Ave., Suite 242 Mesa, AZ 85210-6222, may be served with process by serving its registered agent Elizabeth Cory at 1576 East Oxford Lane, Gilbert, Arizona 85296.

Defendant, ELIZABETH CORY, is the President of Abell Mediation and may be served at her residence at 1576 East Oxford Lane, Gilbert, AZ 85296.

Defendant, MICHAEL CORY, is the Vice President of Abell Mediation and may be served at his residence at 1576 East Oxford Lane, Gilbert, AZ 85296.

### **VENUE**

4. Venue of this suit lies in NUECES 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 NUECES County, Texas.

B. Under the DTPA §17.47(b), venue is proper because Defendants have done business in NUECES County, Texas as follows: Defendants solicited transactions made the subject of the suit in NUECES, County, Texas. More specifically, the Defendants mailed solicitation letters to homeowners living in NUECES County, Texas who were in danger of losing their homes to foreclosure. In these letters, Defendants state that they can provide homeowners with an alternative to foreclosure, thus preventing a foreclosure from occurring. Defendants solicited and received money from Nueces County consumers.

### **PUBLIC INTEREST**

5. 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, by means of these unlawful acts and practices, caused damage to and acquired money from persons of this State and caused and will continue to cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in the 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**

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

### **ACTS OF AGENTS**

7. 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, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

### **NOTICE BEFORE SUIT**

8. The Consumer Protection and Public Health Division contacted Defendant in writing to inform them in general of the alleged unlawful conduct at least seven days before this suit was filed, as may be required by §17.47(a) of the DTPA.

### **NATURE OF DEFENDANTS’ OPERATION**

9.1. Defendants conduct research of foreclosure actions across the United States and send solicitation letters and postcards to homeowners who are delinquent in their mortgage payments and facing possible foreclosure. The cards and letters advise the homeowners that Abell Mediation, Inc. (Abell) can assist them in stopping the foreclosure process and provide a telephone number to call

for information. During the homeowner's initial inquiry regarding this alternative process, the Defendants require a payment ranging from \$800 to \$1,200 to begin the "mitigation process." In exchange for this payment, Defendants represent that they can assist in stopping the foreclosure and save the home. After receiving payment, the Defendants fail to provide the services as represented to homeowners. When consumers try to contact Defendants after paying them money, they are ignored and their phone calls are not returned by Defendants. Defendants prohibit consumers from talking with their own lenders when they sign up with Defendants. This leaves consumers entirely dependent on Defendants to follow through with their promises to assist them in saving their homes. Due to the failure of the Defendants to follow through as promised, and the homeowners' belief that Defendants will assist them as represented to stop the foreclosure process, homes are ultimately foreclosed upon by the lender. In addition to violating the DTPA, Defendants have also violated TEX. BUS. & COM. CODE ANN. §38.001(7), §38.101(a) and §38.107 by engaging in telephone solicitations with purchasers located in the State of Texas without fulfilling the requirement of registering and posting a bond with the Texas Secretary of State. Furthermore, a violation of this chapter is a false, misleading, and deceptive act under the DTPA pursuant to TEX. BUS. & COM. CODE ANN. § 38.303.

9.2 Defendants have received a number of complaints from consumers situated all over the United States. The Better Business Bureau for the city of Phoenix, Arizona has received a total of 12 complaints against Defendant Abell covering the period from November, 2004 to November, 2007. Of the 12 complaints filed with the Phoenix, AZ Better Business Bureau, 9 complaints are from Texas residents. In addition the Office of the Attorney General of Texas has received two complaints from Texas residents. Defendants have victimized Texas consumers by promising to help save their homes, by taking almost all of their remaining monies, and then doing

little or nothing to assist them as promised to save their homes.

**FALSE, MISLEADING, AND DECEPTIVE ACTS AND PRACTICES**

10. 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 17.46(b)(5),(7),(9),(12) & (24) of the DTPA. Such acts include:

A. Engaging in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce, as alleged more specifically herein, in violation of §17.46(a) of the DTPA;

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, as alleged more specifically herein, in violation of §17.46(b)(5) of the DTPA;

C. Representing that goods and services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, as alleged more specifically herein, in violation of §17.46(b)(7).

D. Advertising goods or services with intent not to sell them as advertised as more specifically alleged herein in violation of §17.46(b)(9) of the DTPA.

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 as set forth herein in violation of §17.46(b)(12) of the DTPA.

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 into which the consumer would not have entered had the information

been disclosed, in violation of DTPA §17.46(b)(24).

### **DISGORGEMENT**

11. 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 Defendants putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from individuals and businesses 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.

### **REPATRIATION OF ASSETS**

12. 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.

### **TRIAL BY JURY**

13. Plaintiff herein requests a jury trial and tenders the jury fee to the Nueces County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

### **INJURY TO CONSUMERS**

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

## **APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS**

15. 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 restrained by this Honorable court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause injury, loss and damage to the State of Texas and to the general public. Therefore, Plaintiff requests a Temporary and Permanent Injunction as indicated below.

### **PRAYER**

16.1 WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice to Defendants and a hearing, a TEMPORARY INJUNCTION be issued; and that on final trial of this cause, 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:

A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written or computer generated materials relating to the business of Defendants currently or hereafter in their possession, custody, or control except in response to further orders or subpoenas in this cause;

B. 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 was derived from the business operation of

Defendants without further order of this Court;

C. Entering into agreements to represent consumers in the State of Texas without providing a detailed written list to each consumer of the specific methods and actions Defendants will actually use to assist consumers in preventing foreclosure of their home prior to receiving any money or compensation from consumers;

D. Representing to a consumer, expressly or by implication, that foreclosure on their home is or is not imminent without providing written proof from the entity which threatened or initiated foreclosure which substantiates such representation;

E. Failing to provide and deliver to consumers a weekly written statement or similar document which details each and every contact that the Defendants have had with the homeowner's mortgage company [or mortgage company's designated agent] together with the date and time of the contact, the person and phone number contacted, the identity of the person making the contact for Defendants, and the precise request and specific result of the request relating to preventing the consumer's home or property from being foreclosed upon;

F. Representing, expressly or by implication, that Defendants can assist consumers in preventing foreclosure of their property or that Defendants can assist consumers with paying any arrearage on any mortgage so as to prevent foreclosure unless Defendants actually undertake and document specific and continuous actions to so assist consumers within one business day of receipt of funds from any consumer paying for such services;

G. Failing to provide and remit full and complete refunds to consumers within 48 hours of receiving information from any mortgage company or other source which indicates to a reasonable person that Defendants will not be successful in assisting the consumer from saving his

or her home or other property from foreclosure;

H. Failing to notify consumers orally and in writing within 48 hours of receiving information from any mortgage company which indicates to a reasonable person that Defendants will not be successful in assisting the consumer from saving his or her home or other property from foreclosure;

I. Making any telephone solicitation to or from a person for the purpose of inducing the person to purchase, rent, claim, or receive an item or service, unless Defendants have first registered and posted a bond with the Texas Secretary of State pursuant to Chapters 37 & 38 of the Texas Business and Commerce Code.

J. Taking any fee or any type of consideration from consumers for the purpose of assisting them in any type of foreclosure proceeding without providing the specific type and amount of assistance represented;

K. 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 of, or claimed by said Defendants without notice to Plaintiff and the approval of this Court.

L. Destroying, altering, mutilating, concealing, transferring, or otherwise disposing of or changing any records related to any defendant or entity in which any defendant has an ownership interest.

16.2 In addition, Plaintiff State of Texas respectfully prays that this Court will:

A. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in an amount of not more than \$20,000 per violation of the DTPA;

B. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in an amount of not more that \$5,000 per violation of TEX. BUS. COM. CODE ANN. §38.101(a);

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

D. Order Defendants to pay Plaintiff State of Texas' attorneys fees and costs of court pursuant to TEX. GOV'T CODE §402.006(c);

E. Order Defendants to pay pre-judgment interest on all awards of restitution, damages, civil penalties and attorney fees as provided by law; and

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

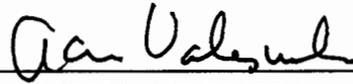
Respectfully submitted,

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