

CAUSE NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
BRIAN DUANE BRUMFIELD and	§	
THORNBROOKS SHAPIRO, LLC,	§	
both doing business as	§	
THE SHERIFF’S JOURNAL, ¹	§	
Defendants.	§	_____ JUDICIAL DISTRICT

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

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Attorney General GREG ABBOTT, on behalf of the State of Texas (“The State”), hereinafter referred to as “Plaintiff,” complaining of BRIAN DUANE BRUMFIELD and THORNBROOKS SHAPIRO, LLC d/b/a THE SHERIFF’S JOURNAL et al, hereinafter referred to as “Defendants,” and for cause of action would respectfully show the Court the following:

I. DISCOVERY

Discovery shall be conducted under LEVEL 2, Texas Rules of Civil Procedure 190.3.

II. JURISDICTION

Attorney General Greg Abbot, acting within the scope of his official duties under 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 Deceptive Trade Practices - Consumer Protection Act, hereinafter “DTPA”, TEX. BUS. & COM. CODE ANN. §§ 17.41 - 17.63 (West 2002 & Supp. 2007),

¹ Brian Duane Brumfield and Thornebrooks Shapiro, LLC are also doing business as Police Publications, Municipal Officer’s Magazine, Law Enforcement Quarterly, First on Patrol Magazine, and The Deputy Defender.

as well as the Texas Occupations Code, and the Texas Law Enforcement Telephone Solicitation Act hereinafter “TLETSA”, TEX. REV. CIV. STAT. ANN. art 9023e (West 2007).

A. The DTPA, section 17.47, grants the Attorney General authority to seek injunctive relief and civil penalties for violations of DTPA provisions on the grounds that:

1. 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 DTPA sections 17.46(a) and (b);
2. Defendants have failed to comply with the registration and disclosure requirements of the Texas Occupations Code sections 1803.051, 1803.053, 1803.054, 1803.056, 1803.101 and 1803.103.

B. The TLETSA, section 9 (a), grants the Attorney General authority to seek injunctive relief and civil penalties for violations of TLETSA provisions on the grounds that:

1. Defendants have failed to comply with the registration and disclosure requirements of TLETSA, TEX. REV. CIV. STAT. ANN. art. 9023e.

This suit, brought against Defendants for injunctive relief, actual damages, restitution, civil fines and penalties, costs, and attorney’s fees, is the direct result of Defendants’ violations of the DTPA, Chapter 1803 of the Texas Occupations Code, and TLETSA, TEX. REV. CIV. STAT. ANN. art. 9023e.

III. DEFENDANTS

Defendant BRIAN DUANE BRUMFIELD d/b/a Police Publications, Municipal Officer’s Magazine, Law Enforcement Quarterly, First on Patrol Magazine, and The Deputy Defender, is an individual residing in Stafford, Texas. He may be served with process at 3203 Country Club Blvd., Stafford, Texas 77477, or alternatively at, 6250 Westpark Drive, #218, Houston, Texas 77057.

Defendant THORNBROOKS SHAPIRO, LLC, is a corporation doing business at 6250 Westpark Drive, #218, Houston, Texas 77057. The Defendant may be served with process through its registered agent, BRIAN DUANE BRUMFIELD, at 6250 Westpark Drive, #218, Houston, Texas 77057, or alternatively at, 3203 Country Club Blvd., Stafford, Texas 77477.

IV. VENUE

Venue of this suit lies in HARRIS County, Texas for the following reasons:

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.

Under the DTPA §17.56[B](2), venue is proper because Defendants and their agents have solicited the transactions made the subject of the action at bar in HARRIS County, Texas.

V. PUBLIC INTEREST

Because Plaintiff has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff believes 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 businesses that lawfully conduct trade and commerce in this State. As such, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas is of the opinion that these proceedings are in the public interest.

VI. TRADE AND COMMERCE

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

VII. ACTS OF AGENTS

Whenever in this petition it is alleged that a Defendants did any act, it is meant that:

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

VIII. NOTICE BEFORE SUIT NOT GIVEN

Pursuant to DTPA section 17.47(a), Plaintiff has not contacted Defendants to inform them of the unlawful conduct alleged herein. Plaintiff is of the opinion 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.

IX. SPECIFIC FACTUAL ALLEGATIONS

A. Defendants falsely claim to publish a magazine known as The Sheriff's Journal as well as several other similar publications. Defendants "sell" advertising space in The Sheriff's Journal to individuals and businesses all over the United States via telephone, representing that the magazine is published several times a year, and distributed to local law enforcement officers or related agencies.

B. Defendants mail invoices to individuals and businesses for advertisements and claim that they are owed money for advertisements the business requested. These advertisements were never requested or authorized by said individuals and businesses. Defendants falsely represent that the business manager or owner previously authorized and agreed to the business's advertisement in the magazine and that the advertisement has already been printed. Regardless of the business's response to these representations, Defendants continue to send invoices, in amounts ranging from \$100 to \$600. *See Exhibits C, I(pg3), L(pg3), M(pg3), P(pg1) & Q(pg1).*

C. Defendants falsely represent that money paid for the advertisement would be used to benefit law enforcement. Defendants represent that money paid to Defendants would help families of slain law enforcement officers. *See Exhibits I, J, P, & Q.*

D. Defendants also imply that they are associated with legitimate law enforcement agencies, when in fact, there is no such association or connection. *See Exhibit K & P(pg1).*

E. Defendants repeatedly call individuals and businesses in an attempt to pressure them into paying fraudulent invoices for advertisements in publications that are not published or disseminated. Many individuals and businesses pay Defendants' fraudulent invoices in an effort to halt the harassing phone calls. Consequently, Defendants profit by successfully manipulating and harassing the individuals or businesses that receive their telephone calls.

See Exhibits I, J, K, L, M, P & Q.

F. Defendants utilize a private mail box or "mail drop", situated in Austin, Texas, which implies that Defendants' magazine business is situated in said city. The use of this mail drop implies that the publication is located in the area of the mail drop and that any contribution or advertisement monies will be utilized in that local area where the mail drop is situated. However, in fact, all such monies are forwarded to Defendants in Houston, Texas. The following known mail drop or private mail box is utilized by Defendants: The UPS Store, 603 W. 13th St., Austin, Texas 78701-1796, which indicates that Defendants completed a private mail box application for the U.S. Postal Service under the name of The Sheriff's Journal. *See Exhibit N.*

G. By the acts and practices described above, Defendants have established a pattern of misrepresentations and conduct in which the amount of funds actually spent publishing and disseminating a law enforcement magazine or journal is non-existent, or minimal at best, and the purpose of the solicitations is primarily, if not exclusively, for the pecuniary benefit of the

Defendants. *See* Exhibits A, I, J, K, L, M, P & Q. In fact, the advertising money received by Defendants is usually not deposited into a bank account, but instead, checks received are cashed at various check cashing businesses: the money received is immediately converted into cash for the benefit of the Defendants *See* Exhibit A.

X. VIOLATIONS OF THE DTPA

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 DTPA sections 17.46(a) and 17.46(b), to wit:

1. Passing off goods or services as those of another, in violation of DTPA section 17.46(b)(1);
2. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA section 17.46(b)(2);
3. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA section §17.46(b)(3);
4. Using deceptive representations or designations of geographic origin in connection with goods or services, in violation of DTPA section 17.46(b)(4);
5. 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 section 17.46(b)(5);

6. 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 DTPA section 17.46(b)(7);
7. Advertising goods or services with intent not to sell them as advertised, in violation of DTPA section 17.46(b)(9);
8. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, in violation of DTPA section 17.46(b)(12); or
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, in violation of DTPA section 17.46(b)(24).

Defendants have, by means of the unlawful acts and practices described in this petition, obtained money or other property from identifiable persons to whom such money or property should be restored.

XI. VIOLATIONS OF CHAPTER 1803 OF THE TEXAS OCCUPATIONS CODE

Defendants have solicited, and continue to solicit, funds in violation of chapter 1803 of the Texas Occupations Code. Specifically, Defendants have violated chapter 1803 by engaging in the following conduct:

1. Engaging in solicitation by telephone and by mail without filing a registration statement in accordance with section 1803.051(a)(1);

2. Engaging in solicitation by telephone and by mail without paying the \$250.00 registration fee required by section 1803.054, in violation of section 1803.051(a)(2);
3. Failing to disclose to advertisers the name of any public safety solicitor employed, as required by section 1803.101(c)(3);
4. Failing to ensure that their public safety solicitors post a \$10,000 bond with the Secretary of State, in violation of Texas Occupations Code sections 1803.051(a)(2) and 1803.056;
5. Failing to disclose the name, street address, and statewide telephone number a person may use to obtain from the Secretary of State additional information on the public safety entity, public safety publication, or public safety solicitor, in violation of section 1803.101(c)(5);
6. Knowingly representing or implying that the solicitation proceeds are being used for a purpose other than the purpose for which the funds are actually used, in violation of section 1803.103(3);
7. Representing or implying that the solicitor is a peace officer or member of a public safety agency or public safety organization if the solicitor is not an officer or member, in violation of section 1803.103(4); or
8. Committing other unfair or deceptive acts or practices, as enumerated above, in violation of section 1803.103(10). *See* Exhibit G.

XII. VIOLATION OF THE TEXAS LAW ENFORCEMENT TELEPHONE SOLICITATION ACT

Defendants have solicited, and continue to solicit, funds in violation of the Texas Law Enforcement Telephone Solicitation Act, TEX. REV. CIV. STAT. ANN. art. 9023e.

Specifically, Defendants have violated TLETSA by failing to register with the Attorney General as required by art. 9023e Sec. 4 (a)&(b). *See* Exhibit H.

XIII. BREACH OF FIDUCIARY DUTIES

By soliciting and collecting funds from the general public under the guise of advertising, Defendants owe a fiduciary duty to the individuals and businesses who contributed to them to use the funds in a way that fulfills the donors' intent. As such, all monies, pledges, and other property received by Defendants as a result of their solicitations constitute charitable trusts to be used for the charitable purposes for which they were solicited. As a result of their oral and written solicitations, Defendants are Trustees of such charitable trusts and are charged with fiduciary duties with regard to said charitable trusts. Defendants, by their actions described in this petition, have breached, and will continue to breach, their fiduciary duties in this regard and have caused and will continue to cause, immediate and irreparable harm by failing to administer these charitable trusts in a prudent and reasonable manner to assure that the funds will be used to the maximum efficiency toward the purposes for which they were solicited by Defendants.

XIV. FRAUD

Defendants, by and through their intentional acts and omissions described in this petition, have made repeated and materially false representations to the public concerning their solicitation of funds for purported charitable purposes, which were either known to be false when made or were made without knowledge of the truth of the matter asserted. 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 the donors, individuals, and businesses located in the State of Texas and throughout the United States.

XV. VIOLATION OF CONSTRUCTIVE TRUST

Generous members of the public of the State of Texas, and other states, donated funds to Defendants for the benefit of worthy charitable causes, such as, dissemination of information on drugs, crimes, and other law enforcement causes. The same is true for members of the public who made donations to Defendants for assistance to peace officers and their families. Acceptance of funds pursuant to such representations established a constructive trust for the benefit of the public, in such a way as to fulfill the donors' intent. Defendants, therefore, owe a duty to the donors and to the public to ensure that funds raised on behalf of these charitable causes be used for the specific purposes for which they were donated. Defendants have breached the duties to their donors who contributed money, by failing to use the funds collected for the express purposes for which they were donated. Defendants have thereby violated the constructive trust.

XVI. CONSPIRACY TO DEFRAUD

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

XVII. DISGORGEMENT

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 is for the benefit of victimized consumers and the State of Texas.

XVIII. REPATRIATION OF ASSETS

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.

XIX. NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS' ASSETS

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 receive large sums of money from their telemarketing scheme and use fraudulently solicited funds for personal gain. Defendants' assets are subject to dissipation for the following reasons:

1. Defendants operate their business out of a mail drop, thereby attempting to evade detection by advertisers, contributors, law enforcement agencies, and Plaintiff.

See Exhibit N.

2. Defendants are neither bonded nor registered with the Texas Secretary of State as required by law, thus all of the funds received by Defendants are contraband. *See Exhibit G.*

3. Defendants cash many of the checks received from individuals and businesses at check cashing businesses so the money cannot be traced and can be put to immediate use by Defendants for their personal gain. *See Exhibits A & O.*

4. Defendant has had three convictions involving theft, which causes the State great concern as to the likelihood that Defendant Brumfield would secrete or dissipate any assets available to him, before the court has had a chance to seize any assets for purposes of restitution. Defendant Brumfield has been convicted of the following:

- a.) Misdemeanor Theft \$200 to \$2,000, Cause No. 8908600, Harris County, convicted March 16, 1989 and sentenced to a \$300 fine and 3 days confinement, *See Exhibit F*;
- b.) Misdemeanor Theft, Cause No. 8931266, Harris County, convicted November 30, 1989 and sentenced to 30 days confinement, *See Exhibit E*;
- c.) Felony Credit Card Abuse, Cause No. 718028, Harris County, convicted June 21, 1996 and sentenced to two (2) years confinement, probated for five (5) years. Subsequently the probation was revoked on April 16, 1998, with six (6) months confinement ordered, *See Exhibit D*.

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

XX. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

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 reside out of state and/or subpoena range who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

XXI. TRIAL BY JURY

Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to Texas Rule of Civil Procedure 216 and Texas Government Code section 51.604 (West 2005 & Supp. 2007).

XXII. APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

Because Defendants have engaged in the unlawful acts and practices described above,

they 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. Plaintiff, therefore, requests an Ex Parte Temporary Restraining Order, Temporary Injunction and Permanent Injunction as indicated below.

XXIII. PRAYER

A. 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, attorneys and any other person in active concert or participation with Defendants who receive actual notice of the injunction, 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 Defendants' assumed names, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;

4. Soliciting funds on behalf of or for the benefit of Defendants and any publication, including, but not limited to The Sheriff's Journal, as well as any other law enforcement related business, magazine, publication, or cause until Defendants have fully complied with chapter 1803 of the Texas Occupations Code and Texas Law Enforcement Telephone Solicitation Act, TEX. REV. CIV. STAT. ANN. art. 9023e;

5. Representing, expressly or by implication, that Defendants or their publications are affiliated with, endorsed by, authorized by, supported by, associated with, or in any way related to any law enforcement organization, group or cause;

6. Mailing, faxing, or forwarding any invoice, letter, or thing to any business or person wherein such invoice, letter, or thing seeks, demands, or requests any type of payment or contribution from said business or person until Defendants have fully complied with chapter 1803 of the Texas Occupations Code and Texas Law Enforcement Telephone Solicitation Act, TEX. REV. CIV. STAT. ANN. art. 9023e;

7. Telephoning, calling or in any way initiating contact with any business or person for the purpose of seeking, selling, or requesting any type of contribution, money, or funds for advertising from said business or person until Defendants have fully complied with chapter 1803 of the Texas Occupations Code and Texas Law Enforcement Telephone Solicitation Act, TEX. REV. CIV. STAT. ANN. art. 9023e;

8. Operating any type of telemarketing operation on behalf of any publication unless and until Defendants fully comply with chapter 1803 of the Texas Occupations Code and Texas Law Enforcement Telephone Solicitation Act, TEX. REV. CIV. STAT. ANN. art. 9023e; and

9. Representing, expressly or by implication, that a person or business has authorized or agreed to a payment or contribution when in fact there is no such authorization or agreement.

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

1. Adjudge against Defendants civil penalties in favor of Plaintiff in an amount up to \$20,000 per violation, pursuant to section 17.47(c)(1) of the Texas Business and Commerce Code;

2. Adjudge against Defendants civil penalties in favor of Plaintiff in an amount not more than \$25,000 per violation, pursuant to TEX. REV. CIV. STAT. ANN. art. 9023e Sec.9(a);

3. 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;

4. Order equitable rescission of contracts between Defendants and consumers whereby consumers receive all of the money back that they paid to Defendants;
5. Order Defendants to pay Plaintiff STATE OF TEXAS' attorney fees and costs of court pursuant to TEX. GOV'T. CODE §402.006(c), and TEX. REV. CIV. STAT. ANN. art. 9023e Sec.9(c);
6. 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;
7. Grant leave to the Plaintiff to conduct telephonic, oral and other depositions prior to the Defendants' answer date and any Temporary Injunction hearing; and
8. Grant all other relief to which the Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

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