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NO.

DISTRICT CLERK
BEXAR COUNTY, TEXAS

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STATE OF TEXAS,
Plaintiff,

v.

TREATMENT ASSOCIATES OF
VICTORIA, INC.,
Defendant.

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IN THE DISTRICT COURT

BEXAR COUNTY, TEXAS

____ JUDICIAL DISTRICT

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

COMES NOW THE STATE OF TEXAS, hereinafter referred to as Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of TREATMENT ASSOCIATES OF VICTORIA, INC. ("DEFENDANT" OR "TREATMENT ASSOCIATES") and for cause of action would respectfully show:

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. 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 DEFENDANT for violations of the Texas Identify Theft Enforcement and Protection Act, Chapter 48¹ of the Tex. Bus. & Com. Code Ann § 48.001, *et seq.*, and Tex. Bus. & Com. Code Ann. §35.48.

3. 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

¹ 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, 79th Leg. R.S. (2005).

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 ground that DEFENDANT has 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.

4. 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 Tex. Health & Safety Code §§464.015(f) and 464.017(e) on the ground that DEFENDANT has violated 25 Tex. Admin. Code §§ 448.210, 448.508(b), (c), (i) and, 448.701(13), promulgated to protect the confidentiality of client information under Tex. Health & Safety Code §464.009(c).

III. DEFENDANT

5. Defendant TREATMENT ASSOCIATES is a Texas domestic for-profit corporation whose registration is filed with the Texas Secretary of State pursuant to the laws of Texas and is doing business in Texas as alleged specifically below and may be served with process by serving its registered agent, Jeffrey S. Warner, 201 N. Crescent Drive, Victoria, Texas 77901-2831.

IV. VENUE

6. Venue of this suit lies in Bexar County, Texas, for the following reasons:

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

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

C. Under Tex. Civ. Prac. Rem. Code §15.002(a)(1), venue is proper in Bexar County because it is the county in which a substantial part of the events or omissions

occurred giving rise to the claim;

D. Under Tex. Bus. & Com. Code Ann. §17.47(b), venue is proper in Bexar County because Defendant has done business in that county; and

E. Under Tex. Health & Safety Code Ann. § 464.015(b), venue is proper in Bexar County because it is the county in which the violation occurred.

V. PUBLIC INTEREST

7. 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 ground that DEFENDANT has 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.

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

9. 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.² Moreover, victims of identity theft spend

²See 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).

an average of 600 hours over a two to four year period, as well as \$1,400 or more, trying to clear their names.³ 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.⁴ The Legislature specifically recognized "dumpster diving" for discarded business records as a significant means through which identity theft is committed.⁵

10. The Legislature also expressed its interest in maintaining the confidentiality of persons seeking drug and alcohol abuse treatment when it instructed the Texas Commission on Alcohol and Drug Abuse to promulgate rules protecting the rights of clients seeking such treatment. Tex. Health & Safety Code § 464.009(c). The Commission enacted such rules and required employee training regarding client confidentiality. 20 Tex. Admin Code §§ 448.210; 448.508(b), (c), and (i); 448.701(13) and 448.603(c)(5). It is in the public interest to encourage persons with drug and alcohol abuse problems to seek treatment with the assurance that their private information will remain confidential.

VI. TRADE AND COMMERCE

11. DEFENDANT has, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by §17.45(6) of the DTPA.

VII. ACTS OF AGENTS

12. Whenever in this petition it is alleged that DEFENDANT did any act, it is meant that DEFENDANT performed or participated in the act, or that DEFENDANT's officers, agents, representatives, or employees performed or participated in the act on behalf of and under the

³*Id.*

⁴*Id.*

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

authority of DEFENDANT.

VIII. NATURE OF DEFENDANT'S OPERATION

13. TREATMENT ASSOCIATES is a drug testing and rehabilitation facility. They conduct routine drug testing and screening for entities such as Child Protective Services and United States Pretrial Services, Western District of Texas, as well as Texas Department of Criminal Justice, Pardons and Paroles Division. They also engage in drug counseling and rehabilitation. TREATMENT ASSOCIATES is a licensed substance abuse treatment facility, with Texas Department of State Health Services, Regulatory Services, License Number 511A.

IX. SPECIFIC FACTUAL ALLEGATIONS

14. In the ordinary course of its business operations, DEFENDANT collects large amounts of sensitive personal identifying information. For example, referral documents in client files contain client names, TDCJ numbers, SID numbers, dates of birth, phone numbers, addresses, drivers' license numbers, and social security numbers. These documents are noted as "Confidential" or "Restricted and Confidential."

15. DEFENDANT's "Payment of Services" form, which all clients sign, assures clients that "with the exception of my signed consent or reporting laws, all information and records regarding my case are confidential. A release of information must be signed by me and on record in my file before my case can be discussed with anyone outside of Treatment Associates."

16. DEFENDANT's "Consent to Release Client Records" form indicates that federal law prevents disclosure of the client's confidential information "without the specific written consent of the person to whom it pertains or a parent or legal guardian thereof, unless otherwise permitted by such regulations. A general authorization for the release of medical or other information is not sufficient for this purpose."

17. DEFENDANT's "Consent to Release Client Records" form also represents: "Information obtained from counseling relationships will remain confidential with the exception of a court order."

18. In truth and in fact, DEFENDANT failed to safeguard sensitive personal information and failed to maintain the confidentiality it promised to its clients. At its location at 701 San Pedro, the files of 45 of DEFENDANT's clients were found in a publicly accessible dumpster.

19. The records dumped by DEFENDANT and the sensitive personal identifying information contained in the files, can be described generally as follows:

- social security numbers of clients;
- dates of birth of clients;
- the above-mentioned private information for family members and friends of clients and other third parties;
- names and dates of birth tied to social security numbers;
- private medical history of clients;
- criminal history of clients;
- personal history of clients;
- drug use and/or abuse history of clients; and
- generally private information that would be shared during a counseling session.

20. Although the above described information could be used to steal the identities of DEFENDANT's clients and third parties, DEFENDANT failed to shred, erase, or otherwise make the sensitive personal information unreadable. Instead, records were placed in trash dumpsters that were readily accessible to the public.

X. FALSE, MISLEADING, AND DECEPTIVE TRADE ACTS AND PRACTICES

21. Plaintiff hereby incorporates the preceding paragraphs 1 through 20 as if fully set out herein.

22. DEFENDANT, as alleged above and detailed below, has 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 DEFENDANT would maintain the confidentiality and privacy of clients' private and sensitive information, DEFENDANT misled consumers and caused confusion regarding the protection and security used to protect the sensitive and personal identifying information which was provided to DEFENDANT, as alleged more specifically in paragraphs 1 through 20 above, in violation of §§17.46(a), (b)(5) and (b)(7) of the DTPA;

B. By representing to consumers that "all information and records regarding [their] case are confidential" and then dumping its customers' sensitive and personal identifying information into trash receptacles making it easily accessible to the public, DEFENDANT violated §§17.46(a), (b)(5) and (b)(7) of the DTPA as alleged more specifically in paragraphs 1 through 20 above;

C. By representing to consumers that their confidential information would not be released "without the specific written consent of the person to whom it pertains or a parent or legal guardian thereof" and then dumping sensitive and personal identifying information into trash receptacles making it easily accessible to the public, DEFENDANT violated §§17.46(a), (b)(5) and (b)(7) of the DTPA, as alleged more specifically in paragraphs 1 through 20 above; and

D. By representing to consumers that "Information obtained from counseling relationships will remain confidential with the exception of a court order" and then dumping sensitive and personal identifying information into trash receptacles making it easily accessible to the public, DEFENDANT violated §§17.46(a), (b)(5) and (b)(7) of the DTPA, as alleged more specifically in paragraphs 1 through 20 above;

E. By failing to disclose that the sensitive and personal identifying information that it

required consumers to provide before proceeding with the transaction would be discarded into trash receptacles, as alleged more specifically in paragraphs 1 through 20 above, DEFENDANT failed to disclose information concerning goods or services which was known at the time of the transaction, and DEFENDANT's 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 §§17.46(a) and (b)(24) of the DTPA.

XI. IDENTITY THEFT PREVENTION VIOLATIONS

23. Plaintiff hereby incorporates the preceding paragraphs 1 through 20 as if fully set out herein.

24. DEFENDANT, as alleged above and detailed below, has engaged in practices declared unlawful as follows:

A. DEFENDANT 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 1 through 20, in violation of Tex. Bus. & Com. Code Ann § 48.102(a).

B. DEFENDANT 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 1 through 20, in violation of Tex. Bus. & Com. Code Ann § 48.102(b).

C. DEFENDANT 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 1 through 20, in violation of Tex. Bus. & Com. Code Ann. § 35.48(d).

**XII. CONFIDENTIALITY OF DRUG AND ALCOHOL ABUSE TREATMENT
RECORDS VIOLATION**

25. Plaintiff hereby incorporates the preceding paragraphs 1 through 20 as if fully set out herein.

26. DEFENDANT, as alleged above and detailed below, has engaged in practices declared unlawful as follows under Tex. Health & Safety Code §§464.009(c), 464.015(f), and 464.017(e):

A. DEFENDANT disclosed confidential information without express written consent of consumers and failed to safeguard private information from illegal or inappropriate use, access and disclosure; or from loss, destruction or tampering; or from unsecured maintenance of records, as alleged more specifically in paragraphs 1 through 20, in violation of 20 Tex. Admin. Code § 448.210.

B. DEFENDANT failed to protect all client records and other client-identifying information from destruction, loss, tampering, and unauthorized access, use or disclosure; failed to limit access to confidential information to personnel whose job duties required access to such client records; and failed to take steps to protect confidentiality, as alleged more specifically in paragraphs 1 through 20, in violation of 20 Tex. Admin. Code §§ 448.508(b), (c), and (i).

C. DEFENDANT failed to have information about its clients kept private and failed to inform clients about times when information would be released without the client's permission as required in the Client Bill of Rights, as alleged more specifically in paragraphs 1 through 20, in violation of 20 Tex. Admin. Code § 448.701(13).

XIII. INJURY TO CONSUMERS

27. DEFENDANT has, 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.

XIV. DISGORGEMENT

28. All of DEFENDANT's assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for DEFENDANT to retain, including all ill-gotten gains and benefits or profits that result from DEFENDANT putting fraudulently converted property to a profitable use. DEFENDANT 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.

XV. REPATRIATION OF ASSETS

29. After due notice and a hearing, this Honorable Court should order that all of DEFENDANT's assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

XVI. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

30. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions (containing requests for production) of witnesses prior to any scheduled Temporary Injunction hearing. There are a number of witnesses who may need to be deposed prior to any scheduled Temporary Injunction hearing. Some of these witnesses live outside of San Antonio and thus cannot appear at any scheduled Temporary Injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to DEFENDANT and its attorneys, if known.

XVII. TRIAL BY JURY

31. Plaintiff herein requests a jury trial and tenders the jury fee to the Bexar County District Clerk's office pursuant to Tex. R. Civ. P. 216 and Tex. Gov't Code §51.604.

XVIII. REQUEST FOR DISCLOSURE

32. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2(a)-(l).

XIX. APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

33. Because DEFENDANT has engaged in the unlawful acts and practices described above, DEFENDANT has violated and will continue to violate the law as alleged in this Petition. Unless enjoined by this Honorable Court, DEFENDANT 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. Therefore, Plaintiff requests a Temporary Injunction and Permanent Injunction as indicated below.

XX. PRAYER

34. WHEREFORE, Plaintiff requests that DEFENDANT 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 DEFENDANT, its 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:

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; and

C. violating DEFENDANT's 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 DEFENDANT stores its data to be recycled without first physically destroying the hard drive or bulk storage device; transmitting such data over telephone lines or satellite communication channels without first encrypting such data.

35. As an alternative to the relief requested in Paragraph 34.B, Plaintiff requests that DEFENDANT 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.

36. Plaintiff further requests that DEFENDANT 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 DEFENDANT's employees or agents in the regular course of business.

37. 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 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 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 \$25,000 against DEFENDANT per each violation of the regulations enacted by the Texas Commission on Alcohol and Drug Abuse under Tex. Health & Safety Code § 464.017(a);

E. Order DEFENDANT to pay the State's reasonable attorney's fees, investigatory costs, and court costs pursuant to Tex. Bus. & Com. Code §48.201(e), Tex. Gov't. Code Ann. §402.006(c), and Tex. Health & Safety Code §§ 464.017(d) and 464.0195; and

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

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection and
Public Health Division



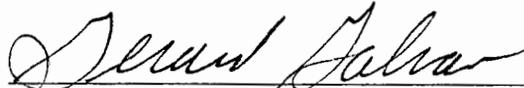
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VERIFICATION

STATE OF TEXAS
COUNTY OF Bexar

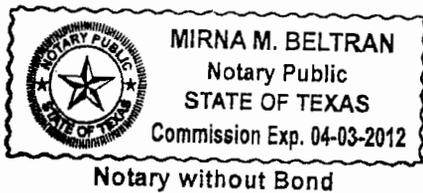
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BEFORE ME, the undersigned authority, on this day personally appeared affiant GERARD GALVAN, who proved to me through a current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that he executed the same, and after he was duly sworn, upon his oath, he deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION, and has reason to believe, based on information and belief, that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.



GERARD GALVAN
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 25th day of September, 2008.





NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS