

NO. _____

STATE OF TEXAS,

Plaintiff,

v.

JUAN M. NINO d/b/a JUAN M. NINO
TAX PRACTITIONER,

Defendant.

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IN THE DISTRICT COURT

CAMERON COUNTY, TEXAS

_____ JUDICIAL DISTRICT

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

COMES NOW THE STATE OF TEXAS, hereinafter referred to as plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of JUAN M. NINO, doing business as Juan M. Nino Tax Practitioner, hereinafter referred to as defendant, and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

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

JURISDICTION

2. The Attorney General, 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.*, (hereinafter "Chapter 48") and the TEX. BUS.

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).

& COM. CODE ANN. § 35.48 (hereinafter "Section 35.48"). Section 35.48 grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions.

DEFENDANT

3. Defendant Juan Nino is an individual doing business as Juan Nino Tax Practitioner, and may be served with process at his regular place of business at 355 W. Elizabeth Street, Brownsville, Cameron County, Texas 78520.

VENUE

4. Venue of this suit lies in Cameron County, Texas, for the following reasons:
- a. Under TEX. BUS. & COM. CODE ANN. § 48.201(c)(1), venue is proper in Cameron County because it is the county in which the violations occurred;
 - b. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), venue is proper in Cameron County because it is the county in which a substantial part of the events or omissions occurred giving rise to the claim.

PUBLIC INTEREST

5. Plaintiff, STATE OF TEXAS, has reason to believe that defendant is engaging in, has engaged in, or is about to engage in acts and practices, which violate Texas identity theft prevention laws, as set forth below, namely failing to protect and safeguard from unlawful use or disclosure personal identifying information and/or sensitive personal information collected or maintained by defendant in the regular course of business. Because these unlawful practices expose defendant's clients to the risk of identity theft, 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.

6. The Texas Legislature in 2005 amended Section 35.48 and enacted the Identity Theft Enforcement and Protection Act to protect this public interest, noting that identity theft is one of the fastest growing crimes in the country, and Texas has one of the highest rates of identity theft in the United States.² Moreover, victims of identity theft spend 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 to businesses 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

ACTS OF AGENTS

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

NATURE OF DEFENDANT’S OPERATION

8. Defendant Juan M. Nino owns and operates Juan M. Nino Tax Practitioner (“Nino Practitioner”). Nino Practitioner is a tax preparation business and a bookkeeping service with one

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).

³*Id.*

⁴*Id.*

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

office in Brownsville, Texas.

STATEMENT OF FACTS

9. In the regular course of its business operations, defendant prepared and maintained a large number of reports, statements, and other instruments on behalf of individual persons and his business clients. For example, defendant's files include Internal Revenue Tax Returns, accompanying schedules, supporting documentation for the tax returns, Texas Workforce Commission Employer's Quarterly Reports, W-2's (IRS Wage and Tax Statements), W-3's (IRS Transmittals of Wage and Tax Statements), among others (collectively referred to as "business records").

10. On or about May 7, 2008, defendant discarded five boxes by placing them next to a trash dumpster behind defendant's office located at 355 W. Elizabeth Street, Brownsville, Cameron County, Texas 78520. The discarded boxes contained defendant's files in which copies of his business records were found. These business records bore the personal identifying information of persons, namely, the individual's first and last name in combination with their date of birth, social security number, financial institution account number, or other financial information.

11. Although the business records contained personal identifying information that could be used to steal the identities of his clients and his clients' employees, defendant failed to shred, erase, or otherwise make the personal identifying information unreadable. Instead, the records were placed next to a trash dumpster that was readily accessible to the public.

BUSINESS & COMMERCE CODE VIOLATIONS

12. Defendant, as alleged above, failed to modify, by shredding, erasing, or other means, the personal identifying information to make it unreadable or undecipherable when he disposed of the

client files containing the personal identifying information of clients of his business, in violation of TEX. BUS. & COM. CODE ANN. § 35.48(d).

13. Defendant, as alleged above, 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, in violation of TEX. BUS. & COM. CODE ANN. § 48.102(a).

14. Defendant, as alleged above, failed to destroy or arrange for the destruction of its business records containing sensitive personal information within its control that were not retained by it, in violation of TEX. BUS. & COM. CODE ANN. § 48.102(b).

PRAYER

15. WHEREFORE, plaintiff prays that defendant be cited according to law to appear and answer herein; and upon trial of this cause 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 disposing of business records that contain personal identifying information or sensitive personal information unless defendant:

- a. Modifies such records by shredding, erasing, or other means to make the personal identifying information and the sensitive personal information unreadable or undecipherable; or
- b. Contracts with a person engaged in the business of disposing of records for the modification of personal identifying information and the sensitive personal information contained therein by shredding, erasing, or other means to make the

personal information unreadable or undecipherable.

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

17. WHEREFORE, the STATE OF TEXAS, respectfully prays that this Court will:

- a. Adjudge civil penalties in favor of plaintiff STATE OF TEXAS in the amount of up to \$500 for each record that defendant did not dispose of in the required manner, pursuant to TEX. BUS. & COM. CODE ANN. § 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 for each violation of the Texas Identity Theft Enforcement and Protection Act, pursuant to TEX. BUS. & COM. CODE ANN. § 48.201(a); and
- c. Adjudge reasonable attorney's fees, court costs, and investigatory costs pursuant to TEX. BUS. & COM. CODE ANN. § 48.201(c) and TEX. GOV'T CODE ANN. § 402.006(c).

18. Further, plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which plaintiff, STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection and
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VERIFICATION

STATE OF TEXAS §

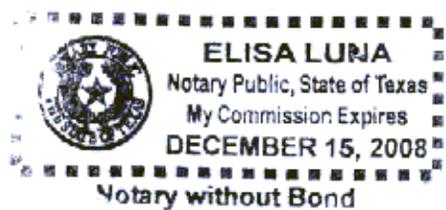
COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she 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 Statement of Facts in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR 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.

Rozanne N. Lopez

ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 9th day of December, 2008.



Elisa Luna

NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS