



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

## **II. JURISDICTION AND AUTHORITY**

2.1 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 pursuant to the authority granted him by the Texas Deceptive Trade Practices–Consumer Protection Act, TEX. CIV. PRAC. & REM. CODE § 17.41 *et seq.* (“DTPA”) upon the grounds that Defendant has engaged in false, misleading and deceptive acts and practices in the conduct of trade or commerce as defined and declared unlawful by the DTPA.

2.2 This action seeks to permanently enjoin Defendant from engaging in the acts and practices described below and which are declared to be unlawful by the DTPA.

2.3 Additionally, this suit seeks civil penalties from Defendant as a result of the conduct herein alleged, pursuant to § 17.47(c) of the DTPA. This suit also seeks restitution on behalf of identifiable persons, who suffered damages as a result of Defendant’s unlawful acts and practices as provided by § 17.47(d) of the DTPA.

2.4 Further, Attorney General Greg Abbott seeks attorney’s fees and investigative fees reasonable in relation to the efforts expended by his office in prosecuting this action and court costs as authorized by TEX. GOV. CODE § 402.006(c).

## **III. VENUE**

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

- a. Under the DTPA § 17.47(b), venue is proper because Defendant does business in Harris County, Texas; and
- b. Under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) venue is proper in Harris

County, Texas because a substantial part of the events or omissions giving rise to the claims occurred in Harris County, Texas.

#### **IV. PARTIES**

4.1 The Attorney General is authorized by the Texas Constitution, Art. 4, § 22, to enforce the laws of Texas. Section 17.47 of the DTPA authorizes the Attorney General to bring enforcement actions under the DTPA.

4.2 Defendant JACOB R. HORN is an individual whose current mailing address is 12015 Shiloh Road, Ste 130, Dallas, Texas 75228 and may be served with process by serving him at that address. At all times material to this action, Defendant Jacob R. Horn was owner of the businesses and conducted business through HBCI TEXAS, LTD and HB ROOF PARTNERS L.L.C., GREENSTAR ROOFING, HORN BROTHERS ROOFING AND HORN BROTHERS CONSTRUCTION.

4.3 HBCI TEXAS, LTD is a business located at 12561 Perimeter Road, Dallas Texas 75228-8108 and whose registered agent and managing partner is Jacob R. Horn and may be serve by serving such registered agent at 12561 Perimeter Road, Dallas Texas 75228-8108.

4.4 HB ROOF PARTNERS, LLC is a limited liability company located at 1601 Elm Street Ste 4100, Dallas, Texas 75201-7274 and whose owner is HBCI TEXAS, LTD and managing partner is Jacob R. Horn and may be serve by serving its registered agent, Loius N. Lee III, at 1601 Elm Street Ste 4100, Dallas, Texas 75201-7274.

4.5 HORN BROTHERS CONSTRUCTION and HORN BROTHERS ROOFING are businesses located at 12561 Perimeter Road, Dallas Texas 75228-8108 and may be served with process by serving their principal, Jacob R. Horn at 12561 Perimeter Road, Dallas Texas 75228-8108.

4.6 Defendants BENTON RAWLON BARBER, (A.K.A. RANDY BARBER) AND CODY MILLER are individuals whose current address is 6023 South Loop, Houston Texas 77033 and both may be served with process at that address. At all times material to this action, Defendant Barber was owner of the businesses 1 Day Roof, Roof All Texas and Roofteams / Roof Teams, Green Star Roofing, Texas Department of Insurance Agency, Texas Department of Insurance Agencies and conducted business through the unregistered assumed names. Defendants Barber, Miller and Horn were co-owner of the business Green Star Roofing. All the mentioned businesses are not registered with any Texas governmental agency. All have an office address of 6023 South Loop, Houston Texas 77033.

4.7 Defendants BARBER, MILLER and HORN directly participated in the conduct alleged herein or directed or controlled the practices and policies of all businesses complained of herein and had authority to control them, had actual or constructive knowledge of the acts and practices complained of herein or exercised a reckless indifference to the truth or falsity of such acts or practices set forth in this Petition.

## **V. PUBLIC INTEREST**

5.1 The Attorney General has reason to believe that Defendant has engaged in the unlawful practices described below. The Attorney General also has reason to believe that Defendant has caused and will continue to cause injury, loss and damage to Texas consumers. The Consumer Protection and Public Health Division of the Office of the Attorney General believes that this action is in the public interest.

## **VI. TRADE AND COMMERCE**

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

**VII.  
ACTS OF AGENTS**

7.1 Whenever it is alleged in this Petition that Defendants did any act, it is meant either that the Defendants performed or participated in the act, or that the Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

**VIII.  
NOTICE**

8.1 The Consumer Protection Division did not inform Defendants of the alleged unlawful conduct prior to filing suit because immediate and irreparable injury, loss or damage will occur as a result of such delay in obtaining a Temporary Restraining Order.

**IX.  
SUMMARY OF THE CASE**

9.1 Defendants are persons and companies who, individually and through their named businesses, advertise under the name "Texas Department of Insurance Agency." They maintain a website with the domain name of <http://www.tdia.us> (us typically being reserved for federal governmental agencies.) They place the seal of the State of Texas on his advertising and mails such advertising in the form of postcards to residents in Texas whose homes are in the areas hardest hit by Hurricane Ike. The postcards state that "A brief review is required for you to possibly receive additional benefits from your insurance provider." A true and correct copy of the mailing statement is attached as Exhibit "A" and by this reference made a part hereof.

9.2 Additionally, Defendants also place fliers in the doorways of residents in Texas whose homes are in the areas hardest hit by Hurricane Ike. The fliers are sometimes taped to the doors. The fliers state "URGENT! RESPONSE REQUESTED and then state "Disaster Relief Management Team" The fliers, in order to appear official, also tout The Seal of the State of Texas

and invite the recipient of the flier to visit the website for more information. A true and correct copy of the flier is attached as Exhibit “B” and by this reference made a part hereof. The website looks similar to official State of Texas websites

9.3 Defendants’ advertising has the appearance of official documents and conveys the overall false impression that the State of Texas Department of Insurance is reviewing the claims previously filed or to be filed to assure that the insurance companies have paid additional benefits. Defendants further advertise that they can negotiate with the insurance company and perform as a negotiator with such entities.

9.4 The Statements’ overall appearance leads a reader to believe that the Defendants sending this information are affiliated with either The Department of Insurance, a state organized Disaster Relief Management Team, or insurance adjusters hired by the State to oversee claims. However, neither the Department of Insurance nor any other governmental agency has any part in this private business, does not approve of or sanction the Defendants’ businesses, has not licensed the individual or businesses, and the Defendants are not agents of the State nor are they performing services on behalf of the State.

9.5 The official looking nature of the documents, coupled with citations of statutory authority regarding legal liability, all combine to deceive Texas residents into purchasing the Defendants’ services.

9.6 This mailing is from a private individual or private businesses and the mailings and fliers are not sent by the Texas Department of Insurance. Attached is the affidavit from the Texas Department of Insurance investigator, Susan Marx, stating that there have been numerous complaints and inquiries regarding the mailing. (Exhibit “C”)

9.7 The Defendants and their agents further advertise and claim that they will negotiate with the insurance companies on behalf of the hurricane victims.

**X.**  
**DECEPTIVE TRADE PRACTICES**

10.1 The Attorney General adopts, incorporates and realleges articles II through IX and all exhibits attached, as if fully set forth below and further alleges:

10.2 The State has reason to believe, and therefore alleges, that Defendants have directly or indirectly engaged in and will continue to engage in misleading, or deceptive acts and practices. Unless this Court restrains Defendants from engaging in the acts described in Paragraphs 9.01 through 9.7, Defendants will continue violating §17.46(a) and (b) as outlined below.

10.3 By engaging in the conduct set forth in Paragraphs 9.1 through 9.7, Defendants engaged in representations, acts, practices or omissions which are material and likely to mislead, and in fact did mislead consumers. Thus Defendants violated DTPA §17.46(a), “false, misleading or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

10.4 By utilizing a form of solicitation that appears to be from an official agency of the State of Texas, Defendants violated DTPA §17.46(b)(2), “causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.”

10.5 By utilizing a form of solicitation that appears to be from an official agency of the State of Texas, Defendants violated DTPA §17.08(b) (1) and DTPA §17.08(b) (2)

10.6 Defendants’ advertising gives the impression that Defendants are providing a service for the Department of Insurance when they have no affiliation with the State, thereby violating §§ §17.46(b)(3) and 17.46(b)(5), by “causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by, another” and “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.”

10.7 Defendants' failure to disclose that he is not a state agency or affiliated with the State is in violation of §17.46(b)(24), "failure 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."

**XI.  
VIOLATION OF TEXAS INSURANCE CODE**

11.1 Neither Defendants nor their agents are licensed by the Texas Department of Insurance, and such failure to be licensed, in light of their advertising, constitutes unauthorized insurance activity and the conduct violates Tex. Ins. Code Ann. §§ 101.001-101.156.

**XII.  
DISGORGEMENT**

12.1 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 Defendant 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.

**XIII.  
INJURY TO CONSUMERS**

13.1 By means of the foregoing unlawful acts and practices, Defendants have acquired 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.  
EQUITABLE RELIEF**

14.1 The State of Texas asks that the Court by way of an Ex Parte Temporary Restraining Order to temporarily restrain and permanently enjoin Defendant from sending any more brochures, postcards or fliers or any similar solicitation, to residents in Texas.

14.2 The State of Texas further asks that the Court by way of an Ex Parte Temporary Restraining Order temporarily restrain and permanently enjoin Defendants from advertising or offering services that are misrepresented as being offered by the State.

14.3 The State of Texas asks further that the Court by way of an Ex Parte Temporary Restraining Order temporarily restrain and permanently enjoin Defendants from using any form of solicitation that has the appearance of being from an official agency of the State of Texas.

**XV.  
REQUEST TO CONDUCT DISCOVERY PRIOR TO  
TEMPORARY INJUNCTION HEARING**

15.1 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 and prior to Defendants' answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled temporary injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

**XVI.  
TRIAL BY JURY**

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

**XVII.  
INJURY TO CONSUMERS**

17.1 Defendants have, 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 for damages.

**XVIII.  
OTHER RELIEF**

18.1 The State of Texas asks the Court to order Defendants to restore any money or property which may have been acquired from Texans by means of any unlawful act or practice.

18.2 The State of Texas asks the Court to order Defendants to pay a civil penalty, to and for the benefit of the State of Texas, in the amount of \$20,000.00 per violation of the DTPA.

18.3 The State of Texas asks the Court to order Defendants to pay reasonable attorney fees, pursuant to TEX. GOVT. CODE § 402.006.

**XIX.  
PRAYER**

WHEREFORE, Plaintiff The State of Texas prays that Defendant be cited according to law to appear and answer herein; that after reasonable notice and hearing a Temporary Restraining Order be issued, thereafter a Temporary Injunction be issued; and upon final hearing a Permanent Injunction be issued, restraining and enjoining Defendants, their successors, assigns, officers, agents, servants, employees, attorneys and any other person in active concert or participation with Defendants, or acting under any assumed name or legal entity, 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 materials relating to Defendants' business which are in Defendant's possession, custody, or control except in response to further orders or subpoenas in this cause;
- b. sending any more postcards, fliers, brochures, or any similar solicitation to Texans;
- c. using any form of solicitation which has the appearance of being from an official agency of the State of Texas;

- d. causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in that Defendants are not connected with any official agency of the State of Texas;
- e. causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by, another;
- f. 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 they do not have;
- g. failing to disclose information concerning any good or service sold or offered for sale with knowledge at the time of the transaction when such failure to disclose is intended to induce consumers to enter into transactions consumers would not enter into if such information were disclosed; and
- h. representing, directly or by implication, that this Court or the Attorney General or The Department of insurance has approved any good or service sold or offered for sale by Defendants, or has approved any of Defendants' business practices.

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

- a. Order Defendants to make restitution and disgorge the sum of all money, or the equivalent of money, paid by Texans to Defendants.
- b. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of \$20,000.00 per violation of the DTPA;
- c. Order Defendants to pay Plaintiff State of Texas attorney's fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c);

DATED this 6th day of April, 2009.

Respectfully submitted,

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