

CAUSE NO. 2009-29793

STATE OF TEXAS,
Plaintiff

IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

EXCEL LOSS MITIGATION
INCORPORATED, UNITED
SERVICING LLC, BELL
INVESTMENTS & DEVELOPMENTS
LLC, FRANCIS MARION
BELL, DAVID BELL, AND
DAVID ESPY, INDIVIDUALLY
Defendants

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189 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER,
ASSET FREEZE, AND 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 EXCEL LOSS MITIGATION INCORPORATED, UNITED SERVICING LLC, BELL INVESTMENTS & DEVELOPMENTS LLC, FRANCIS MARION BELL, DAVID BELL (AKA DAVID CALVERT), and DAVID ESPY, Defendants, and for cause of action would respectfully show as follows:

I. DISCOVERY CONTROL PLAN

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

II. AUTHORITY

- This action is brought by Attorney General Greg Abbott, through his Consumer

FILED
Karen Jackson
District Clerk
MAY 13 2009

Time: _____
Harris County, Texas
By: _____
Deputy

Protection 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 grounds 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.

III. DEFENDANTS

3.1. Defendant, EXCEL LOSS MITIGATION INCORPORATED, is a Texas corporation whose principal place of business is 333 N. Sam Houston Pkwy E, Suite 400, Houston, Texas 77060 or 363 N. Sam Houston Parkway E, Suite 1100, Houston, Texas 77060, and who may be served with process by serving its registered agent, Francis M. Bell, at 333 North Sam Houston Parkway, Suite 400, Houston, Texas 77060.

3.2. Defendant, UNITED SERVICING LLC is a Delaware limited liability company doing business in Texas. Defendant does not maintain a regular office or place of business or a designated agent for service of process within the State of Texas. By virtue of its business activities within the State of Texas and pursuant to TEX. CIV. PRAC. & REM. CODE §17.044 (b), it has appointed the Secretary of the State of Texas as its agent for service of process upon whom service for said Defendant may be had. Defendant may be cited by serving the Secretary of State of Texas provided that the citation and Original Petition and Application For Temporary Restraining Order and For Temporary and Permanent Injunction are forwarded to Defendant at its principal place of business via Defendant's registered agent, Business Filings Incorporated at 108 West 13th Street, Wilmington, Delaware 19801, by registered or certified mail, return receipt requested. According to TEX. CIV. PRAC. & REM. CODE §17.044 (b), the Secretary of State is the agent for the service or process on

Defendant because it: 1) engaged in business in Texas; 2) it does not maintain a regular place of business in Texas; 3) it does not have a designated agent for service of process in Texas; and 4) the lawsuit arises out of its business in Texas. This Court has personal jurisdiction over the Defendant because it contracted to perform services in whole or in part in the State of Texas pursuant to TEX. CIV. PRAC. & REM. CODE §17.042 (1). Alternatively, Defendant may be served by personal service by delivering this Petition to its registered agent Business Filings Incorporated at 108 West 13th Street, Wilmington, Delaware 19801.

3.3. Defendant, FRANCIS MARION BELL (“Frank Bell”), is an individual who may be served at 12296 Squirrel Tree Road, Willis, Montgomery County, Texas 77318-7633 or 2203 Timberloch Place, Suite 100, Spring, Montgomery County, Texas 77380-1103.

3.4. Defendant, DAVID BELL a/k/a DAVID CALVERT, is an individual who may be served at 2620 S. Jackson Avenue, Joplin, Missouri 64804.

3.5. Defendant, DAVID ESPY, is an individual who may be served at 6907 Enchanted Crest Court, Katy, Harris County, Texas 77449-5339.

3.6. Defendant, BELL INVESTMENTS & DEVELOPMENTS LLC is a Nevada corporation doing business in Texas. Defendant does not maintain a regular office or place of business or a designated agent for service of process within the State of Texas. By virtue of its business activities within the State of Texas and pursuant to TEX. CIV. PRAC. & REM. CODE §17.044 (b), it has appointed the Secretary of the State of Texas as its agent for service of process upon whom service for said Defendant may be had. Defendant may be cited by serving the Secretary of State of Texas provided that the citation and Original Petition and Application For Temporary Restraining Order and For Temporary and Permanent Injunction are forwarded to Defendant at its principal place

of business via Defendant's registered agent, CRA of America, Inc. at 3638 North Rancho Drive, Las Vegas, Nevada 89130, by registered or certified mail, return receipt requested. According to TEX. CIV. PRAC. & REM. CODE §17.044 (b), the Secretary of State is the agent for the service or process on Defendant because it: 1) engaged in business in Texas; 2) it does not maintain a regular place of business in Texas; 3) it does not have a designated agent for service of process in Texas; and 4) the lawsuit arises out of its business in Texas. This Court has personal jurisdiction over the Defendant because it contracted to perform services in whole or in part in the State of Texas pursuant to TEX. CIV. PRAC. & REM. CODE §17.042 (1). Alternatively, Defendant may be served by personal service by delivering this Petition to its registered agent, CRA of America, Inc. at 3638 North Rancho Drive, Las Vegas, Nevada 89130.

IV. VENUE

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

A. Under TEX. BUS. & COM. CODE ANN. §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.

B. Under the DTPA §17.47(b), venue is proper because Defendants have done business in Harris County, Texas as follows: Defendants solicited transactions made the subject of the suit in Harris, County, Texas.

V. PUBLIC INTEREST AND EX PARTE TRO

5.1. Because Plaintiff, the 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 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 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.

5.2. Pursuant to §17.47(a), the State is not required to notify Defendants and Defendants have not been notified of this Application for Temporary Restraining Order for the reason that the State is of the opinion that there is good cause to believe that Defendants would dissipate or secrete assets if prior notice of suit were given and would destroy relevant records. As such, in the opinion of the State, an emergency exists and that immediate and irreparable injury, loss or damage would occur as a result of prior contact.

5.3. As demonstrated below, there is good cause to believe Defendants would dissipate or secrete assets that should be preserved for restitution to consumers and so that full and final relief can be awarded at trial. For this reason, the State is not required to give Defendants prior notice of this Application for Temporary Restraining Order under the DTPA pursuant to §17.47(a). Defendants request the Court grant this TRO *ex parte*.

VI. FACTUAL BACKGROUND

The Nature of Defendants' Business

6.1. Defendants have worked in concert in a business that targets desperate homeowners who are facing foreclosure of their homes or having difficulties making their mortgage payments. (Ex. A, Cote Aff. ¶¶4-12; Ex. B, Porchia Aff. ¶¶3-8; Ex. C, Butts Aff. ¶¶3-9; Ex. D, Diop Aff. ¶¶3-6) Defendants use high pressure sales tactics and false “guarantees” that Defendants can save their homes from foreclosure in order to extract large cash payments from homeowners. (Ex. A, Cote Aff.

¶¶4, 7, 8; Ex. B, Porchia Aff. ¶¶4, 8; Ex. C, Butts Aff. ¶4) Defendants falsely claim that they have a team of “legal experts” and “professional mediators” that will persuade the mortgage company to put the homeowner’s past due payments “on the back of the mortgage” and thereby avoid foreclosure sale. (Ex. A, Cote Aff. ¶¶4, 8, 9; Ex. B, Porchia Aff. ¶¶6, 7) Defendants also extract upfront fees from unwitting homeowners for loan modification services that they do not provide. (Ex. D, Diop Aff. ¶¶3-5; Ex. B, Porchia Aff. ¶4)

6.2 Consumers report that after they send Defendants the upfront cash fee, generally \$1498, Defendants perform no services of any value for the homeowner. (Ex. D, Diop Aff. ¶5; Ex. A, Cote Aff. ¶11; Ex. B, Porchia Aff. ¶3; Ex. C, Butts Aff. ¶5) (Ex. G, Turner Aff. (consumer complaints); Ex. H, Hernandez Aff. (consumer complaints). Defendants have no legitimate business model, resources, or plan to actually perform any services that would help the homeowners. (Ex. A, Cote Aff. ¶9; Ex. B, Porchia Aff. ¶¶3, 6, 7; Ex. C, Butts Aff. ¶¶5, 6) When consumers call to complain or inquire about the status of their loan, Defendants generally ignore the calls or the consumer is put off. (Ex. B, Porchia Aff. ¶¶3, 6; Ex. D, Diop Aff. ¶5; Ex. A, Cote Aff. ¶11; Ex. C, Butts Aff. ¶5; Ex. G Turner Aff.: Ex. H, Hernandez Aff.) As a result, eventually, the homes are either foreclosed or sold by the homeowner or the homeowner is forced to seek elsewhere for help. (Ex. A, Cote Aff. ¶11; Ex. B, Porchia Aff. ¶3; Ex. E, Turner Aff.; Ex. F, Hernandez Aff.)

The Defendants

6.3 Defendants have conducted their foreclosure rescue/loan modification business in Houston, Texas. Excel was incorporated in November 2008. (Ex. H Hernandez Aff.)

6.4 After consumers filed online complaints about Excel with the BBB and RipOffReport.com, four months after incorporating Excel, Defendants formed a new company,

Defendant United Servicing LLC, removed the Excel website from the internet, and created a new but similar website for United Servicing, offering the same foreclosure rescue services. (Ex. A, Cote Aff. ¶13) (A copy of the former Excel website is attached as Ex. A to Cote Aff. A copy of the United Servicing website is attached as Ex. H to Cote Aff)

6.5 The sole director of Excel is Frank Bell. (Hernandez Aff. ¶3) David Espy, is or was, a business partner of Frank Bell. David Bell, Frank Bell's father, (a/k/a David Calvert) is also a business associate of the other Defendants. (Ex. A, Cote Aff. ¶12) Bell Investments provides financing for the Defendants. (Ex. C, Butts Aff. ¶7; Ex. B, Porchia Aff. ¶8)

Defendants' Misrepresentations

6.6 Defendants, operating in Houston, Texas, solicit consumers in Florida, Nevada, California, Ohio, Michigan, Louisiana and other states, including Texas. (Turner Aff., Ex. H)

6.7 Defendants make the following misrepresentations to consumers:

- that they have assisted “thousands of customers in avoiding foreclosures and keeping their homes”; (Cote Aff. Ex. A p. 1)
- that they have a “group of professionals that work specifically with Lenders and Government Entities.” (Cote Aff. Ex. A p.1)
- that “[a]ll of its mediators are seasoned professionals that understand the pitfalls of false promises and lengthy negotiations”; (Cote Aff. Ex. B p. 1)
- that “seasoned” professionals will review the homeowner's finances and determine if the homeowner has a realistic change of avoiding foreclosure; (Cote Aff. Ex. B p. 1)

- that “mitigation specialists” can propose a resolution and negotiate with the lender “usually within two weeks”; (Cote Aff. Ex. B p. 1)
- that the “vast majority” of clients get the solutions they contract for and customers are “prequalified”; (Cote Aff. Ex. A, p. 1)
- “100% satisfaction guaranteed or your money back”. (Cote Aff. Ex. B p. 2, Ex. C p. 1)

(Cote Aff. Ex. A, B, and C ¶3)

6.8 Defendants combine misrepresentations with high pressure sales tactics to extract large cash fees from desperate homeowners. Defendants’ sales agents make as many as 300 calls per day, and receive a commission per sale. (Ex. A, Cote Aff. ¶ 8) Defendants instruct sales agents that they should tell homeowners that Defendants “guarantee” their homes will not be foreclosed—even though they obviously cannot make such a guarantee since the lender makes the determination of whether and when to foreclose. (Ex. B, Porchia Aff. ¶4) Using a telemarketing script (Ex. A, Cote Aff. Ex. E), provided by management, sales agents promise to negotiate late fees, penalties, past due amounts, and interest and have the mortgage company apply these to the “back end” of the loan and thereby avoid foreclosure. Defendants do not tell consumers that they have no greater leverage or ability to induce the mortgage company to agree to this referral of payments than the homeowner himself or herself and that most of the time this option is not available. (Ex. B, Porchia Aff. ¶4; Ex. C, Butts Aff. ¶4; Ex. A, Cote ¶7 Ex. 7)

6.9 Sales agents falsely claim that they “save” the homeowner money by reducing the monthly payment “about 50%” of the time, and the homeowner “does not have to make any monthly payments” at all for 2 to 3 months. (Ex. A, Cote Aff. Ex. E) Homeowners are told to send a

cashier's check for the \$1498, that the process will take 45-60 days, that they are not required to make any mortgage payments during that time and the \$1498 will be applied to the past due balance and the mortgage payments during the interim. (Ex. A, Cote Aff. Ex. D ¶ 7) Sales agents are instructed by management that if they can "get more" than the standard \$1498 fee from a desperate homeowner, the extra cash will be paid to the sales agent. (Ex. A, Cote Aff. ¶7; Butts Aff. ¶4) Sales agents are encouraged to pressure consumers to send the upfront fee using the "hook" and the "spin." (Ex. A, Cote Aff. Ex. E)

6.10 Homeowners are told not to contact their lenders during this period. (Ex. A, Cote Aff. ¶10)

6.11 Defendants' representations to consumers are either outright false or seriously misleading. Defendants employ no "legal experts" or "professional mediators" to perform loan modifications or workouts with lenders. (Ex. B, Porchia Aff. ¶ 7; Ex. A, Cote Aff. ¶9; Ex. C, Butts Aff. ¶6) Defendants have no legitimate business plan or resources for assisting consumers to avoid foreclosure. (Ex. C, Butts Aff. ¶6) At any one time, at most, Defendants have had 1-3 clerical staff who are responsible for contacting mortgage companies, but these employees have virtually no training and no experience in banking, mortgage renegotiation, or workouts. (Ex. B, Porchia Aff. ¶7; Ex. A, Cote Aff. ¶9) One employee who had some loan workout experience worked for Defendants only 3 weeks. (*Id.*)

6.12 As a result, homeowner files stack up for months with no efforts being made to avoid foreclosure. (Ex. B, Porchia Aff. ¶6; Ex. A, Cote Aff. ¶9) Defendants have no system or organization for processing of the files. (Ex. B, Porchia Aff. ¶6) As a result, consumers either lose their homes to foreclosure or short sale or they are forced to seek help elsewhere. (Ex. B, Porchia

Aff. ¶3; Ex. D, Diop Aff. ¶¶5, 6) Consumers report that when they finally contact their mortgage company, they learn that Defendants made no contact at all on their behalf.

6.13 Although Defendants represent “satisfaction guaranteed” or “your money back” there is no system or protocol of refunds. (Ex. B, Porchia Aff. ¶3) Consumers who lost their homes and want a refund are repeatedly put off. (Ex. B, Porchia Aff. ¶3) As a result, irate consumers have threatened to bring a gun and shoot up the office. (*Id.*) The police have been called to Defendants’ offices at least 6 times due to threats from irate customers. (*Id.*)

6.14 Defendants promise that they will not accept consumers’ money unless they know they can help, which is untrue. (Ex. B, Porchia Aff. ¶8) Sales agents are instructed by management to tell consumers they must obtain approval from “underwriters” which is also untrue. (Ex. A, Cote Aff. ¶7; Ex. B, Porchia Aff. ¶8; Ex. C, Butts Aff. ¶4) There is no “underwriting” and the Defendants pressure homeowners to borrow the funds to pay the upfront fee. (Ex. B, Porchia Aff. ¶8; Ex. C, Butts Aff. ¶4)

6.15 After the consumer has paid the upfront fee, Defendants often encourage the homeowner to do a “short sale” in which the Defendants buy the home at a steeply discounted price, thereby depriving the homeowner of their cash and their home. (Ex. B, Porchia Aff. ¶8)

Debt Counseling and Credit Repair

6.16 In addition to the foregoing, Defendants offer debt counseling and credit repair services. Under Texas law, Defendants are required to register and post a bond with the Texas Secretary of State prior to offering or advertising credit repair services under TEX. FIN. CODE §§393.001 *et seq.* Defendants also are required to register and post a bond prior to advertising or offering its debt management services. TEX. FIN. CODE §394.001 *et seq.* A search of the records

reveals that Defendants have not registered or posted a bond under either statute. (Ex. I, Hernandez Aff.)

VII. TRADE AND COMMERCE

7.1 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.

VIII. ACTS OF AGENTS

8.1 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.

IX. FALSE, MISLEADING, AND DECEPTIVE ACTS AND PRACTICES

Texas Deceptive Trade Practices Act Tex. Bus. & Comm. Code §§ 17.41 *et seq.*

9.1. 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) 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. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, as alleged more specifically herein, in violation of §17.46(b)(2) of the DTPA;

C. Causing confusion or misunderstanding as to affiliation, connection, or

association with, or certification by, another, as alleged more specifically herein, in violation of §17.46(b)(3) of the DTPA;

D. 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;

E. 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).

F. 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.

G. 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.

H. 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).

Texas Telephone Solicitation Act
Tex. Bus. & Comm. Code §§ 302 *et seq.*

9.2. Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in false, misleading, or deceptive acts or practices defined by TEX. BUS. COM.

CODE ANN. §302.303 by engaging in telephone solicitation from a location within the State of Texas without fulfilling the requirement of registering with the Texas Secretary of State and posting the required bond in violation of TEX. BUS. & COM. CODE §302.101, §302.107.

**Prohibited Activities Under Tex. Fin. Code §§ 393.001 *et seq.*
and Tex. Fin. Code §§394.001 *et seq.***

9.3 Defendants, as alleged above, have in the course of trade and commerce engaged in false, misleading, or deceptive acts or practices by offering to provide the services of a credit services organization within the State of Texas without fulfilling the requirement of registering with the Texas Secretary of State and posting the required bond in violation of Tex. Fin. Code §393.306.

9.4 Defendants, as alleged above, have in the course of trade and commerce violated Tex. Fin. Code §394.001 *et seq.* by offering to provide debt management services within the State of Texas and to consumers within the State of Texas without fulfilling the requirement of registering with the Texas Office of Consumer Credit Commissioner and filing a bond or proof of insurance or proof of alternative financial arrangements. TEX. FIN. CODE § 394.204, §394.206.

**X. NECESSITY OF IMMEDIATE RELIEF TO PRESERVE ASSETS AND
PREVENT FURTHER INJURY TO CONSUMERS**

10.1 Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction to preserve and protect the Defendants' assets from dissipation so that the victims of Defendants' actions can receive the restitution to which they are entitled.

10.2 Defendants have acquired large sums of cash and real property from consumers as a result of their deceptive business practices. Good cause exists to believe Defendants will secrete or dissipate assets if not immediately enjoined and without prior notice:

a. Defendants have demonstrated a pattern of attempting to hide their deceptive business

activities by refusing to return customer phone calls, refusing to respond to complaints, moving their offices without providing a forwarding address, changing the name of their business and closing their website after receiving complaints, changing cell phone numbers of management every few weeks;

b. Defendants acknowledge the misrepresentations they make during the sales process and take the position that their form contract relieves them of any liability to consumers;

c. Although Defendants promise a money back guarantee, Defendants have demonstrated a pattern of refusing or ignoring consumers who request refunds;

d. Defendants have failed to register or post security for their credit repair and debt management services as required by Texas law.

10.3 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 temporarily and permanently 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. Therefore, Plaintiff requests a Temporary Restraining Order and Temporary and Permanent Injunction as indicated below.

XI. EQUITABLE RECISSION

11. All agreements between consumers and Defendants should be subject to the equitable remedy of rescission.

XII. CONSTRUCTIVE TRUST

12. A constructive trust should be placed upon all of Defendants' assets in favor of all consumers victimized by defendant and in favor of the State of Texas until this Court determines the

appropriate amount of disgorgement and restoration of money or other property.

XIII. DISGORGEMENT

13. 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. Defendants are not registered and bonded under the Texas Telephone Solicitation Act, thus all the monies received from Texas consumers is contraband and subject to disgorgement and distribution to consumers. See TEX. BUS. & COM. CODE §38.101(a) and § 38.107.

VIX. REPATRIATION OF ASSETS

14.1 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.

XV. TRIAL BY JURY

15.1 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.

XVI. INJURY TO CONSUMERS

16.1 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.

XVII. PRAYER

17.1 WHEREFORE, Plaintiff prays that the Court enter a Temporary Restraining order and a Temporary Injunction in this case be maintained during the pending of this suit, and upon final hearing 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. Defendants EXCEL LOSS MITIGATION INCORPORATED, UNITED SERVICING LLC, BELL INVESTMENTS & DEVELOPMENTS LLC, FRANCIS MARION BELL, DAVID BELL (AKA DAVID CALVERT), and DAVID ESPY their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, and all financial institutions such as Woodforest National Bank holding money or assets of any kind in the name and/or for the benefit of the Defendants who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other entity, shall be restrained from engaging in the following acts or practices pending further Order of this Court:

1. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, dissipating, distributing, or allowing the transfer, removal, withdrawal or encumbering from any financial institution or from any other entity or location or from the jurisdiction of this Court, any money, cash, 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 or custody of, standing in the name of, or claimed by

Defendants without further order of this Court;

2. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants or subject to access, ownership or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access.

B. Defendants EXCEL LOSS MITIGATION INCORPORATED, UNITED SERVICING LLC, BELL INVESTMENTS & DEVELOPMENTS LLC, FRANCIS MARION BELL, DAVID BELL (AKA DAVID CALVERT), and DAVID ESPY their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, are prohibited from transferring, spending, encumbering withdrawing, or removing any sum of money from any accounts, assets or property referenced in the foregoing paragraph of this order or from any other such account(s) and assets where any monies or proceeds from the operation of Defendants' business has been deposited, transferred, invested, or placed except by further order of this Court.

C. Defendants EXCEL LOSS MITIGATION INCORPORATED, UNITED SERVICING LLC, BELL INVESTMENTS & DEVELOPMENTS LLC, FRANCIS MARION BELL, DAVID BELL (AKA DAVID CALVERT), and DAVID ESPY their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, are prohibited from

1. 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;

2. Representing, expressly or by implication, that Defendants can "guarantee" to save consumers' homes from foreclosure;

3. Representing expressly or by implication that
 - a. Defendants have assisted “thousands” of customers in avoiding foreclosure;
 - b. Most of Defendants’ customers get the solutions they contract for;
 - c. Defendants have a 100% satisfaction guarantee or the consumer’s money back;
 - d. Defendants use “legal experts”, “mitigation specialists”, “seasoned professionals” or have established relationships with banks and lenders;
 - e. Defendants can reduce the consumer’s monthly mortgage payment;
 - f. Defendants have special relationships with lenders, mortgage companies, or governmental entities that enable Defendants to obtain relief that is unavailable to the consumer;
 - g. Representing, expressly or by implication, that Defendants will be able to have a homeowner’s arrearage, penalties, interest or other fees placed on the back or at the end of any scheduled payment plan or payout;
 - h. Falsely advertising or misrepresenting the nature of Defendants’ services.

4. 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;

5. Making any telephone solicitation in the State of Texas or to a person in the State of Texas 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.

6. Providing or offering to provide services of a credit services organization as defined by TEX. FIN. CODE §393.001(1)(3) without first registering and filing a bond as required by TEX. FIN. CODE §393.304 and §393.401-407.

7. Providing or offering to provide debt management services as defined in TEX. FIN. CODE §394.202(6) without first registering and fulfilling the requirements of TEX. FIN. CODE §394.204 and §394.206.

19.2. 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 than \$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 that some or 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;

F. Order the appointment of a Temporary and Permanent Receiver to locate and conserve the defendant's assets and to manage the corporate defendants so as to minimize harm to consumers who contracted with Defendants;

G. Place an equitable lien or constructive trust on all property taken fraudulently by Defendants which can be traced to assets now belonging to Defendants or which were transferred by Defendants in order to avoid creditors, such trust or lien to be in favor of victimized consumers;

H. Order equitable rescission of contracts between Defendants and consumers whereby consumers receive all of the money back that they paid to Defendants;

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

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

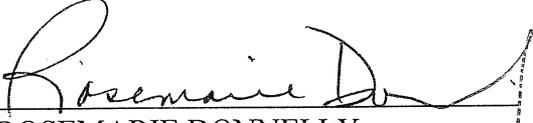
Respectfully submitted,

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