

Filed in The District Court  
of Travis County, Texas

NO. D16V09000890

LM MAY 20 2009

At 9:31A M.  
Amalia Rodriguez-Mendoza, Clerk

STATE OF TEXAS

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IN THE DISTRICT COURT OF

Plaintiff,

v.

TRAVIS COUNTY, TEXAS

COMMUNITY SUPPORT, INC.,  
a Domestic Limited Liability  
Corporation

261<sup>st</sup> JUDICIAL DISTRICT

Defendant.

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

Plaintiff, State of Texas, acting by and through Greg Abbott, Attorney General of Texas, has brought this action through his Consumer Protection and Public Health Division, pursuant to the Texas Deceptive Trade Practices - Consumer Protection Act, Tex.Bus.&Com.Code Ann. § 17.47, and the Texas Occupations Code, Solicitation for Public Safety Organizations, Tex.Occ.Code Ann. Ch. 1803, *et. seq.*, having filed a Plaintiff's Original Petition and Application for Injunctive Relief ("Petition"), against Defendant, Community Support, Inc. ("CSI"), and alleging CSI committed violations of the aforementioned Acts. Defendant CSI denies the allegations of the Petition and denies any alleged violations of the Acts cited therein.

The State of Texas and CSI have agreed to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION ("Agreed Judgment") by the Court without trial or adjudication of any issue of fact or law, and without admission of any wrongdoing or admission of any of the violations of the Acts as alleged in the Petition.

NOW THEREFORE, upon the consent of the parties hereto **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

I.

**JURISDICTION AND SCOPE**

1. Over thirty (30) states jointly investigated numerous allegations of violations of State Law<sup>1</sup> governing solicitations of charitable contributions. All participating states have contemporaneously filed this Judgment in their respective courts.
2. Defendant Community Support, Inc., is a Nevada corporation with its principal place of business at 312 E. Wisconsin Ave., Suite 408, Milwaukee, Wisconsin 53202.
3. Community Support is engaged in professional fundraising on behalf of charitable organizations, through telephone solicitations and mailings, and is a "professional fund-raiser" or "paid solicitor" or "professional solicitor" or "public safety solicitor" within the meaning of state law.
4. This Court has jurisdiction over the parties and the subject matter of this litigation as set forth in the petition filed contemporaneously with this Judgment.
5. The interpretation and enforcement of this Judgment shall be governed by the laws of the state in which it is filed.

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<sup>1</sup> State statutes specifically alleged to be violated include: §§ 407.020 – 407.469, Revised States of Missouri; N.D.C.C. § 50-22-04.3 and N.D.C.C. § 51-15-02; Chapter 1716 of the Ohio Revised Code; Nevada Revised Statutes, NRS 598.1305; 501.204 Florida Statutes; Chapter 367 of Kentucky Revised Statutes; W.Va. Code § 29-19-1, et seq. and W.Va. Code § 46A-6-104; Charitable Solicitations Act, RCW 19.09; Consumer Protection Act, RCW 19.86.020; Oregon Revised Statutes 128.886 and ORS 646.608(dd); Montana Code Ann. § 30-14-101 et. seq.; Iowa Code § 714.16 (2)(a) (2009); Ind. Code §§24-5-0.5-1, et seq. and 23-7-8-1, et seq.; Colorado Rev. Stat. Sec. 6-16-111; Arkansas Code Ann. § 4-88-101, et seq. and Arkansas. Code Ann. § 4-28-401, et seq.; Kansas Statutes Annotated §17-1759, et seq.; Alaska Statutes 45.68.010 et seq. and 45.50.471 et seq.; O.C.G.A. (1) Sec. 10-1-390, et seq. and (2) Sec. 43-17-1, et seq.; Illinois Solicitation For Charity Act is 225 ILCS 460/1 et sec.; NMSA 1978, Section 57-22-6.3; Haw. Rev. Stat. §§ 467B-9(c),(k),(l) and 480-2; Wis. Stat. § 440.46(1); Minnesota Chapter 309

6. The terms of this Judgment shall apply to Community Support, Inc., and its officers, directors, employees, agents, representatives; its successors and assigns; and all persons, corporations, partnerships, and other entities engaged in the solicitation or collection of contributions on behalf of clients of Community Support, Inc.

#### Definitions

7. For purposes of this Judgment, the following definitions apply:
- a. "Community Support" means Community Support, Inc., its officers, directors, employees, agents, representatives; its successors and assigns; and all persons, corporations, partnerships, and other entities engaged in the solicitation or collection of contributions on behalf of clients of Community Support, Inc.
  - b. "Effective Date" shall be May 21, 2009.
  - c. "Donation" or "contribution" means money or item of value provided in response to a solicitation made on behalf, or in the name, of any nonprofit organization.
  - d. "Donor" means any person or business solicited for a donation or contribution.
  - e. "Charity" means any nonprofit or charitable organization on whose behalf Community Support solicits donations or contributions.
  - f. "Person" means natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government agency, or any other group or combination acting as an entity.
  - g. "Material fact" means a fact likely to affect a person's decision as to the amount of, or whether to make, a donation or contribution.
  - h. "Settling states" means the states that will file this Agreed Judgment. As of the signing of this Agreed Judgment those states may include Alaska, Arkansas, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico,

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and New Jersey Statutes Annotated 45:17A-18 et seq.; Tex. Occ. Code Ann. Ch. 1803 et seq. and Tex. Bus. & Com. Code Ann. § 17.61 et seq.

North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Washington, West Virginia, and Wisconsin. Further, Community Support, Inc., consents to additional states not listed herein filing this Agreed Judgment. This Agreed Judgment is valid as between Community Support, Inc. and any state that executes and enters it, without regard to whether any other states also execute and/or enter it.

## II.

### INJUNCTIVE RELIEF

#### Solicitation Practices

8. IT IS HEREBY ORDERED that Community Support Inc., in connection with soliciting contributions, is hereby permanently restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, orally or in writing, any material fact through false or misleading statements or representations. Without limiting the foregoing, this prohibition includes:

- 1) misrepresenting the nature or purpose of the charitable program activities;
- 2) misrepresenting the portion of the donation that will be retained by the charity;
- 3) misrepresenting the portion of the donation that will be directly used for its charity's charitable purposes;
- 4) misrepresenting, either specifically or generally, that the charity has any connection to or is affiliated with an organization or agency, including a police, fire or other public safety organization;
- 5) misrepresenting that donations will go to a specific purpose or program unless the amount of donations that will actually be used for that purpose or program or a portion is reasonably in proportion to the charity's total program service expenditures;
- 6) misrepresenting that donations will benefit persons or organizations in the donor's state or local community unless a substantial portion of the charity's program services are provided in that state or local community;
- 7) misrepresenting that a resident of a household has previously donated to the charity, or the amount of any previous donation; and

8) misrepresenting that a person has already made a pledge to donate to the charity.

B. Except as provided in paragraph C of this section, using a local, state or regional address on return envelopes and other solicitation or collection materials unless the address is one at which the client charity actually has an ongoing physical presence and conducts substantial activities unrelated to fundraising, except that Community Support shall have no more than 90 days from the Effective Date of this Judgment to continue to use supplies of written materials it had on hand on May 1, 2009. Nonetheless, Community Support shall comply with this requirement as soon as practicable.

i. CSI may use the address of a national or a regional processing center as necessary to promote cost-savings, which must be clearly and conspicuously identified as being a mail processing address on mailings and pledge materials received by consumers so that the consumer could not misapprehend that the address is the location of the charitable organization.

C. Using post office boxes or private mail boxes as collection points for donations in states or local communities in which Community Support is soliciting unless the client charity actually has an ongoing physical presence and conducts substantial activities unrelated to fundraising in such state or local community. Community Support must cease the use of all such post office boxes or private mail boxes no later than 90 days from the Effective Date of this Judgment.

D. Failing to provide the following disclosures IN THE FOLLOWING ORDER after the opening greeting of the call and after disclosure of the fact the call is being recorded

or in close proximity to the opening greeting, and beginning no later than the THIRD sentence after the opening greeting of the presentation, and in all instances prior to the request for any financial support:

- 1) the name of the individual solicitor and the full name of the company HE OR SHE WORKS FOR, immediately before the name of the nonprofit. The following is an acceptable example: " ... this is (Caller's full name), an employee of a company called Community Support, Inc. [or "an employee of Community Support, Incorporated"], calling on behalf of the [charity] ..." Further, Community Support, Inc. shall avoid any phrasing reasonably likely to cause confusion between the company name and the ordinary usage of the words "community support";
- 2) the paid and/or professional status of the individual making the call, using the terms "paid caller," OR "paid solicitor," unless state law expressly requires the use of different words; WORDING THAT CONCEALS, OBFUSCATES OR DIMINISHES THE INTENT OF THE DISCLOSURE, SUCH AS, "AS A PAID CALLER FOR COMMUNITY SUPPORT, INC., YOU HAVE THREE LEVELS OF SUPPORT TO CHOOSE FROM," DOES NOT COMPLY WITH THIS PROVISION.

E. Failing to clearly and accurately disclose how donations will substantially be used by the charity in each solicitation call.

F. Failing to conspicuously and accurately identify the location of the headquarters of the charity in all written material sent to donors.

G. Engaging in any conduct during the course of a telephone call that harasses, intimidates or frightens the recipient of a solicitation call. Harassment shall include causing a telephone to ring repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

H. Failing to comply with all state registration laws and rules of the Settling States, including without limitation those related to the following:

- a. the identification and registration of subcontractors of Community Support;
- b. the use of entities that provide caging services;
- c. required pre- and post-solicitation disclosures;
- d. affirmative disclosure of the charitable purposes for which the donation will be spent;
- e. misrepresenting the nature or purpose of the charitable program activities; and
- f. misrepresenting the portion of the donation that will be retained.

#### **Record Retention and Production**

9. Community Support, Inc. shall keep all relevant records for at least three years, unless state law would require a longer period of time or this Judgment specifies a shorter period. Community Support shall make all such records available upon ten days' notice to any settling state. The records that Community Support, Inc. must keep include:

- a. all recordings of all calls made by Community Support, however Community Support is only required to keep recordings for 12 months;
- b. copies of each call script, letter, pledge notice, and all other solicitation materials actually used by Community Support;
- c. records identifying all persons solicited by Community Support and their donations;

- d. copies of all complaints, emails, letters and other communications from donors or other persons solicited by Community Support. During the initial year following execution of this Agreed Judgment, every 30 days Community Support shall forward to the appropriate state agencies all complaints received from residents of the state, along with a statement of the steps, if any, Community Support took to resolve the complaint. Provided, this obligation shall continue for an additional year upon a request in writing from a settling state to continue for another year;
- e. copies of all Community Support's correspondence with any government agency including without limitation copies of all complaints, letters, and emails from persons solicited;
- f. copies of all contracts and other agreements with each of Community Support's charities for whom it solicits charitable donations;
- g. copies of all correspondence, reports, and summaries given to or received from Community Support's charities for whom it solicits charitable donations; and
- h. copies of all written authorizations or verifications from Community Support's clients regarding representations in the charitable solicitations made by Community Support.

**Substantiation**

10. IT IS FURTHER ORDERED that Community Support, Inc. shall ascertain and document before soliciting for any charity, or before entering into any agreement to solicit, and again commencing in June of 2009 and every 6 months until Community Support stops soliciting for that charity, the following:

- a. that the charity is registered, if it is required to be registered, and that it operates consistently with its stated purpose;
- b. that all initial, rebuttal, and other scripts, brochures, and other solicitation materials used by Community Support for the charity, do not misrepresent:
  - 1. the identity of the solicitor;
  - 2. the programs or services funded by the solicited contributions;
  - 3. the geographic area or areas within which those programs or services are provided; and

4. the portion of donations or contributions that will be, or has previously been, applied to the charitable purpose;
- c. that the charity has provided the programs or services described in the solicitation scripts and in other solicitation materials used by Community Support during the most recent fiscal or calendar year, provided that, if such programs or services will be or have been provided for the first time during the current calendar or fiscal year, the substantiation shall be sufficient if it identifies or describes the program's intended beneficiaries and intended local communities and includes the charity's written plan and itemized budget for delivering these benefits during the current calendar or fiscal year.

For purposes of this provision, "substantiation" means copies of thank you letters, donation receipts, canceled checks, or other evidence showing that the charity undertakes or will undertake the programs described in the solicitation materials used by Community Support; and

- d. that more than an incidental amount of the contributions received by the charity are spent on the programs or services described in the solicitation scripts and in other solicitation materials used by Community Support during the most recent fiscal or calendar year, including by reviewing a financial statement of the charity for each year and accounting period during the past two calendar or fiscal years (or for the period of the charity's operation, if less than two years) or, if the organization has filed a Form 990 or other tax return with the Internal Revenue Service at any time during the past three calendar or fiscal years, by reviewing copies of each Form 990 or other tax return filed by or on behalf of the charity during that time, provided that, if such programs or services will be or have been provided for the first time during the current calendar or fiscal year, the substantiation shall be sufficient if it identifies or describes the program's intended beneficiaries and intended local communities and includes the charity's written plan and itemized budget for delivering these benefits during the current calendar or fiscal year.
- e. that the charity has provided written confirmation that its scripts, rebuttal scripts, thank you letters, invoices, brochures, and other solicitation materials are true and not deceptive. However, this required confirmation is not, by itself, sufficient to comply with the requirements of this section. If Community Support has reasonable grounds to doubt the veracity of such confirmation, it must take reasonable steps to ascertain the truth of the representations.

11. Community Support shall meet with each client charity every six months to verify all information it uses in its solicitations is accurate and Community Support, Inc. shall document such verifications and meetings in writing and shall maintain such records, and all information obtained from the client, and provide them to any settling state regulator upon request. Such meetings may take place via telephone or videoconference.

12. No later than July 1, 2009, Community Support shall obtain from each charity for which it is currently soliciting, or with which it has a contract, written confirmation that the specific script, the rebuttal script, and Q&A's and all representations contained therein are true and accurate.

#### **Collection Efforts**

13. IT IS FURTHER ORDERED that Community Support, Inc., will not make any additional telephone calls to effect collection thirty days after the termination of any agreement with any client. In addition, in any agreement signed after May 15, 2009, Community Support, Inc. shall not include any term that allows it to continue to receive and issue the proceeds collected in accordance with the terms of any agreement with any client more than 90 days after termination of that agreement.

### **III.**

#### **ENFORCEMENT**

14. Every settling state shall have the authority to enforce or seek sanctions for violations of the provisions of this Judgment in this Court.

15. Each of the Settling States shall be able to enforce the terms of this agreed judgment independently in its state courts and without approval from the other participating states.

16. Community Support, Inc. shall pay \$5,000 to \$10,000 for each individual violation of this Judgment to the state in which the violation took place or where the recipient of the solicitation is located. But Community Support, Inc. shall not be liable to that settling state for that penalty if it:

- a. Supplies recordings, documents, and other evidence, and makes employees available for interviews or other statements, at the request of and to the satisfaction of such settling state, including but not limited to recordings of the calls in question and others as delineated by the settling state, and
- b. Clearly and convincingly demonstrates thereby that, as part of Community Support, Inc.'s routine business practices:
  - i. It has established and implemented written procedures to comply with the terms of this judgment and communicated them sufficiently to all relevant employees;
  - ii. It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to this Judgment;
  - iii. Community Support, Inc. has maintained thorough records of such policies, their implementation, and the program of training employees in those policies;
  - iv. Community Support, Inc. monitors and enforces compliance with the procedures established pursuant to this section and keeps and makes available to any Settling State upon request complete records of all such monitoring and enforcement; and

- v. Any conduct violating this agreed judgment is a unique and isolated aberration from the norm.

17. The above Paragraph 16 and its subparts apply only in the event the settling state invokes Paragraph 16's payment provision. The foregoing payment for violation of this Judgment is intended to supplement civil penalties and other remedies already available to the state under its consumer protection laws and charitable solicitation laws. In the event Community Support, Inc. commits a violation of this Judgment and/or any applicable state laws, the settling state, at its option, may invoke the payment provision of this Judgment, or may pursue any other remedies available by law, or both.

18. Community Support, Inc. shall pay all costs associated with any action necessary to enforce the terms of this Judgment, if it is found to have violated this Judgment.

#### IV.

#### PAYMENT

19. The Settling States shall recover and Community Support, Inc. shall pay \$200,000 according to the following payment schedule:

- a. \$50,000.00 on May 31, 2009.
- b. \$25,000.00 on August 15, 2009,
- c. \$50,000.00 on January 15, 2010, and
- d. \$25,000.00 on May 15, 2010.
- e. \$50,000.00 on November 15, 2010

20. Such monies shall be paid by Community Support, Inc. to the Attorney General of the State of Missouri on behalf of the Settling States. The \$200,000.00 shall be distributed to

the Settling States as per an agreement between them, to which Community Support, Inc. is not a party, and is attached to this Agreed Judgment as Exhibit A.

21. In the event such funds are not paid by the specified dates, interest on any unpaid balance shall accrue at the rate of nine percent (9%) per annum from the date due until paid in full. In addition to such interest, Community Support shall pay the Settling States an additional \$300,000 if it fails to pay any of the four payments specified above, within thirty (30) days of the due date.

22. Community Support, Inc. shall immediately pay the Settling States \$500,000 should any of the financial information it provided to the Settling States in negotiating this Judgment prove to be inaccurate in any material respect.

23. As soon as practicable following receipt of the above funds, the Attorney General of the State of Missouri shall cause such funds to be distributed among the Settling States pursuant to an agreement between and among the Settling States, to which Community Support Inc., is not a party. The funds may be used at the discretion of the receiving agency in each state, consistent with state law, for purposes of reimbursement of the state's costs and fees associated with the investigation and litigation of this matter, consumer protection, law enforcement, education, litigation funds, local consumer aid funds, public protection, or for any other purpose allowed by law.

## V.

### GENERAL PROVISIONS

24. Preservation of Law Enforcement Action. Nothing herein precludes the States from enforcing the provisions of this Agreed Judgment, or from pursuing any law enforcement

action with respect to the acts or practices of Community Support, Inc., not covered by this Agreed Judgment or any acts or practices conducted after the Effective Date.

25. Compliance with and Application of State and Federal Law. Nothing in this Judgment will be construed to limit the authority of any participating agency to protect the interests of their constituents. Accordingly, nothing herein relieves Community Support, Inc. of their continuing duty to comply with applicable laws of all States nor constitutes authorization by the State for Community Support, Inc. to engage in acts and practices prohibited by such laws.

26. Community Support, Inc. shall comply with all state and federal laws, as they currently exist or may be amended in the future, pertaining to unfair and deceptive trade practices, telemarketing or any form of charitable solicitation. Further, nothing in this Judgment shall in any way restrict any state from enforcing its Do-Not-Call laws, federal telemarketing sales rules, registration laws, or consumer protection laws against Community Support, Inc. or any of its clients, affiliates or subcontractors. The penalties and injunctions herein are intended to supplement state and federal laws and nothing herein shall relieve Community Support, Inc. of its duty of compliance with any law. Nothing in this Judgment shall be deemed to preclude any donor or charity from bringing any action it may have against Community Support that arises out of Community Support's solicitation efforts.

27. Non-Admission. This Judgment shall not be construed as, or deemed to be evidence of, an admission or concession on the part of Community Support, Inc., of any liability or wrongdoing whatsoever, which is hereby expressly denied and disclaimed by Community Support, Inc. This Judgment is a compromise settlement with no finding of any wrongdoing whatsoever, including but not limited to any violation of federal or state law.

28. Past and Future Practices. Nothing herein constitutes approval by any State of Community Support, Inc.'s past or future practices. Community Support, Inc., shall not make any representation contrary to this paragraph.

29. No Change to Substantive Rights. Nothing herein shall be construed to waive, modify or change any substantive rights of other persons or entities against Community Support, Inc., or against other persons or entities with respect to the acts and practices covered by this Agreed Judgment.

30. Review. Community Support has read and understands this Judgment and enters into it voluntarily, having been advised by its undersigned counsel of the meaning and effect of each provision of this Judgment.

31. Approval. Community Support, Inc. and all Settling States shall recommend that this Judgment be approved by a court with appropriate jurisdiction in all Settling States. In addition, Community Support, Inc. consents to this Judgment being presented, submitted, and filed ex parte and entered in all Settling States without the need for an entry of appearance Community Support, Inc. or any other sort of consent beyond Community Support's signature on this Judgment. Further, Community Support, Inc. consents to additional states not listed here filing this agreed judgment. This agreed judgment is valid as between Community Support, Inc. and any state that executes and enters it, without regard to whether any other states also execute and/or enter it.

32. Continuing Jurisdiction. Community Support and the Settling States acknowledge that the state court that approves this Judgment shall have continuing jurisdiction over all matters concerning this Judgment in that state.

Community Support, Inc. shall sign and agree to any document necessary to effectuate this Judgment.

33. For purposes of this document a signature page sent via fax or electronic mail shall be treated the same as an original signature, and signatures may affixed through counterparts.

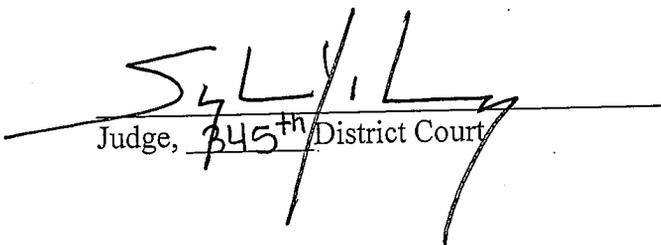
34. For purposes of this document a signature page sent via fax or electronic mail shall be treated the same as an original signature, and signatures may affixed through counterparts.

35. Community Support waives service of process and hereby authorizes its attorneys to accept all process and other filings by certified mail.

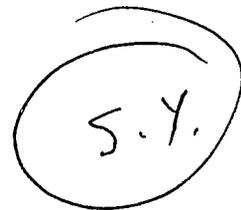
#### Signatures and Acceptance by Respondent Parties

The undersigned has the authority to consent and sign on behalf of Community Support, Inc. in this matter, and does consent to form and content of this Judgment and to its entry:

APPROVED AND SO ORDERED THIS 20 day of May, 2009.

  
Judge, 345<sup>th</sup> District Court

Accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

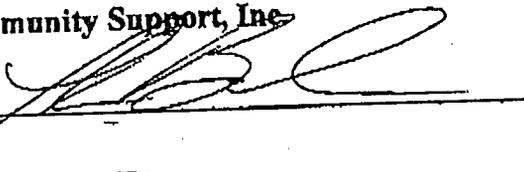


**Signatures and Acceptance by Respondent Parties**

The undersigned has the authority to consent and sign on behalf of Community Support, Inc. in this matter, and does consent to form and content of this Judgment and to its entry:

~~Community Support, Inc.~~

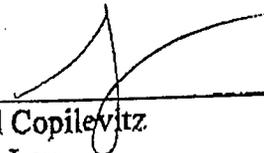
By: \_\_\_\_\_



Date: \_\_\_\_\_

5/18/09

Approved as to form:



Errol Copilevitz  
Greg Lam  
Copilevitz & Canter  
310 W. 20th Street, Suite 300  
Kansas City, Missouri 64108

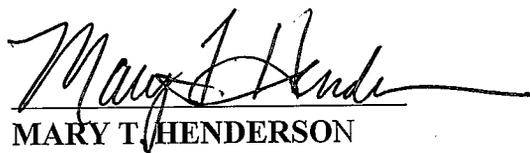
APPROVED AS TO FORM AND SUBSTANCE

GREG ABBOTT  
Attorney General of Texas

C. ANDREW WEBER  
First Assistant Attorney General

JEFF ROSE  
Deputy Attorney General for Litigation

PAUL D. CARMONA  
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ATTORNEYS FOR THE STATE OF TEXAS