

No. _____

STATE OF TEXAS,
Plaintiff,

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

FOUR PEAKS FINANCIAL
SERVICES, LLC,
Defendant.

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of FOUR PEAKS FINANCIAL SERVICES, LLC, Defendant, or "Four Peaks," and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

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

JURISDICTION

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 & Supp. 2008) ("DTPA") upon the grounds that Defendant has engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

3. 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, also 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 521 of the TEX. BUS. & COM. CODE ANN § 521.001, *et seq.*

NATURE OF DEFENDANT'S OPERATIONS

4. Defendant operates a for-profit debt settlement company. Debt settlement is a form of consumer debt relief, targeted to consumers with thousands of dollars of unsecured debt. Consumers interested in debt settlement likely are also considering options such as traditional credit counseling, debt management plans, debt consolidation loans, and possibly bankruptcy.

5. Unlike those alternatives, debt settlement is an aggressive form of debt relief, in which consumers stop paying all of their unsecured debts, and save the money they would normally use to pay those debts. After several months, when the accounts are in default, the debt settlement company will contact the creditor and negotiate a lump-sum payoff of the debt, ideally at a highly reduced percentage. The consumer then uses the money that he/she has been saving to pay the lump-sum, and can then have the benefit of a significant portion of their original debt being forgiven.

6. Because of its theoretical potential for a quick turnaround and significant savings, debt settlement is often promoted emphasizing these facts. For example, Defendant Four Peaks represents on its web site that: “[T]he typical Four Peaks' client enrolls in a 36-month debt settlement program and realizes approximately 45% in reduction of debt.” Debt settlement companies may also disparage the alternative forms of debt relief in order to persuade consumers that settlement is the best option for them. For example, Defendant Four Peaks advises potential customers that, “There are alternative solutions: debt consolidation, which rarely is a viable answer, or bankruptcy, which destroys your credit for years to come. Only debt settlement offers a practical remedy that works realistically with your life and provides a clean slate.” In reality, the debt settlement company has

no interest in nor ability to advise consumers on the best option for them, rather they are selling their program.

7. Because debt settlement only works if consumers are not making monthly payments on their unsecured debts (since creditors will not want to settle a debt if they are receiving monthly payments), there are inherent risks involved with participating in a debt settlement program, that can have catastrophic effects to the consumer. Specifically, consumers entering a debt settlement program may experience any, or all, of the following:

- A. Creditors will continue to assess interest, late fees, over-limit charges, and any other fees associated with the account. As a result, at the time that a settlement is reached, the consumer owes significantly more on their account, thus reducing the actual savings.
- B. Creditors are under no obligation to accept, or even entertain, a settlement offer. When this occurs, consumers are stuck with a vastly higher balance because of the interest and late fees that have accumulated on the debt. As a result, the consumer can end up in a far worse financial situation than when they entered the program.
- C. Because they are no longer receiving monthly payments, creditors will likely engage in collection activities which may include repeated phone calls and other correspondence. Over time, these activities can increase, especially as the consumer's account may get transferred to a collection agency.
- D. Once a consumer stops paying on their accounts, the creditor may file a lawsuit against the consumer for breaking their contract. Most debt settlement companies, including Defendant, cannot offer any assistance when a lawsuit is filed and as a result the consumer can end up with multiple judgments against them.
- E. The consumer's credit reports will reflect the late charges and nonpayment of their unsecured debt. As a result, the consumer's credit score will drop while participating in the program, and the consumer may experience the long term effects of a low credit score, which can include difficulty in buying a house or car, obtaining insurance, or obtaining employment.
- F. The debt forgiveness that occurs as part of the settlement is taxable income.

8. Because debt settlement is generally a “for-profit” industry, companies charge their customers large fees. Fees are typically calculated as a percentage of the total debt the consumer brings into the program, are often collected in the first several months of the program, and are for the most part non-refundable. In addition, there may be monthly maintenance fees, enrollment fees, administrative fees, and back-end settlement fees. As a result, the high fees cut into the potential savings that a consumer can experience in the program. Moreover, these fees may be the tip of the iceberg for consumers - if they are sued and want an attorney they may have to pay a lawyer’s legal fees, if they want to improve their credit after participating in the settlement program they may have to pay a credit repair firm’s fees, and if they want tax advice regarding debt forgiveness, they may need to pay an accountant.

9. Because of the additional costs and negative effects of debt settlement, it is often difficult to say what a consumer’s true cost is in a program, or what benefit they may really see. For example, a consumer with a \$10,000 unsecured debt may be told their debt can settle for \$4,000, or a 60% savings, but when the company’s fees are added, along with whatever costs are associated with improving the damage caused by the settlement process, the consumer likely will spend far more than \$4,000 in resolving the debt. In addition, late fees and interest will likely increase the \$10,000 debt, such that a 60% settlement will actually be for much more than \$4,000. Add to this the risk that a creditor will not settle an account, and it becomes evident that debt settlement is a risky form of debt management, that requires clear disclosures to consumers so that they can make an informed decision.

DEFENDANT

10. Defendant Four Peaks Financial Services, LLC is an Arizona limited liability company that does business in Texas and throughout the United States. Defendant’s principal place

of business is at 9375 East Shea Boulevard, Suite 100, Scottsdale, Arizona 85260. Defendant engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

VENUE

11. Venue of this suit lies in Travis County, Texas for the following reasons:
 - A. Under the DTPA §17.47(b), venue is proper because Defendant has done business in Travis County, Texas.
 - B. Under TEX. BUS. & COM. CODE § 521.151(c), venue is proper in Travis County.

PUBLIC INTEREST

12. Because Plaintiff STATE OF TEXAS has reason to believe that Defendant has engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendant has caused and will cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest, and at least seven days prior to instituting this action contacted Defendant to inform it in general of the alleged unlawful conduct.

13. Additionally, the Texas Attorney General has evidence that Defendant is engaging in, has engaged in, or is about to engage in acts and practices which violate the State of Texas'

identity theft prevention laws, as set forth below, namely failing to protect and safeguard consumers' sensitive personal information, collected or maintained by Defendant in the regular course of business, from unlawful use or disclosure. Because these unlawful practices expose Defendant's customers to the risk of identity theft, these proceedings are in the public interest.

14. In 2005, the Texas Legislature enacted the Identity Theft Enforcement and Protection Act to protect citizens from identity theft. In so doing, the legislature noted that identity theft is one of the fastest growing crimes in the country, and that Texas has one of the highest rates of identity theft in the United States.¹ 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.² Identity theft also imposes a substantial cost on businesses - in 2002 the total cost of losses to businesses due to identity theft in the United States was estimated at almost \$50 billion³.

TRADE AND COMMERCE

15. Defendant is engaged in trade and commerce as that term is defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

16. Whenever in this Petition it is alleged that Defendant did any act, it is meant that:
- A. Defendant performed or participated in the act; or
 - B. Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

¹See 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).

²*Id.*

³*Id.*

STATEMENT OF FACTS

17. Defendant Four Peaks operates a web site at www.fourpeaksfinancialservices.com, on which it advertises its debt settlement program, which is available nationwide including in Travis County, Texas. Although Defendant represents that it can provide numerous options of debt relief to consumers, including debt consolidation, credit enhancement, and education, in reality, Defendant only sells a debt settlement program. Defendant's web site includes several representations regarding the benefits of its program:

- A. "By putting your financial situation in Four Peaks' hands, you're signing on to first settle your unsecured debts, then effectively clear your credit report of damaging, inaccurate, or baseless information."
- B. "By sticking to the proposed program, you'll successfully eliminate your unsecured debt simply by staying the course - and earn yourself a well-deserved financial 'clean slate.'"
- C. "Keep in mind that though the typical Four Peaks' client enrolls in a 36-month debt settlement program and realizes approximately 45% in reduction of debt, we handle all types of cases. Our specialists can arrange a debt settlement program from as little as a few months to three years in length."
- D. "Though our typical client enjoys approximately 45% reduction in debt, this reduction can range anywhere from 30% to 60%."
- E. "Our advisors are ready and willing to help you negotiate your debts. What's more, you'll avoid bankruptcy, put an end to the harassing phone calls from creditors, and allow your credit score to dramatically improve - the right start for your new financial independence and smarter lifestyle."
- F. "...debt that is settled will be identified on a client's credit report as 'paid as agreed' or 'settled for a lesser amount' rather than simply 'paid in full.'"
- G. "We offer unbiased and independent services to consumers."

18. On its web site, Defendant further describes alternative forms of debt relief. For example:

- A. "Four Peaks Financial Services is a private, for-profit company, which benefits you. How? Because, unlike traditional non-profit credit counseling agencies, Four Peaks Financial does not depend on donations from clients and/or creditors in order to cover the cost of doing business. This business model allows us to better serve your interests, since we work for you - not your creditors."
- B. "There are alternative solutions: debt consolidation, which rarely is a viable answer, or bankruptcy, which destroys your credit for years to come."

19. In reality however, the representations and promises made by Four Peaks as described above are often false, or at best misleading, and contain several material omissions regarding Defendant's, or any, debt settlement program. These include:

- A. Four Peaks cannot know at what percentage consumers' debts will settle for, nor can they know how long it will take to complete Defendant's program. Indeed, since nothing requires creditors to settle at a particular rate or even accept a settlement, Four Peaks cannot know what individuals' experiences will be – especially since it does not know who the consumers' creditors are at the time of the representations.
- B. Four Peaks' program, like all debt settlement programs, can often result in long-term negative effects on the consumer's credit.
- C. Four Peaks misrepresents its ability to remove damaging information from one's credit report.
- D. Four Peaks disparages consumer credit counseling and bankruptcy, without disclosing that the negative effects of those options they choose to emphasize are also true of debt settlement - which can destroy credit for years to come and depends on consumers' payments to survive.

20. Four Peaks fails to clearly disclose the negative effects of its, or any, debt settlement program. These include the fact that creditors may not accept any settlement, the fact that debt forgiveness is taxed as income, the fact that late fees and interest will increase the amount of the consumer's debt, the fact that Defendant cannot work with certain creditors, and the negative effects on the consumer's credit. Rather, by failing to clearly disclose this material information, and disparaging other forms of debt relief, Defendant misleads consumers into believing that Four Peaks'

debt settlement program is the only viable option, no matter what the consumers unique situations may be.

21. Defendant represents that it protects and safeguards the personal information it obtains from consumers:

- A. "With regard to confidential information, only select Four Peaks personnel whose purpose is to serve our clients' best interests will have access to this information."
- B. ". . . standards have been set up to ensure that client information is safeguarded and is used solely for the purposes of carrying out our business."
- C. "Four Peaks does not share any client information with outside parties,"
- D. "We restrict access to your personal information only to those employees who need to know that information to service and maintain your account with us. We also maintain physical, electronic and procedural safeguards that comply with federal requirements to guard your personal information."
- E. "We do not share any personal information about current or former clients, or anyone who has received counseling or who has inquired about a debt settlement program except as permitted by law."

22. Despite Four Peaks' repeated assertions that it safeguards consumers' personal identifying information, Defendant has exposed the sensitive personal information of its clients to the public via its web site, in violation of Texas identity theft prevention and consumer protection laws.

VIOLATIONS OF DTPA

23. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

24. Defendant, as alleged and detailed above, has in the course of trade and commerce engaged in false, misleading, and deceptive acts and practices declared unlawful in § 17.46(a) and (b) of the DTPA. Such acts include:

- A. Engaging in false, misleading or deceptive acts or practices in violation of § 17.46(a) of the DTPA.
- B. 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 in violation of § 17.46(b)(5) of the DTPA.
- C. Disparaging the goods, services, or business of another by false or misleading representation of facts in violation of § 17.46(b)(8) of the DTPA.
- D. Advertising goods or services with intent not to sell them as advertised in violation of § 17.46(b)(9) of the DTPA.
- E. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of § 17.46(b)(12) of the DTPA. And
- F. 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 which the consumer would not have entered into had the information been disclosed in violation of § 17.46(b)(24) of the DTPA.

VIOLATIONS OF IDENTITY THEFT ENFORCEMENT AND PROTECTION ACT

25. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

26. Defendant, as alleged above and detailed below, has failed to implement and maintain reasonable procedures, including taking any corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business, in violation of TEX. BUS. & COM. CODE § 521.052(a).

PRAYER

27. By reason of the acts and practices described herein above, DEFENDANT has violated and will continue to violate the laws as herein alleged unless enjoined by this Honorable Court.

28. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that DEFENDANT be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued; and that upon final hearing a permanent injunction be issued restraining and enjoining DEFENDANT, its officers, agents, servants, employees and attorneys, and any other person in active concert or participation with DEFENDANT, from engaging in the following acts or practices:

- A. Representing to consumers that Defendant will settle consumers' debts for a certain percentage of the debt, or within a certain percentage range, unless Defendant has a substantial basis in fact for the representations. For purposes of compliance with this term, the substantial basis in fact shall be:
 - (i) Contractual agreements with creditors to settle debts with clients of the Defendant at the represented percentage of the debt, or within the represented percentage range, or
 - (ii) A documented record of at least three years of settlement data which reflects that at least 75% of accounts handled by Defendant settled at or below the represented percentage or percentage range.
- B. Failing to inform consumers that Defendant cannot assist with certain types of debt, including but not limited to student loans.
- C. Failing to disclose that consumers may be sued by their creditors if they are enrolled in Defendant's program.
- D. Failing to disclose to consumers that Defendant will not be able to assist the consumer with any lawsuit that is filed by a creditor against the consumer.
- E. Failing to disclose to consumers that enrollment in Defendant's program will likely result in increased collection efforts by the consumers' creditors.
- F. Misrepresenting Defendant's ability to cease contact and collection efforts by the consumers' creditors.
- G. Misrepresenting Defendant's ability to settle with all creditors, or at any particular rate with those creditors.
- H. Failing to disclose to consumers any creditors who refuse to work with Defendant and/or any other debt settlement companies.

- I. Failing to disclose that a consumer's debt will continue to increase while the consumer is participating in Defendant's debt settlement program, including but not limited to:
 - (i) Increases due to compounding interest;
 - (ii) Late fees and other penalties for nonpayment; and
 - (iii) Increased interest rates due to default.
- J. Failing to disclose to consumers that the amount of debt they are ultimately required to pay in order to resolve a debt obligation may be far larger than the amount of debt with which they enter Defendant's program.
- K. Failing to disclose that Defendant cannot guarantee that the consumers' creditors will agree to settle with the consumers for any amount less than the full amount owed.
- L. Failing to disclose that consumers will owe taxes on forgiven debt amounts.
- M. Making any false or misleading representations regarding bankruptcy, credit counseling, or other forms of debt relief.
- N. Misrepresenting Defendant's ability to provide tax, legal, accounting, or credit repair advice.
- O. Misrepresenting Defendant's experience or past success in debt settlement.
- P. Misrepresenting the effects of debt settlement, or any other form of debt relief, on a consumer's credit score.
- Q. Failing to implement and maintain reasonable procedures, including taking any corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the Defendant in the regular course of business.

29. Plaintiff further requests that upon final hearing this Court award such relief as the Court finds necessary to redress injury to consumers including, but not limited to, restitution of monies paid by consumers; and further order Defendant to pay to the State of Texas:

- A. Restitution of monies paid by consumers.
- B. Disgorgement of any ill-gotten gains.

- C. Civil penalties of up to \$20,000.00 per violation of the DTPA.
 - D. Civil penalties of at least \$2,000.00 up to \$50,000.00 per violation of the Identity Theft Enforcement and Protection Act.
 - E. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law. And,
 - F. All costs of Court, costs of investigation, and reasonable attorneys fees pursuant to TEX. GOVT. CODE ANN. § 402.006(c).
30. Plaintiff further prays for such other relief to which Plaintiff 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 Public Health Division



PAUL SINGER
State Bar No. 24033197
NANETTE DINUNZIO
State Bar No. 24036484
Assistant Attorneys General
Consumer Protection and Public Health Division
P.O. Box 12548
Austin, Texas 78711
(512) 463-2070 (telephone)
(512) 473-8301 (facsimile)