

NO. _____

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	
	§	HIDALGO COUNTY, TEXAS
FURNITURE SUPER CENTER, L.L.C.	§	
d/b/a NATIONAL FURNITURE	§	
LIQUIDATORS,	§	
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

COMES NOW, THE STATE OF TEXAS, plaintiff, acting by and through Attorney General GREG ABBOTT, filing Plaintiff's Original Petition and Application for Temporary and Permanent Injunction, complaining of and against FURNITURE SUPER CENTER, L.L.C. d/b/a NATIONAL FURNITURE LIQUIDATORS (hereinafter "defendant") and for cause of action would respectfully show:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.2(b)(3).

NATURE OF THIS SUIT

2. This suit is brought by the ATTORNEY GENERAL through the Consumer Protection and Public Health 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 Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (hereinafter "DTPA"), and the Going Out of Business Act, TEX. BUS. & COM. CODE ANN. §17.81 *et seq.* (hereinafter "GOBA"). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. BUS. &

COM. CODE ANN. § 17.47. The GOBA also grants authority to the Attorney General to seek injunctive relief for violations of its provisions. TEX. BUS. & COM. CODE ANN. § 17.93.

DEFENDANT

3. Defendant, FURNITURE SUPER CENTER, L.L.C., is a Texas corporation and may be served with process by serving its registered agent for service, Humberto Saenz, 1800 South Main Street, Ste. 135, McAllen, Texas 78503.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Section 17.47(b) of the DTPA.

VENUE

5. Venue of this suit lies in Hidalgo County, Texas, for the following reasons:

- a. Under TEX. CIV. PRAC. & REM. 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 the county of suit; and
- b. Under DTPA § 17.47(b), venue is proper because defendant has done business in the county of suit.

PUBLIC INTEREST

6. Plaintiff, THE STATE OF TEXAS, has reason to believe that defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that defendant has, by means of these unlawful acts and practices, caused damage to or acquired money or property from persons, and that defendant adversely affects the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection and Public Health Division of the Office of the

Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

7. Defendant has, at all times described below, engaged in conduct which constitutes "trade" and "commerce," as those terms are defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

8. Whenever in this petition it is alleged that defendant did any act, it is meant that defendant performed or participated in the act, or that the officers, agents or employees of defendant performed or participated in the act on behalf of and under the authority of defendant.

NOTICE BEFORE SUIT GIVEN

9. The Consumer Protection and Public Health Division contacted defendant in writing to inform it in general of the alleged unlawful conduct at least seven days before this suit was filed, as may be required by § 17.47(a) of the DTPA.

NATURE OF DEFENDANT'S OPERATION

10. Defendant is the owner of NATIONAL FURNITURE LIQUIDATORS a retail business that engages in the retail sale of furniture to consumers.

FACTUAL ALLEGATIONS

11. Defendant operates NATIONAL FURNITURE LIQUIDATORS at 2246 Nolana, McAllen, Texas. On or about June 24, 2009, defendant conducted a sale advertised with the phrase "Store Closing Forever" and "Lost Our Lease" on the front of its business. A copy of a photograph taken of defendant's storefront advertisement, is attached hereto as State's Exhibit 1, and incorporated herein for all purposes. On or about June 24, 2009, defendant

also advertised its going out of business sale with hand held advertisements on busy street intersections in the McAllen area, that included the phrase "Store Closing Forever" and "All Must Go." A copy of a photograph taken of defendant's hand held advertisement, is attached hereto as State's Exhibit 2, and incorporated herein for all purposes.

12. Defendant has failed to file an original inventory with the Hidalgo County Appraisal District. As a result, defendant has been advertising a going out of business sale without a permit from the Hidalgo County Appraisal District.

13. Based on information provided by consumers who purchased furniture from defendant, the Consumer Protection and Public Health Division, Office of the Attorney General, has reason to believe that, defendant sold furniture by misrepresenting to the consumers, prior to the sale, that the furniture would be delivered or available for pick-up within: 1) the same day of purchase, 2) within 1-2 days of purchase, or 3) at a specified date agreed to by defendant and the consumer. As a result of defendant's misrepresentations, the consumers purchased the furniture.

14. At the time of purchase, consumers signed an instrument called a "invoice contract" that imposed limitations on the recourse available to them. The invoice contract provided that defendant's customers are not entitled to refunds, returns, or exchanges. When customers requested a refund of their purchase money because defendant failed to deliver the furniture by the date indicated or within a reasonable period of time thereafter, defendant denied customers' refund requests.

15. Based on information provided by consumers who purchased furniture from defendant, the Consumer Protection and Public Health Division, Office of the Attorney General, has reason to believe that consumers purchased the furniture from defendant and,

at the time of the sales transaction, defendant knew or should of known that the furniture would not be delivered to, or available for pick-up by its customers by the date indicated, or within a reasonable period of time thereafter, because the furniture was not in stock and it would take a longer period of time to acquire the furniture from the source supplier. Defendant failed to disclose such information intending to induce the consumer in purchasing the furniture, a transaction into which the consumer would not have entered had the information been disclosed.

16. Defendant acquired money by means of its failure to disclose information, as alleged in the preceding paragraph, from its customers.

DTPA VIOLATIONS

17. Defendants, as alleged above, have 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 as follows:

- a. By providing a false delivery date to induce consumers to purchase its furniture, defendant is engaging in or has engaged in an act or practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA;
- b. By representing that the furniture will be delivered within 2 to 10 days to induce consumers to purchase the furniture, defendant is representing that an agreement confers or involves rights, remedies or obligations which it does not have or involve, in violation of §17.46(b)(12) of the DTPA;
- c. By fraudulently advertising that it is going out of business, in violation of §17.46(b)(17) of the DTPA; and

d. By failing to disclose that the furniture for sale by defendant would not be delivered within 10 days, which was known at the time of the sale transaction, defendant intended to induce consumers into purchasing the furniture, a transaction into which consumers would not have entered had the information been disclosed, in violation of §17.46(b)(24) of the DTPA.

GOING OUT OF BUSINESS ACT VIOLATIONS

18. Defendant, as alleged above, have in the course of trade and commerce violated the GOBA, as follows:

a. By fraudulently advertising that it is going out of business, in violation of §17.82 of the GOBA; and

b. By failing to file the original inventory, sale inventory and the final inventory, in violation of §§ 17.83, 17.86 and 17.87 of the GOBA.

INJURY TO CONSUMERS

19. Defendant has, by means of the unlawful act(s) or practice(s) alleged, caused actual damages to identifiable persons who should be compensated for such damages, or in the alternative, acquired money or property from persons to whom such money or property should be restored.

20. Because defendant has engaged in the unlawful acts and practices described above, defendant has violated the law as alleged in this petition, or will continue to violate the law, and should be restrained by this Honorable Court will continue to violate the laws of the State of Texas and cause injury to the general public.

PRAYER

21. WHEREFORE, 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 upon trial of this cause a PERMANENT INJUNCTION be issued, restraining and enjoining defendant, his officers, agents, servants, employees and attorneys and any other person in active concert or participation with defendant from the following acts or practices:

- a. Providing a false delivery date to induce consumers to purchase its furniture;
- b. Falsely representing that the furniture will be delivered within a specified date to induce consumers to purchase the furniture; and
- c. advertising a sale with the phrase "Store Closing Forever," "Lost Our Lease," "going out of business," "closing out," or a similar phrase or word indicating that defendant's enterprise is ceasing business without a permit from the county appraiser.

22. Plaintiff, THE STATE OF TEXAS, further prays that this Court order defendant to comply with the procedures required by the GOBA §17.81 *et seq.*

23. Plaintiff, THE STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled temporary injunction hearing and prior to defendant's answer date, with reasonable shortened notice to defendant and his attorney, if known.

24. In addition, plaintiff, THE STATE OF TEXAS, respectfully prays that this Court will:

- a. Adjudge against defendant civil penalties in favor of plaintiff, STATE OF TEXAS, in the amount not to exceed more than \$20,000.00 per violation of the DTPA;

- b. Order defendant to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;
 - c. Adjudge against defendant reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006;
 - d. Adjudge against defendant pre-judgment and post-judgment interest at the highest lawful rate;
 - e. Rescind all agreements entered into by and between defendant and consumers;
 - f. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).
25. Further, plaintiff, THE STATE OF TEXAS, respectfully prays for all other relief to which plaintiff, THE STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Assistant Attorney General for Civil
Litigation

PAUL D. CARMONA
Chief, Consumer Protection and
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Attorney for Plaintiff

VERIFICATION

STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION, and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

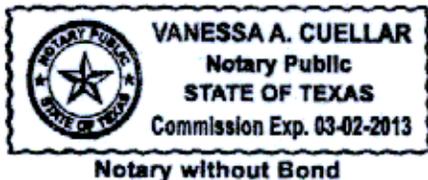
Rozanne N. Lopez

ROZANNE N. LOPEZ
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 29th day of July, 2009.

Vanessa Cuellar

NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS



STORE CLOSING FOREVER

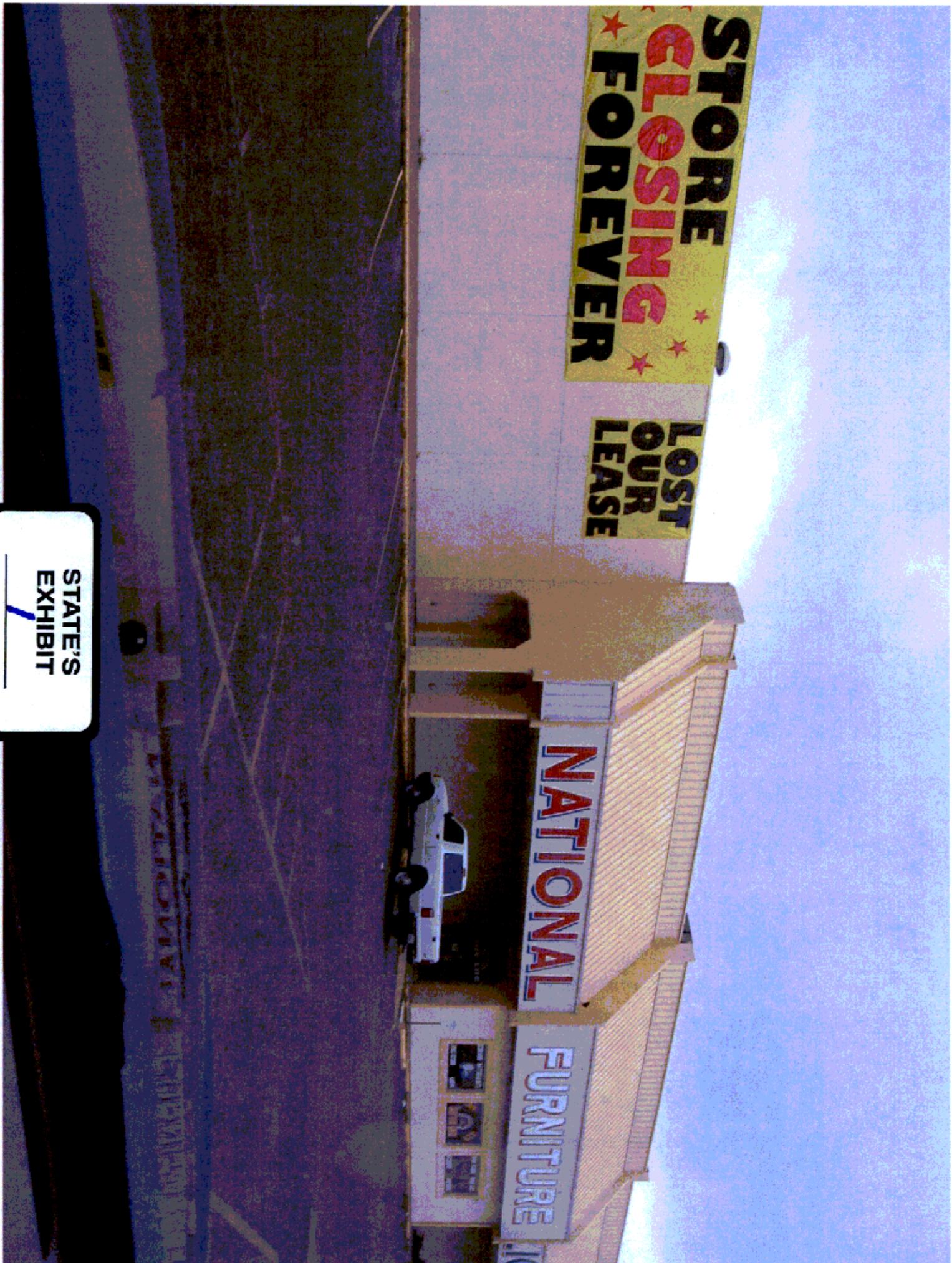
LOST OUR LEASE

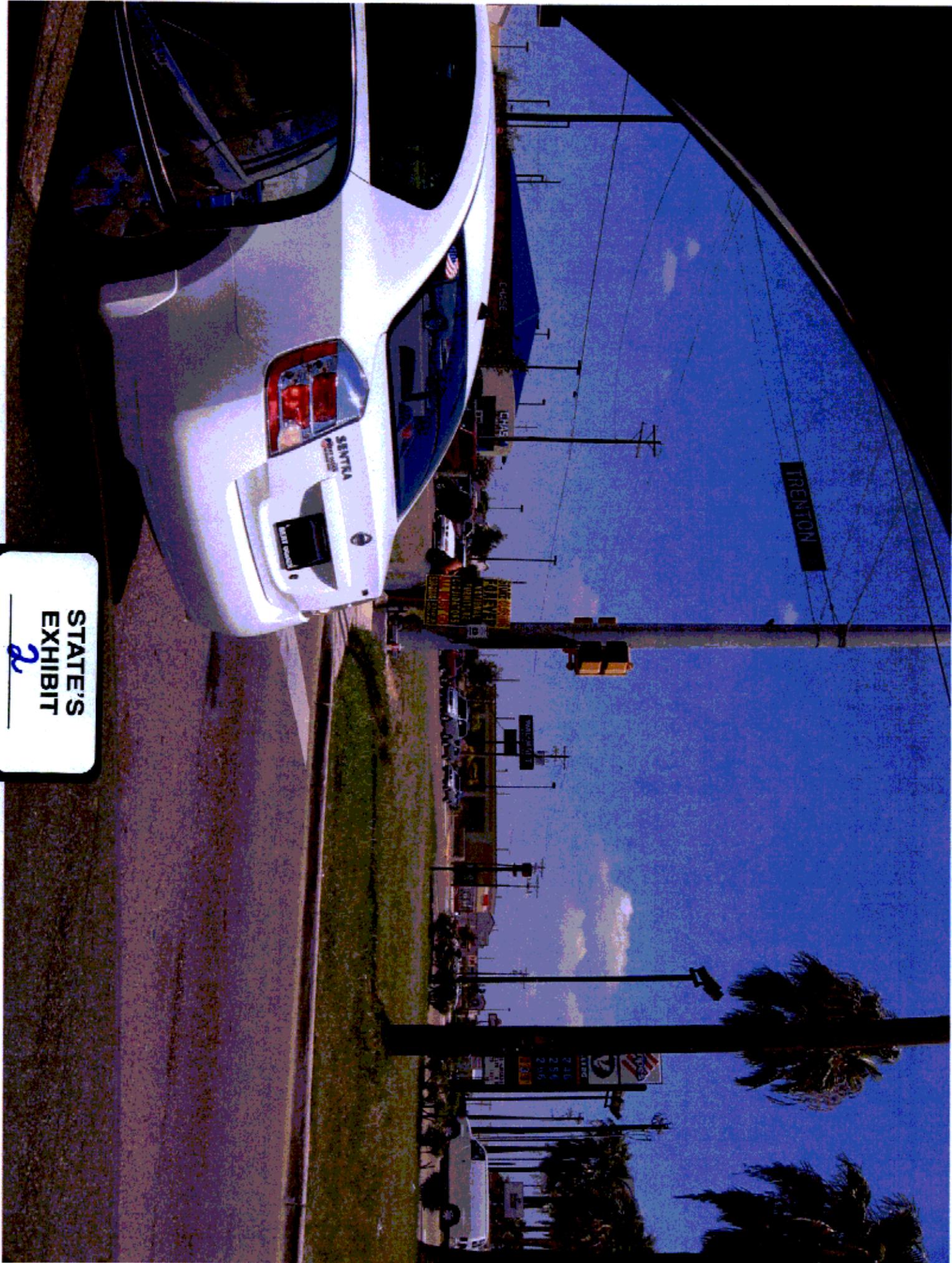
NATIONAL

FURNITURE



STATE'S EXHIBIT





STATE'S
EXHIBIT
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