

Cause No. \_\_\_\_\_

<b>STATE OF TEXAS,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>UNITED STATES FALLEN HEROES</b>	§	
<b>FOUNDATION, a nonprofit corporation</b>	§	<b>OF TARRANT COUNTY, TEXAS</b>
<b>in the State of Texas, and EVAN</b>	§	
<b>WALTER COLEMAN a/k/a WALTER</b>	§	
<b>EVAN COLEMAN a/k/a WALTER</b>	§	
<b>RALEIGH COLEMAN, JR.,</b>	§	
<b>Individually,</b>	§	
<b>Defendants</b>	§	_____ <b>JUDICIAL DISTRICT</b>

**STATE OF TEXAS ORIGINAL PETITION**  
**FOR CIVIL PENALTIES AND FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, acting by and through its Attorney General, GREG ABBOTT (“State”), and files this Original Petition against UNITED STATES FALLEN HEROES FOUNDATION (“USFHF”), a Texas nonprofit corporation, and EVAN WALTER COLEMAN, Individually a/k/a WALTER EVAN COLEMAN a/k/a WALTER RALEIGH COLEMAN, JR.(“Defendants”) under the authority of the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE ANN. §17.47 (**Vernon 2002**) (“TDTPA”), and in support thereof would respectfully show the Court as follows:

**I. SUMMARY OF THE CASE**

1.1 Defendant Evan Walter Coleman, Individually, a/k/a Walter Evan Coleman a/k/a Walter Raleigh Coleman, Jr. (“Coleman”) is accused of violating the Texas Deceptive Trade Practices and Consumer Protection Act. Coleman has taken money from consumers and businesses

in this State under the auspices of the United States Fallen Heroes Foundation. As Chairman of the foundation, Coleman falsely represented that the funds he collected would be used to build a national memorial in Kennedale, Texas for the fallen soldiers of the military operations in Iraq, Afghanistan and the Persian Gulf. Instead, Coleman misappropriated charitable funds for personal use, often paying for his mortgage, meals and utilities with the money collected from consumers. He frequently and periodically withdrew the fund's monies from ATMs. Coleman deposited donations collected for the fund into accounts other than an United States Fallen Heroes account. Coleman set up jars of money marked "United States Fallen Heroes Fund" at convenience stores taking the money without accounting for any of the funds collected. Coleman misrepresented the Foundation's tax exemption status to the City of Kennedale and the public. When the State began the investigation into Coleman's activities he abruptly resigned as Chairman of the foundation. But because Coleman has preyed upon the public with the deceptive conduct described herein, the State seeks by this suit to enjoin him from any further such activity and association with the foundation. The State also seeks restitution and a judgment for civil penalties to be paid to the State.

## **II. PARTY PLAINTIFF**

2.1 This suit is brought in the name of the STATE OF TEXAS by and through its Attorney General, Greg Abbott, and his Consumer Protection & Public Health Division under the authority granted to him by Section 17.47 of the Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.47 (**Vernon 2002**), and by the Constitution, statutes, and laws of the State of Texas.

## **III. PARTY DEFENDANTS**

3.1 Defendant UNITED STATES FALLEN HEROES FOUNDATION is a Texas

domestic not-for-profit corporation engaged and doing business in the State of Texas. **Defendant's principal place of business is located in Tarrant County, Texas. Defendant USFHF may be served with process by serving its registered agent, Larry W. Summers at 618 Hillside Drive, Kennedale, Tarrant County, Texas, 76060, or wherever he may be found.**

3.2 Defendant WALTER EVAN COLEMAN a/k/a WALTER RALEIGH COLEMAN, JR. is the former chairman of Defendant USFHF and an individual resident of the State of Texas. **Defendant EVAN WALTER COLEMAN a/k/a WALTER EVAN COLEMAN a/k/a WALTER RALEIGH COLEMAN, JR. may be served with process at 4424 Shady Elm Drive, Mansfield, Tarrant County, Texas, 76063, or wherever he may be found.**

#### **IV. DISCOVERY CONTROL PLAN**

4.1 Pursuant to Rule 190.1, TEX. R. CIV. P., the State submits that this suit should be governed by Rule 190.3, Level 2 discovery.

#### **V. AUTHORITY AND JURISDICTION**

5.1 This action is brought by the Attorney General GREG ABBOTT, through his Consumer Protection & 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 TDTPA, TEX. BUS. & COM. CODE ANN. §17.47 (**Vernon 2002**), **upon the grounds that Defendants have engaged in false, misleading or deceptive acts or practices in the course of trade and commerce as defined in, and declared unlawful by §17.46 of the TDTPA.**

#### **VI. VENUE**

6.1 Venue of this suit is proper in Tarrant County under §15.002(a)(1) of the Texas Civil Practice and Remedies Code because a substantial part of events or omissions giving rise to this

claim occurred in Tarrant County and because Defendant USFHF has its principal office in Tarrant County.

6.2 Venue of this suit is proper in Tarrant County pursuant to Section 17.47(b) of the TDTPA because the transactions and events giving rise to this action occurred in Tarrant County and because Defendant USFHF has its principal place of business in Tarrant County.

## **VII. PUBLIC INTEREST**

7.1 By reason of the institution and operation of the unlawful practices set forth herein, Defendants have and will continue to cause immediate and irreparable injury, loss and damage to the State and its citizens, and will also cause adverse affects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

7.2 Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by §17.45(6) of the TDTPA.

## **VIII. NOTICE BEFORE SUIT**

8.1 The State contacted Defendants in writing to inform them 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 TDTPA.

## **IX. PARTICULARLY APPLICABLE LAW**

9.1 False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are subject to action by the Consumer Protection Division under the Texas Deceptive Trade Practices Act. TEX. BUS. & COM. CODE ANN. §17.46(a); *see also* TDTPA, TEX. BUS. & COM.

CODE ANN. §§17.41-17.63. The TDTPA prohibits:

- “engaging in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” TEX. BUS. & COM. CODE ANN. §17.46(a).
- “causing confusion or misunderstanding as to the source, approval, or certification of goods or services.” TEX. BUS. & COM. CODE ANN. §17.46(b)(2).
- “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.” TEX. BUS. & COM. CODE ANN. §17.46(b)(5).
- “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.” TEX. BUS. & COM. CODE ANN. §17.46(b)(24).

9.2 Section 17.47 of the TDTPA states “whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.” TEX. BUS. & COM. CODE ANN. §17.47(a).

9.3 The TDTPA further provides that in addition to injunctive relief, upon request by the Consumer Protection Division, a civil penalty may be awarded to be paid to the State in the amount of not more than \$20,000 per violation. TEX. BUS. & COM. CODE §17.47(c). In determining the amount of such civil penalty, the following factors are required to be considered:

- (1) the seriousness of the violation, including the nature, circumstances, extent

- and gravity of any prohibited act or practice;
  - (2) the history of previous violations;
  - (3) the amount necessary to deter future violations;
  - (4) the economic effect on the person against whom the penalty is to be assessed;
  - (5) knowledge of the illegality of the act or practice; and
  - (6) any other matter that justice may require.
- TEX. BUS. & COM. CODE §17.47(g).

9.4 “Trade” and “Commerce” under the TDTPA, are not understood as being limited to only for-profit business activity.<sup>1</sup> “Trade” and “Commerce” means the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value, wherever situated, and includes any trade or commerce directly affecting the people of this State. TEX. BUS. & COM. CODE §17.44(6).

9.5 “Consumer protection division” is defined as the consumer protection division of the attorney general’s office. TEX. BUS. & COM. CODE ANN. §17.45(8).

9.6 “Person” means an individual, partnership, corporation, association, or other group, however organized. TEX. BUS. & COM. CODE ANN. §17.45(3).

## X. ACTS OF AGENTS AND OFFICERS

10.1 Defendant COLEMAN was an organizer, director, registered agent and chairman of

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<sup>1</sup> The Texas Supreme Court has held a *private* suit for damages against someone who engages in deceptive acts may be maintained by one who seeks or acquires “goods or services” by purchase or lease, and that a mere attempt to acquire money is not seeking or acquiring a good or service because money is neither. *Riverside Nat’l Bank v. Lewis*, 603 S.W.2d 169, 173 (Tex. 1980). However, a suit in the public interest by the State may be had under the TDTPA to enjoin and seek damages for any false, misleading or deceptive act or practice that directly or indirectly affects the people of Texas. *State v. American Blast Fax, Inc.*, 159 F.Supp.2d 936, 940 (W.D.Tex. 2001). The State is not required to prove its “consumer” status. *See id.*, TEX. BUS. & COM. CODE ANN. §17.46(a), §17.47(a). Also, the fact that Defendant UNITED STATES FALLEN HEROES FOUNDATION, is a Texas domestic not-for-profit corporation does not preclude a TDTPA claim. *See Doe v. Boys Clubs of Greater Dallas, Inc.*, 868 SW2d 942 (Tex. App.-Amarillo 1994), *aff’d*, 907 S.W.2d 472 (Tex.1995) and *Mother & Unborn Baby v State*, 749 S.W.2d 533 (Tex.App.-Ft.Worth 1988).

Defendant UNITED STATES FALLEN HEROES FOUNDATION. As such, Defendant COLEMAN was a controlling person and had unique and exclusive responsibility for the overall management and oversight of the corporation, including compliance with all state and federal laws regulating sales and marketing of goods and services. As Chairman, Defendant COLEMAN functioned in a chief executive officer capacity with the responsibility of supervising other officers, directors, employees, representatives, agents and volunteers of the corporation. As a result, Defendant COLEMAN directed and had personal knowledge of the day-to-day activities of the corporation.<sup>2</sup>

10.2 Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that Defendants performed or participated in such act or thing or that such act was performed by the officers, agents or employees of said Defendants, and in each instance, the officers, agents or employees of said Defendants that were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

## XI. FACTUAL ALLEGATIONS AND VIOLATIONS

11.1 On March 31, 2010, Defendant corporation UNITED STATES FALLEN HEROES FOUNDATION, filed a certificate of formation as a nonprofit organization with the Texas Secretary of State. Thereafter, Defendant COLEMAN, as chairman of Defendant USFHF, began soliciting

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<sup>2</sup> Texas law is well settled that corporate agents may be held personally responsible and individually liable for wrongful acts. It is not necessary to “pierce the corporate veil” in order to impose personal liability. *See Leyendecker v. Wechter*, 683 S.W.2d 369, 375 (Tex. 1984). Liability of such a corporate officer is based on his own actions not his status as an agent. It is not necessary for an employee to act knowingly or intentionally in order to be personally liable. *Miller v. Keyser*, 90 S.W.3d 712, 716 (Tex. 2002). Additionally, TDTPA §17.46(c)(1) authorizes Texas courts to be guided by the interpretations given by the Federal Trade Commission and federal courts to the Federal Trade Commission Act, 15 U.S.C.A. §45(a)(1). Many federal courts have held principals or controlling persons of corporations individually liable. *See FTC v. Amy Travel*, 875 F.2d 564 (7<sup>th</sup> Cir. 1988), and *FTC v. Publishing Clearing House*, 104 F.3d 1168 (9<sup>th</sup> Cir. 1994).

charitable donations from individuals and businesses for the construction of a national monument for veterans in Kennedale, Texas. The Defendants participated in fundraising and solicited donations from businesses and individuals claiming the contributions solicited were for charitable purposes.

11.2 Defendant COLEMAN affirmatively misrepresented the ability of USFHF to receive non-profit, tax-exempt funds from individual contributors. Defendant USFHF was not and is not currently registered as a Section 501(c)(3) tax-exempt organization by the Internal Revenue Service.

11.3 Defendant COLEMAN falsely and fraudulently represented to the City of Kennedale and to the public that USFHF was a tax-exempt charitable organization.

11.4 Defendant COLEMAN presented a falsified IRS determination letter to the City of Kennedale in order to secure a contract for the purchase of land for the proposed memorial. Defendant COLEMAN also presented an “IRS Application for 501(c)3 tax-exempt status” to the City of Kennedale, which application was never actually filed with the IRS.

11.5 Defendant COLEMAN misrepresented that funds solicited would be used for charitable purposes. According to USFHF’s financial records, funds collected by Defendant COLEMAN on behalf of USFHF were used to pay Coleman’s personal expenses including mortgage, utility and restaurant expenses.

11.6 Defendant COLEMAN solicited charitable donations by placing donation jars in several businesses falsely and fraudulently representing that money obtained therefrom would be used exclusively to construct the memorial.

11.7 On July 29, 2010, Defendant COLEMAN contacted the Office of the Attorney General to arrange for delivery of the requested documents as part of the pre-suit investigation of the Defendants' activities. COLEMAN represented that on July 28, 2010, he had resigned from his position as Chairman of USFHF and had turned over all control of USFHF to LARRY W. SUMMERS, the new Chairman. The State anticipates that under the new leadership, USFHF will proceed in a lawful manner. Nevertheless, due to past misconduct, to preserve the public's interest in charitable organizations, in the interest of full disclosure and to assure future compliance, USFHF is named as a defendant party to this suit.

11.8 In support of these allegations the State relies upon the verification and Investigative Report of State Investigator Kelle Slaughter attached hereto and incorporated herein for all purposes as Exhibit A, which report was prepared pursuant to her legal duty to report factual findings observed or resulting from an investigation made pursuant to authority granted by law.

## **XII. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

12.1 Defendants, as set out in Paragraphs 11.1 through 11.6, in the course and conduct of trade and commerce, have directly and indirectly engaged in and will continue to engage in false, misleading, or deceptive acts and practices declared unlawful by Sections 17.46(a) and (b) of the TDTPA, including but not limited to:

- A. Engaging in false, misleading, or deceptive acts or practices in the conduct of trade or commerce by making false, misleading or deceptive representations regarding the status of USFHF and the intended use of donations, in promoting and soliciting charitable donations for USFHF in violation of Section 17.46(a) of the TDTPA;
- B. Soliciting donations for USFHF as a tax-exempt, charitable organization when it is not,

thereby causing confusion or misunderstanding as to the approval or certification of Defendant USFHF corporation, in violation of Section 17.46(b)(2) of the TDTPA;

- C. Soliciting charitable donations for USFHF as a tax-exempt, charitable organization when it is not, thereby representing that goods or services have sponsorship, approval, characteristics and benefits which they do not have and representing that Defendant COLEMAN has sponsorship, approval, status and affiliation which he does not have, in violation of Section 17.46(b)(5) of the TDTPA;
- D. Soliciting charitable donations for USFHF claiming the funds will be used for charitable purposes when they are not, thereby representing that goods or services have characteristics, benefits and uses which they do not have, in violation of Section 17.46(b)(5) of the TDTPA;
- E. Soliciting charitable donations for USFHF as a tax-exempt, charitable organization when it is not, thereby failing to disclose information concerning goods or services which was known at the time of the transaction to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of Section 17.46(b)(24) of the TDTPA; and
- F. Soliciting charitable donations for USFHF claiming the funds will be used for charitable purposes when in fact the funds were misappropriated and converted for personal use, thereby failing to disclose information concerning goods or services which was known at the time of the transaction to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of Section 17.46(b)(24) of the TDTPA.

### **XIII. DISGORGEMENT**

13.1 All of the assets of Defendants USFHF and COLEMAN are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for said Defendants to retain, including all ill-gotten gains and benefits. Defendants should be ordered to disgorge all monies secured through deception, together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of the victimized consumers and the State of Texas.

#### **XIV. MOTION FOR TEMPORARY INJUNCTION**

14.1 The State of Texas alleges that the activities of Defendants USFHF and COLEMAN are in violation of the laws of the State of Texas and that Defendants' conduct threatens continued injury to consumers and the general public. By reason of the institution and continued operation of the acts and practices described hereinabove, Defendants USFHF and COLEMAN have violated and will continue to violate the laws as alleged above. Defendants USFHF and COLEMAN unless restrained by this Court, will continue violating the laws of the State of Texas and injury, loss and damage will result to the State and to the general public.<sup>3</sup>

14.2 In addition, the records and assets of Defendants relating to the promotion and solicitation of charitable donations by Defendants USFHF and COLEMAN by fictitious, ineffective, false, misleading and deceptive means may be dissipated, spoiled, lost, altered, removed or materially injured. The interests of the State require a temporary injunction in light of the harmful activities of Defendants USFHF and COLEMAN to protect the interests of the State and of the public and to

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<sup>3</sup> The Texas Supreme Court has held when the State seeks injunctive relief pursuant to an authorized statute [e.g. TDTPA §17.47(a)] it does not need to prove the common law injunctive relief elements such as imminent harm or irreparable injury. *West v. State*, 212 S.W.3d 513, 519 (Tex. App.–Austin 2006, no pet.). When the State seeks injunctive relief pursuant to the TDTPA, it need only demonstrate to the court its reason to believe that (1) any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by [the TDTPA], and (2) that the proceedings would be in the public interest. TEX. BUS. & COM. CODE ANN. §17.47(a).

conserve assets of Defendants until this Court determines the appropriate amount of restitution and disgorgement and this Court renders a money judgment. The State requests that, as may be shown necessary, all accounts relating to Defendant USFHF or donations and solicitations in the name of, on behalf of, or for the benefit of USFHF be frozen.<sup>4</sup>

14.3 The State requests this matter be set for a hearing on the State’s request for a temporary injunction and, pursuant to TEX. BUS. & COM. CODE ANN. §17.47, the State requests this Court issue a temporary injunction pursuant to the injunctive relief requested below.

### **XV. PRAYER**

15. For these reasons, the State respectfully requests the following:

15.1. Defendants UNITED STATES FALLEN HEROES FOUNDATION and EVAN WALTER COLEMAN a/k/a WALTER EVAN COLEMAN a/k/a WALTER RALEIGH COLEMAN, JR., Individually, be cited according to the law to appear and answer herein;

15.2 The Court set a date and time for a hearing on the State’s motion for temporary injunction, and upon such hearing, enter a temporary injunction as set forth in Section 14 herein;

15.3 That the Court issue a temporary and a permanent injunction ordering Defendant USFHF be enjoined from conducting any further fundraising activities, donation solicitations, or requesting or receiving any money whatsoever unless currently holding a valid IRS 501(c)3 tax exempt designation and from expending any sums of donated monies received except in furtherance of its stated purpose, and further ordering that Defendant COLEMAN be enjoined from the following:

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<sup>4</sup> UNITED STATES FALLEN HEROES FOUNDATION Account no. xxxxx8846 at 1<sup>st</sup> National Bank (redacted herein for privacy purposes); and any other accounts in the name of UNITED STATES FALLEN HEROES FOUNDATION or Texas/Louisiana Fallen Heroes Foundation or in the name of WALTER EVAN COLEMAN or WALTER RALEIGH COLEMAN, JR or variant thereof.

- A. Conducting any further fundraising activities, donation solicitations, or requesting or receiving any money whatsoever on behalf of, in conjunction with, or for the benefit of USFHF or any other organizations;
- B. Advertising, marketing, promoting, or publicizing on behalf of, in conjunction with, or for the benefit of USFHF and related organizations;
- C. Accessing in any manner all funds and accounts containing funds collected on behalf of, in conjunction with, or for the benefit of USFHF and related organizations;
- D. Failing to conserve (to the extent still controlled), during the pendency of these proceedings, all records and assets of Defendant USFHF;
- E. Spending any funds of USFHF or funds collected on behalf of, in conjunction with, or for the benefit of USFHF and related organizations;
- F. Transacting any further business whatsoever on behalf of, in conjunction with, or for the benefit of USFHF and related organizations; and,
- G. Failing to timely pay all money judgments rendered and ordered to be paid by the Court herein.

15.4 That the State be awarded judgment against the Defendants UNITED STATES FALLEN HEROES FOUNDATION and EVAN WALTER COLEMAN a/k/a WALTER EVAN COLEMAN a/k/a WALTER RALEIGH COLEMAN, JR., Individually, as follows:

- A. That Defendant COLEMAN be ordered to pay to the State civil penalties in amounts found by the trier of fact within the statutory range set forth in TDTPA §17.47(c);
- B. That Defendant COLEMAN be ordered to pay the State attorney's fees and costs of court pursuant to TEX. GOV. CODE ANN. §402.006(c); and,
- C. That Defendant COLEMAN be ordered to disgorge the funds wrongfully converted and restore same to donors or to the reorganized USFHF.

15.5 That the Court grant all other relief to which the State may show itself entitled.

Respectfully submitted,

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ATTACHMENTS AND EXHIBITS:

Verification of Facts by Investigator Kelle Slaughter  
Summary Investigative Report of Investigator Kelle Slaughter; Exhibit A

