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EL PASO COUNTY, TEXAS

STATE OF TEXAS,
Plaintiff,

v.

JORGE ALMARAZ d/b/a MAX
CREDIT EXPRESS OF EL PASO a/k/a
MAX CREDIT EXPRESS,
MAX CREDIT EXPRESS LLC.
FRANCISCO PAYAN d/b/a MAX
CREDIT WEST a/k/a MAX CREDIT
EXPRESS,

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BY _____
DEPUTY

Cause No. 2010- 4116

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

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the State of Texas, acting by and through the Attorney General of Texas, Greg Abbott, and on behalf of the public interest, complains of Jorge Almaraz d/b/a Max Credit Express of El Paso a/k/a Max Credit Express, Max Credit Express LLC, and Francisco Payan d/b/a Max Credit West a/k/a Max Credit Express ("Defendants"). Plaintiff alleges that Defendants engaged in unlawful and deceptive acts and practices in violation of the Texas Deceptive Trade Practices Act and Credit Services Organization Act. In support thereof, Plaintiff respectfully shows the following:

I. DISCOVERY CONTROL PLAN

1. Discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.2(b)(3); 190.3(a).

II. 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.* (“DTPA”) upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

3. This action is further 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 TEX. FIN. CODE ANN. § 393.502 upon the grounds that Defendants have engaged in business in this state as a credit services organization without complying with the provisions found in Chapter 393 of the Texas Finance Code.

III. DEFENDANTS

4. Defendant Jorge Almaraz d/b/a Max Credit Express of El Paso d/b/a Max Credit Express is an individual who operates a business in El Paso County, Texas. Defendant may be served with process at 12424 Paseo Largo Circle, El Paso, Texas 79928 or 1320 N Zaragoza Ste 106, El Paso, Texas 79936 or wherever he may be found.

5. Max Credit Express LLC is a Texas entity who may be served by serving its registered agent, Jorge Almaraz who may be served at 12424 Paseo Largo Circle, El Paso, Texas 79928 or 1320 N Zaragoza Ste 106, El Paso, Texas 79936 or wherever he may be found.

6. Francisco Payan d/b/a Max Credit West a/k/a Max Credit Express is a resident of El Paso County, Texas who may be served at 5020 N. Desert, Suite C1-A, El Paso, Texas, 79912 or at 13366 Astoria Dr., El Paso, Texas 79928 or wherever he may be found.

IV. VENUE

7. Venue of this suit lies in El Paso 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 El Paso County, Texas.
 - b. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(3), venue is proper because Defendants' principal offices in this State are in El Paso County, Texas.
 - c. Under DTPA § 17.47(b), venue is proper because Defendants have their principal place of business in El Paso County, Texas and have done business in El Paso County, Texas.

V. PUBLIC INTEREST

8. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe that Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this state, and that imminent harm exists in that Defendants will continue to cause such adverse effects. Therefore, Plaintiff believes and is of the opinion that these proceedings are in the public interest.

VI. NOTICE BEFORE SUIT NOT GIVEN

9. Pursuant to DTPA §17.47(a), contact has been made with the Defendants herein to inform them of the unlawful conduct alleged herein.

VII. TRADE AND COMMERCE; CREDIT SERVICES; AND BUSINESS OPPORTUNITIES

10. 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 DTPA.

11. Defendants have, at all times described below, conducted business in this state as a “credit services organization” as that phrase is defined by TEX. FIN. CODE ANN. § 393.001(3).

VIII. ACTS OF AGENTS

12. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:

- a. Defendants performed or participated in the act, or
- b. Defendants’ officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

IX. SPECIFIC FACTUAL ALLEGATION

13. Defendants market and sell “credit repair” and “credit restoration” services through a business called Max Credit Express. Defendants advertise to consumers in El Paso County, Texas who have poor credit.

14. Defendants have advertised and continue to advertise their services through an Internet website located at www.mcecreditrepair.com and other advertising media.

15. Defendants' claim to repair consumers' credit history, credit rating and ability to purchase a home or automobile.

16. A business that claims that it can improve a consumer's credit history or credit rating or provide advice or assistance to a consumer in that regard is considered a "credit services organization" under the Credit Services Organization Act. TEX. FIN. CODE ANN. § 393.001(3). A credit services organization must register with the Texas Secretary of State, file a registration statement, and obtain a surety bond or surety account, among other requirements. Defendant Almaraz did not register with the Secretary of State or obtain a surety bond. Defendant Max Credit Express LLC registered in July, 2010 and Payan registered in April, 2010.

17. To attract consumers and induce them to purchase Defendants' services, the Max Credit Express website states "The FCRA of 1970, and the newly amended FACTA are very complex laws. So wouldn't it really make more sense to have a legal firm perform this work especially when it is of such importance? Of course it does." Other Max Credit Express advertisements claim: that they will "fix" your credit by asking "Tienes mal credito?, Quieres buen credito?" (translated means, "Have bad credit, Want good credit?"). Its advertisement further states "Aprovecha tu INCOME TAX ... Ano Nuevo, Credito Nuevo," (translated means, "Take advantage of your INCOME TAX ... New Year, New Credit.") The ad further states "We remove inaccurate, obsolete or unverifiable (sic) information".

18. Consumers who are persuaded to use Defendants' services are asked to sign a contract and pay an advance fee. Defendants collect from \$695 to \$1,195 from each consumer in advance fees.

19. Defendants require payment of these fees from consumers before the promised debt invalidation of credit repair services are performed.

**X. VIOLATIONS OF FINANCE CODE CHAPTER 393 –
CREDIT SERVICES ORGANIZATIONS**

20. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

21. In Texas, a business that represents that it can improve a consumer's credit history or credit rating or provides advice or assistance to a consumer in that regard is considered a "credit services organization" under the Credit Services Organization Act. TEX. FIN. CODE ANN. § 393.001(3). A credit services organization must register with the Texas Secretary of State, file a registration statement, and obtain a surety bond or surety account, among other requirements. Defendants are operating as a "credit services organization" because they represent that their debt invalidation process can improve a consumer's credit rating.

22. Defendants Payan and Almaraz, as alleged and detailed above, failed to file a registration statement with the Secretary of State before conducting business in this state, in violation of TEX. FIN. CODE ANN. § 393.101.

23. Defendants Payan and Almaraz, as alleged and detailed above, have charged or received from a consumer valuable consideration before completely performing all the services they have agreed to perform for the consumer, without obtaining a surety bond for each of their locations or establishing and maintaining a surety account for each of their locations, in violation of TEX. FIN. CODE ANN. § 393.302.

24. Defendants Payan and Almaraz, as alleged and detailed above, have advertised their services without filing a registration statement, in violation of TEX. FIN. CODE ANN. § 393.306.

25. Defendants, as alleged and detailed above, have directly or indirectly engaged in a fraudulent or deceptive act, practice, or course of business relating to the offer or sale of their services, in violation of TEX. FIN. CODE ANN. § 393.305. These and other such actions are specifically defined to be deceptive trade practices actionable under the DTPA under TEX. FIN. CODE ANN. § 393.504.

XI. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

26. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

27. Defendants, as alleged and detailed above, have in the conduct of trade and commerce engaged in false, misleading, or deceptive acts or practices declared unlawful in DTPA § 17.46(a) advertising goods and services claiming they were registered when in fact they were not.

28. Defendants, as alleged and detailed above, have caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA § 17.46(b)(2) by claiming they were registered when in fact they were not.

29. Defendants, as alleged and detailed above, have represented 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 DTPA § 17.46(b)(5) by claiming to be registered when they were not, to be experts about credit laws when they were not and to be BBB members when they were not.

30. Defendants, as alleged and detailed above, have represented 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 DTPA § 17.46(b)(12) by receiving payments from consumers for work to be performed in the future at a time when they did not have a bond or were registered.

31. Defendants, as alleged and detailed above, have failed to disclose information concerning goods or services which was known at the time of the transaction with an intent to induce the consumer into a transaction into which that consumer would not have entered had the information been disclosed, in violation of DTPA § 17.46(b)(24) by failing to tell the consumer that they were not.

32. Defendants, as alleged and detailed above, have violated Chapter 393 of the Texas Finance Code, and such actions are specifically defined to be deceptive trade practices actionable under the DTPA under TEX. FIN. CODE ANN. § 393.504.

XII. DISGORGEMENT

33. Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from individuals, businesses, and any governmental entity together with all of the proceeds, profits, income, interest and

accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

XIII. OTHER RELIEF

34. The State of Texas asks the Court to order Defendants to restore any money or property which may have been acquired from their “clients” by means of any unlawful act or practice.

35. The State of Texas asks the Court to order Defendants to pay a civil penalty, to and for the benefit of the State of Texas, in the amount of \$20,000.00 per violation of the DTPA.

36. The State of Texas asks the Court to order Defendants to pay reasonable attorney fees, pursuant to TEX. GOV'T CODE § 402.006.

37. The State of Texas asks the Court to order Defendants to pay civil penalties to and for the benefit of the State of Texas, in the amount of not less than \$100 for each violation of Tex.Fin.Code §392.403.

XIV. TRIAL BY JURY

38. Plaintiff herein requests a jury trial and tenders the jury fee to the El Paso County District Clerks office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN.§51.604.

XV. REQUEST FOR DISCLOSURE

39. Pursuant to Rule 194, Tex.R.Civ.P., Defendants are requested to disclose the information or material described in Rule 194.2. Defendants' written responses to the requests for disclosure along with all copies of documents and other tangible items responsive to these requests shall be produced at the Office of the Attorney General,

Consumer Protection and Public Health Division, 401 E. Franklin, Suite 530, El Paso, Texas 79901 except as provided by Rule 194.3, within 50 days of service of Plaintiff's Original Petition.

XV. CONDITIONS PRECEDENT

40. All conditions precedent have been performed or have occurred.

XVI. PRAYER

41. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition.

42. Plaintiff prays that Defendants be cited according to law to appear and answer herein; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants (including any business entities established by Defendants), their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants, from engaging in the following acts or practices:

- a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer generated materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause.
- b. Misrepresenting the benefits received, or which may be received, by any consumer using a good or service offered for sale by Defendants. This includes, but is not limited to, representing that a consumer is able to improve his or her personal credit rating through the use of any program offered by

Defendants if the program does not directly affect that consumer's credit rating.

- c. Misrepresenting they are a "legal firm" and that they are knowledgeable about credit laws.
 - d. Misrepresenting that a consumer can obtain a house or car by virtue of using the goods or services offered by Defendants. .
 - e. Advertising or otherwise conducting business in Texas as a credit service organization without first filing a registration statement and/or bond with the Texas Secretary of State, as required by TEX. FIN. CODE ANN. § 393.101.
43. In addition, Plaintiff respectfully prays that this Court will:
- a. Order Defendants to pay civil penalties of \$20,000.00 per violation to the State of Texas for each violation of the DTPA;
 - b. Order Defendants to pay civil penalties in an amount up to \$250,000.00 as allowed by law under the DTPA, due to Defendants committing acts and practices that were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;
 - c. Order Defendants to pay restitution, as provided by law;
 - d. Order Defendants to pay Pre-judgment and Post-judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and
 - e. Order Defendants to pay all costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE ANN. § 402.006©.

44. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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