

NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	
	§	SAN PATRICIO COUNTY, TEXAS
HOLDEN ROOFING, INC.	§	
and	§	
BRETT HOLDEN, Individually,	§	
Defendants.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION
AND APPLICATION FOR INJUNCTION**

COMES NOW THE STATE OF TEXAS, plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complains of HOLDEN ROOFING, INC. and BRETT HOLDEN, defendants, 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. 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, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against defendants for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (“DTPA”); Chapter 601 of the Texas Business and Commerce Code, Cancellation of Certain Consumer Transactions, TEX. BUS. & COM. CODE ANN. § 601.001, *et seq.* (“Home Solicitation Act” or “HSA”); and the Texas Debt Collection Act, TEX. FIN. CODE ANN. § 392.001 *et seq.* (“TDCA”). 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 Home Solicitation Act and the Texas Debt Collection Act also grant authority to the Attorney General to seek injunctive relief for violations of its provisions. TEX. BUS. & COM. CODE ANN. § 601.205 and TEX. FIN. CODE ANN. § 392.403(d), respectively.

DEFENDANTS

3. Defendant HOLDEN ROOFING, INC., a Texas corporation whose registered office is P.O. Box 955, Richmond, Fort Bend County, Texas, may be served with process by serving its registered agent for service of process, Brett Holden, at 2128 First Street, Rosenberg, Fort Bend County, Texas 77471.

4. Defendant BRETT HOLDEN, an individual, may be served with process at his usual place of business at 2128 First Street, Rosenberg, Fort Bend County, Texas 77471.

JURISDICTION

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

VENUE

6. Venue of this suit lies in San Patricio 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 defendants have done business in the county of suit.

PUBLIC INTEREST

7. Plaintiff, STATE OF TEXAS, has reason to believe that defendants have engaged in and will continue to engage in the unlawful acts or practices set forth below, and that defendants have, by means of these unlawful acts and practices, caused damage to or acquired money or property from persons, and that defendants adversely affected legitimate business enterprises which lawfully conduct trade and commerce in 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

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

ACTS OF AGENTS

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

NOTICE BEFORE SUIT

10. The Consumer Protection and Public Health Division 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 Section 17.47(a) of the DTPA.

FACTUAL ALLEGATIONS

Nature of Defendant HRI's Business

11. Defendant HOLDEN ROOFING, INC. ("HRI") is a roofing company that contracts with homeowners for the repair or replacement of roofs. Defendant HRI advertised its roofing services by door-to-door sales and through business cards, a website (holdenroofing.com), decals on company vehicles, and flyers. HRI's advertising offers free inspections or free estimates to consumers who seek repairs or replacement of their roofs. HRI's main office is in the Houston area, and it maintains branch offices in Austin, Brownsville, Corpus Christi, Dallas, San Antonio, and Tyler.

12. Defendant HRI uses sales representatives to personally solicit sales of its "consulting" and roofing services in Texas, including San Patricio County, Texas, by making oral sale presentations at the homes of consumers. Its marketing strategy includes the targeting of areas that have experienced a severe weather event. For example, defendant HRI dispatched sales representatives to engage in personal solicitations of sale to consumers whose home was exposed to a storm, hail, or hurricane and was, as a consequence, in need of roof repair or replacement.

Defendant HRI's "Consulting" Services

13. In order to induce sales of its roofing services, defendant HRI offers a service as an intermediary agent by which it assists homeowners in the insurance claims process. Specifically, defendant HRI agrees to provide its sales representatives' time and expertise as roofers to assist the homeowner with his or her insurance claim. In the capacity of an intermediary, HRI's representatives evaluate the roof, consult with insurance adjusters and other carrier representatives

concerning the amount of loss or damage to the roof, and act on behalf of the insured homeowner in negotiating for and effecting the settlement of the claim under the policy of insurance covering the homeowner's house.

14. Homeowners who agree to use the services of a HRI's representative as an intermediary must sign a "Consultation and Assistance Agreement" that is supplied by HRI for use by its sales representatives (herein referred to as the "Consultation Agreement"). Typically, the Consultation Agreement is signed by the homeowner and returned to defendant HRI's sales representative at the home of the homeowner. Under the agreement, the homeowner authorizes and appoints defendant HRI to provide the intermediary services described in the preceding paragraph in exchange for the homeowner's agreement to hire defendant HRI to perform the roofing job for the amount of the insurance settlement. In the event of a breach of the Consultation Agreement by the homeowner¹, the terms of the Consultation Agreement require that the homeowner pay 20% of the replacement cost of the roof² (herein referred to as the "20% surcharge") to defendant HRI.

15. In the Consultation Agreement, defendant HRI misrepresents that the 20% surcharge is "compensation and liquidated damages, not [a] penalty". The 20% surcharge is security for the homeowner's performance of the Consultation Agreement rather than the measure of HRI's damages in the event of a breach. The harm caused by a homeowner's breach of the Consultation Agreement

¹ The Consultation Agreement spells out two events that constitute a breach once the insurance claim is approved, namely: (1) when the homeowner decides not to replace or repair the roof or (2) when the homeowner retains a different roofer to perform the work.

² The replacement cost of the roof is unknown at the time the Consultation Agreement is signed by the homeowner.

can be easily and accurately estimated, and the 20% surcharge is not a reasonable estimate of damages or a reasonable forecast of just compensation for the services provided by HRI. Defendant HRI included the so-called “liquidated damages” clause in its Consultation Agreements with homeowners, although homeowners did not agree to the clause’s inclusion and did not agree in advance that the 20% surcharge was just compensation for a breach of the Consultation Agreement. At the time of the transaction, defendant HRI’s sales representatives failed to disclose that the 20% surcharge served as security for the homeowner’s performance of the Consultation Agreement, and their failure to disclose such information was intended to induce the homeowner into a transaction which the homeowner would not have entered had the information been disclosed.

16. Defendant HRI’s sales representatives provide homeowners with a copy of the Consultation Agreement at the time of its execution. However, no statement, giving notice of the consumer’s right to cancel, is contained in the Consultation Agreement, and there was no completed notice of cancellation form (in duplicate) attached to the Consultation Agreement. Moreover, in a significant number of instances, defendant HRI’s sales representatives failed to inform the homeowner orally of his or her right to cancel the transaction at the time the homeowner signed the Consultation Agreement.

17. In order to induce homeowners into signing the Consultation Agreement, some of HRI’s sales representatives misled homeowners about the purpose of the agreement. In such instances, the sales representative used a pretext to get the homeowner to sign the agreement. For example, some homeowners were told that, by signing the Consultation Agreement, they were giving their consent for a free inspection or free estimate. Homeowners signed the Consultation Agreement without

reading it, relying on what they were told by defendant HRI's sales representatives. These homeowners did not know they were entering into a contractual obligation or were not made aware of the 20% surcharge provision contained in the Consultation Agreement. Consequently, these homeowners entered into a transaction which they would not have entered had the information about the agreement and surcharge been disclosed.

Defendant HRI's Roofing Services

18. In the course of a home solicitation, HRI's representatives may enter into a sales transaction in which only the roofing service is purchased by the homeowner, and there is no purchase of the "consulting" service. Homeowners who agree to purchase the roofing service must sign a "Roofing" Contract that is supplied by HRI for use by its sales representatives. Typically, the Roofing Contract is signed by the homeowner and returned to the defendant HRI's sales representative at the home of the homeowner. Under the contract, defendant HRI agrees to furnish the specified materials and services for the price stated therein, and the homeowner accepts the terms and conditions of the contract and authorizes HRI to do the specified work. In the event of untimely cancellation by the homeowner³, the terms of the Roofing Contract require that the homeowner pay 15% of the contract price (herein referred to as the "15% surcharge") to defendant HRI. The 15% surcharge provision is inconspicuous since it is buried in the small print found on the backside of the contract.

19. In the Roofing Contract, defendant HRI misrepresents that the 15% surcharge is "reasonable and just compensation and liquidated damages, and not as a penalty". The 15% surcharge is security

³ Untimely cancellation occurs when the homeowner cancels the contract later than the third business day after the contract is signed, but before HRI commences the work.

for the homeowner's performance of the Roofing Contract rather than the measure of HRI's damages in the event of a breach. The harm caused by a homeowner's breach of the Roofing Contract can be easily and accurately estimated, and the 15% surcharge is not a reasonable estimate of damages or a reasonable forecast of just compensation for the services provided by HRI. Defendant HRI included the so-called "liquidated damages" clause in its Roofing Contracts with homeowners, although homeowners did not agree to the clause's inclusion and did not agree in advance that the 15% surcharge was just compensation for a breach of the Roofing Contract. At the time of the transaction, defendant HRI's sales representatives failed to disclose that the 15% surcharge served as security for the homeowner's performance of the Roofing Contract, and their failure to disclose such information was intended to induce the homeowner into a transaction which the homeowner would not have entered had the information been disclosed.

20. Defendant HRI's sales representatives provide homeowners with a copy of the Roofing Contract at the time of its execution. While the Roofing Contract contains a statement giving notice of the consumer's right to cancel, the statement is not in immediate proximity to the space reserved in the contract for the signature of the homeowner and does not substantially comport with the form required by the Home Solicitation Act. The statement conditions the right to cancel on the payment of a 5% restocking fee⁴. There was also no completed notice of cancellation form (in duplicate) attached to the Roofing Contract. Moreover, in a significant number of instances, defendant HRI's sales representatives failed to inform the homeowner orally of his or her right to cancel the transaction at the time the homeowner signed the Roofing Contract.

⁴ The restocking fee is 5% of the total contract price.

21. HRI's Roofing Contract contains a provision, titled "Cancellation and Assignment", which provides, in pertinent part:

YOU MAY CANCEL THIS CONTRACT AND PAY ONLY ANY APPLICABLE RESTOCKING FEE IF YOU DO SO BY DELIVERING WRITTEN NOTICE TO HOLDEN AT THE ADDRESS ON THE FRONT OF THIS CONTRACT ON OR BEFORE THE THIRD BUSINESS DAY AFTER YOU SIGN THIS CONTRACT. ANY APPLICABLE/ENFORCEABLE CONTINGENCY AGREEMENT EXECUTED PRIOR TO THIS CONTRACT PRECLUDES ALLOWANCES FOR CANCELLATION WITHIN THREE DAY PERIOD.

(Emphasis in the original.)

Defendant HRI's Collection Activity

22. Defendant HRI sends a letter, demanding payment of the surcharge and attorney fees, to those homeowners who defendant HRI considers in breach of the Consultation Agreement or the Roofing Contract. In the letter, defendant HRI threatens to file a lawsuit if the homeowner does not agree to perform his/her so-called contractual obligation by remitting payment of the surcharge within 30 days of receipt of the letter. The letter, which HRI used for a purported breach of the Consultation Agreement, states in pertinent part:

Holden Roofing substantially performed the contracts obligations regarding assisting with the insurance claim process, but you have chosen not to perform. As a result of your nonperformance, Holden Roofing is entitled to liquidated damages totaling 20% of your roof's replacement cost value under the liquidated-damages clause in paragraph number 4 of the contract . . . [W]e request that you remit payment to satisfy the liquidated damages section of the Agreement. If you do not agree to remit this payment in accordance with the terms of the Agreement within 30 days of receipt of this notice, suit will be filed against you.

The letter, which HRI used for a purported breach of the Roofing Contract, states in pertinent part:

. . . Holden Roofing executed a valid and binding written contract with you. It has come to my attention that you have decided to cancel this contract after the allotted three day cancellation period. This cancellation is considered a material breach of this contract . . . As a result of your material breach and nonperformance, Holden

Roofing is entitled to liquidated damages, as established by the terms of the contract, section 20, in the amount of 15% of the contract value, totaling \$1,083.13.^{5]} . . . [Holden Roofing] requests that you remit payment in the amount of \$1,083.13, which includes only Holden Roofing’s actual damages. If you do not agree to perform your contractual obligations and pay the sum within 30 days of receipt of this notice, suit will be filed against you. In the alternative, Holden Roofing still desires to complete your roof replacement in accordance with the terms and conditions agreed upon in the contract.

The letters include the statement “THIS IS AN ATTEMPT TO COLLECT A DEBT.”

Defendant Brett Holden’s Role

23. Defendant Holden is the owner, the sole incorporator, sole board member, and sole officer of HRI and serves as its President and registered agent. Defendant Holden controls all aspects of HRI’s business and developed its business plan and model, as well as its operating policies and procedures. Defendant Holden is responsible for the management of HRI’s operations and finances; he oversees, and is familiar with, every segment of HRI’s consulting and roofing businesses, including those aspects related to sales and the solicitation of sales at consumers’ homes; advertising and marketing; contracting; employee and agent training; and collection activities. Defendant Holden had access to and control over HRI’s assets, policies, procedures, books, accounts, minutes, letters, memoranda, documents, and all other records of the company.

24. Defendant Holden knew, or should have known, that the surcharge provision in its contracts was not for “liquidated damages” but was used to secure the homeowner’s performance of HRI’s contracts; that HRI’s sales representatives used false, misleading, or deceptive sales tactics to sell HRI’s consulting services; that HRI’s sales representatives failed to orally inform homeowners of

⁵ The amount varies from consumer to consumer.

their right to cancel the transaction; and that HRI's contracts failed to comply with the requirements of the Home Solicitation Act. In his capacity, defendant Holden had a duty to institute policies, procedures, and quality controls for HRI's business enterprise, as well as the responsibility to train HRI's sales representatives, to ensure HRI's business acts and practices were in compliance with state law, but failed to do so. As a result of his acts or omissions, defendant Holden personally and knowingly participated in HRI's unlawful conduct, as alleged in this petition.

HOME SOLICITATION ACT VIOLATIONS

25. Defendants HRI and HOLDEN, as alleged above, have in the course of trade and commerce violated Chapter 601 of the Texas Business and Commerce Code ("Home Solicitation Act" or "HSA"), as follows:

- a. By failing to provide consumers with a copy of the Consultation Agreement containing the required statement, giving notice of the consumer's right to cancel, at the time of the agreement's execution, defendants are in violation of HSA § 601.052(a) and (b);
- b. By failing to attach a completed "Notice of Cancellation" form (in duplicate and easily detachable) to the Consultation Agreement at the time of the agreement's execution, defendants are in violation of HSA § 601.053(a);
- c. By failing to inform consumers orally at the time the Consultation Agreement was signed of their right to cancel the transaction, defendants are in violation of HSA § 601.152(1);
- d. By failing to provide consumers with a copy of the Roofing Contract that contains the statement, giving notice of the consumer's right to cancel, in the required form and format, at the time of the contract's execution, defendants are in violation of HSA §

601.052(a) and (b);

e. By failing to attach a completed “Notice of Cancellation” form (in duplicate and easily detachable) to the Roofing Contract at the time of the contract’s execution, defendants are in violation of HSA § 601.053(a);

f. By failing to inform consumers orally at the time the Roofing Contract was signed of their right to cancel the transaction, defendants are in violation of HSA § 601.152(1); and

g. By misrepresenting the consumer’s right to cancel in the “Cancellation and Assignment” provision of the Roofing Contract, defendants are in violation of HSA §601.152(2).

DTPA VIOLATIONS

26. Defendants HRI and HOLDEN, 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 unilaterally including a contractual penalty of 20% of the roof replacement cost in order to secure the consumer’s performance of the Consultation Agreement, defendants are engaging in an act or practice that is false, misleading, or deceptive, in violation of section 17.46(a) of the DTPA;

b. By unilaterally including a contractual penalty of 15% of the total contract price in order to secure the consumer’s performance of the Roofing Contract, defendants are engaging in an act or practice that is false, misleading, or deceptive, in violation of section 17.46(a) of the DTPA;

c. By incorporating into the Consultation Agreement, a provision that obligates

consumers to select HRI to perform the repair or replacement to the roof as consideration for HRI's agreement to provide assistance with the consumer's insurance claim, defendants are engaging in an act or practice that is false, misleading, or deceptive, in violation of section 17.46(a) of the DTPA;

d. By failing to disclose the surcharge provision (contained in the contracts) during the oral sales presentation, when such failure to disclose such information was intended to induce the homeowner into a transaction which the homeowner would not have entered had the information been disclosed, defendants are engaging in an act or practice that is false, misleading, or deceptive, in violation of section 17.46(a) of the DTPA;

e. By misrepresenting to consumers that its estimates and inspections are free in order to induce a sale of their consulting and/or roofing services, defendants are in violation of DTPA § 17.46(b)(5);

f. By misrepresenting to consumers, during the oral sales presentation, the purpose or nature of the Consultation Agreement, defendants are in violation of DTPA § 17.46(b)(12);

g. By misrepresenting to consumers that the contractual surcharges are liquidated damages, defendants are in violation of DTPA § 17.46(b)(12);

h. By violating the Home Solicitation Act, defendants have engaged in false, misleading, and deceptive acts or practices, in violation of section 17.46(b) of the DTPA. Section 601.204 of the Home Solicitation Act provides that a violation of the Act is a false, misleading, or deceptive act or practice and is actionable under the DTPA; and

i. By violating Texas Debt Collection Act (see below), defendants have engaged in false, misleading, and deceptive acts or practices, in violation of section 17.46(a) or (b) of

the DTPA. Section 392.404 of the Texas Debt Collection Act provides that a violation of the Act is a false, misleading, or deceptive act or practice and is actionable under the DTPA.

TEXAS DEBT COLLECTION ACT VIOLATIONS

27. Defendants HRI and HOLDEN, as alleged above, have in the course of trade and commerce engaged in, and will continue to engage in, debt collection practices declared unlawful by the Texas Debt Collection Act (“TDCA”), as follows:

- a. By misrepresenting the character of the 20% surcharge in the Consultation Agreement as “liquidated damages”, defendants are in violation of TDCA § 392.304(a)(8);
- b. By misrepresenting the character of the 15% surcharge in the Roofing Contract as “liquidated damages”, defendants are in violation of TDCA § 392.304(a)(8); and
- c. By threatening to file a lawsuit against consumers for recovery under a so-called “liquidated damages” clause that is unenforceable because it is an invalid penalty, defendants are in violation of TDCA § 392.301(a)(8).

INJURY TO CONSUMERS

28. Defendants have, 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.

29. Because defendants have engaged in the unlawful acts and practices described above, defendants have violated the law as alleged in this petition, or will continue to violate the law, and should be restrained by this Honorable Court.

PRAYER

30. WHEREFORE, plaintiff prays that defendants 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 defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with defendants from the following:

- a. Failing to provide consumers with a copy of the Consultation Agreement containing the statement, giving notice of the consumer's right to cancel, in the form and format required by HSA § 601.052(a) and (b), at the time of the agreement's execution;
- b. Failing to attach a completed "Notice of Cancellation" form (in duplicate and easily detachable) to the Consultation Agreement at the time of the agreement's execution;
- c. Failing to inform consumers orally at the time the Consultation Agreement is signed of their right to cancel the transaction;
- d. Failing to provide consumers with a copy of the Roofing Contract containing the statement, giving notice of the consumer's right to cancel, in the form and format required by HSA § 601.052(b), at the time of the contract's execution;
- e. Failing to attach a completed "Notice of Cancellation" form (in duplicate and easily detachable) to the Roofing Contract at the time of the contract's execution;
- f. Failing to inform consumers orally at the time the Roofing Contract is signed of their right to cancel the transaction;
- g. Misrepresenting the consumer's right to cancel in the Roofing Contract, including the provision titled "Cancellation and Assignment" of the contract;
- h. Including in any contract or agreement, a penalty clause or provision that serves as security for the consumers' performance of the contract;

- i. Including in any contract or agreement, a liquidated damages clause or provision stipulating the amount of damages recoverable in the event of breach;
- j. Representing to consumers that roof estimates and inspections are free;
- k. Misrepresenting to consumers, during the oral sales presentation, the purpose or nature of the Consultation Agreement;
- l. Failing to specify, in dollars and cents, the cost or price of services which the consumers will be charged under the Consultation Agreement;
- m. Incorporating into any contract or agreement, including the Consultation Agreement, a provision that obligates consumers to select HRI to perform the repair or replacement to the roof as consideration for HRI's agreement to provide assistance with the consumer's insurance claim;
- n. Accepting money from, or pursuing a legal action against, consumers for any breach of the Consultation Agreement;
- o. Accepting money from, or pursuing a legal action against, consumers who cancel or cancelled the Roofing Contract; and
- p. Threatening to file a lawsuit, or filing suit, against any consumer for recovery of "liquidated damages";
- q. Concealing, withholding, destroying, mutilating, altering, falsifying or removing from the jurisdiction of this court any books, records, documents, invoices, receipt or other written material relating to the business of defendant currently or hereafter in defendant's possession, custody or control except in response to further orders or subpoenas in this cause; and

- r. Representing, directly or by implication, that this Court, or the Office of the Attorney General has approved any good or service sold or offered for sale by defendants, or has approved any business practice of defendants.
31. WHEREFORE, plaintiff further prays that defendants be ordered and compelled to:
- a. Declare void and unenforceable the so-called liquidated damages clause in the Consultation Agreement and the Roofing Contract;
 - b. Rescind the Consultation Agreement and Roofing Contract entered into by and between defendant and consumers in each consumer transaction in which defendants are found to have engaged in any violation of the Home Solicitation Act or DTPA;
 - c. Refund all money paid by consumers pursuant to the so-called liquidated damages clause in the Consultation Agreement and the Roofing Contract;
 - d. Refund all money collected from consumers that was paid in satisfaction of a judgment debt arising from a claim under the so-called liquidated damages clause of the Consultation Agreement and the Roofing Contract; and
 - e. Release all judgments and discharge all judgment debt that were based on a claim arising under the so-called liquidated damages clause of the Consultation Agreement and the Roofing Contract.
32. In addition, plaintiff 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;
 - b. Adjudge against defendant civil penalties in favor of plaintiff STATE OF TEXAS, in the amount of not more than \$250,000.00 for violations of the DTPA if the consumer was

65 years of age or older;

c. 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;

d. Adjudge against defendant reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006;

e. Adjudge against defendant pre-judgment and post-judgment interest at the highest lawful rate;

f. Appoint a receiver or sequester defendant's assets if defendant has been ordered by this Court to make restitution and defendant has failed to do so within three months after the order to make restitution has become final and nonappealable; and

g. 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).

33. Further, plaintiff STATE OF TEXAS, respectfully prays for all other relief, at law or in equity, to which plaintiff STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
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Attorney for Plaintiff

VERIFICATION

COUNTY OF HIDALGO §
 §
STATE OF TEXAS §

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 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
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the ____ day of _____, 2011.

NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS