

CAUSE NO. DC-13-00175

FILED
2013 APR 15 AM 10:56
GARY H. HARRIS
CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS
DEPUTY

STATE OF TEXAS,
Plaintiff,

v.

SHANE V. GARNER, INDIVIDUALLY,
and d/b/a CREDIT SERVICES TODAY
and CREDIT ALLIANCE GROUP,
INC., a/k/a CREDIT SERVICES
TODAY

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

1414D JUDICIAL DISTRICT

STATE'S ORIGINAL PETITION
FOR EX PARTE TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE,
INJUNCTIVE RELIEF AND CIVIL PENALTIES

TO THE HONORABLE JUDGE OF SAID COURT:

The STATE OF TEXAS, acting by and through its ATTORNEY GENERAL GREG ABBOTT, and his Consumer Protection Division, files this Original Petition for Ex Parte Temporary Restraining Order with Asset Freeze, Temporary and Permanent Injunctive Relief and Civil Penalties, against SHANE V. GARNER, individually, and d/b/a CREDIT SERVICES TODAY and CREDIT ALLIANCE GROUP, INC., a/k/a CREDIT SERVICES TODAY, and would respectfully show the following:

SUMMARY OF THE CASE

Credit Alliance Group, Inc. (CAG) and Shane V. Garner have operated as an unlicensed debt management service provider based in Dallas, Texas, for over six years. Texas law prohibits any person from providing such debt management services without first obtaining an approved registration from the Texas Consumer Credit Commissioner. Despite representing in customer contracts that they operate in compliance with Texas law, neither CAG, nor its owner, Shane V.

Garner, has ever obtained such a registration. CAG advertised nationwide, targeting consumers who were already facing serious financial trouble, and representing that, for a fee, CAG was typically able to settle customers' debts for 20-60% of outstanding balances. CAG promised, "If Credit Alliance Group does not perform, YOU won't have to pay us a dime!" CAG promised to hold customer funds in fully insured accounts, solely under the customers' control, until debts were successfully settled. Instead, CAG not only charged unreasonable fees for services never provided, it also unlawfully co-mingled and diverted these customers' personal funds for its own benefit and has failed to refund these monies to customers despite numerous requests. As a result, hundreds of customers have lost thousands of dollars, their consumer debts have grown, and their credit ratings are worse than before signing up with Credit Alliance Group.

Because of such conduct, Shane V. Garner, d/b/a Credit Services Today, and Credit Alliance Group, Inc., also known as Credit Services Today, are charged in this suit with violations of the Texas Deceptive Practices - Consumer Protection Act and violations of the Texas Consumer Debt Management Services Act. By this suit, the State seeks a Court ordered restraining order and injunction to prevent Defendants from engaging in such false, misleading and deceptive business practices and also seeks to secure assets wrongfully obtained by Defendants so as to enable restitution for consumers, appropriate civil penalties, attorney's fees and costs.

1. DISCOVERY CONTROL PLAN

1.1 Pursuant to Texas Rule of Civil Procedure 190.1, the discovery in this case is intended to be conducted under Discovery Level 2.

1.2 This case is not subject to the restrictions of expedited discovery under TRCP 169 because:

a) The relief sought by the State includes non-monetary injunctive relief; and

b) The State's claims for monetary relief including penalties, consumer redress and attorneys' fees and costs are in excess of \$1,000,000.00.

2. NATURE AND PURPOSE OF THIS SUIT

2.1 This is an enforcement action brought by Texas Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted 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. The Texas Attorney General is authorized to seek temporary restraining orders, civil penalties, redress for consumers and other identifiable persons harmed by Defendants acts and practices, and other injunctive relief in enforcement actions, such as this one, filed pursuant to Section 17.47 of the DTPA. Further, in such enforcement actions, this Court is authorized to make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages, or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice. TEX. BUS. & COM. CODE ANN. §17.47(d).

3. DEFENDANTS

3.1 Defendant CREDIT ALLIANCE GROUP, INC., is a Texas Corporation. **Defendant CREDIT ALLIANCE GROUP, INC., a/k/a Credit Services Today, can be served through its registered agent, SHANE V. GARNER, at its offices at 1717 Main Street, Suite 5800, Dallas, Texas 75201, or, his home address 3622 Edgewater Street, Dallas,**

Texas, 75205, or wherever he may be found.

3.2 Defendant SHANE V GARNER individually, is the owner and CEO, of Defendant CREDIT ALLIANCE GROUP, INC. located at 1717 Main Street, Suite 5800, Dallas, Texas 75201, and also does business as Credit Services Today at the same address. **Defendant SHANE V. GARNER, d/b/a Credit Services Today, may be served at his home address, 3622 Edgewater Street, Dallas, Texas, 75205, or wherever he may be found.**

4. VENUE

4.1 Venue of this suit lies in Dallas 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.

5. PUBLIC INTEREST

5.1 Plaintiff, STATE OF TEXAS, has reason to believe that Defendants are engaging in, have engaged in, and may continue to engage in, the unlawful acts or practices set forth below, that Defendants have, by means of these unlawful acts and practices, caused damage to or acquired money or property from identifiable persons, and that Defendants' conduct adversely affects the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection 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.

6. TRADE AND COMMERCE

6.1 Defendants have, at all times described herein, engaged in trade and commerce as that term is defined by §17.45(6) of the DTPA.

7. ACTS OF AGENTS

7.1 Whenever it is alleged in this petition that Defendants did any act or thing, it is meant that Defendants, jointly and severally, performed or participated in such act or thing or that such act was performed by the officers, agents or employees of said Defendant, and in each instance, the officers, agents or employees of said Defendants that were then authorized to act did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.¹

8. NOTICE BEFORE SUIT

8.1 The Consumer Protection Division informed Defendants in general of the alleged unlawful conduct described below, at least seven days before filing suit, as may be required by §17.47(a) of the DTPA.

9. APPLICABLE LAW

9.1 Plaintiff, is authorized to bring action to restrain, by temporary restraining order, temporary injunction, and permanent injunction, deceptive acts and practices in the business of trade and commerce pursuant to § 17.47(a) of the DTPA.

9.2 This Court is authorized, pursuant to § 17.47(d) of the DTPA, to “make such

¹ Texas law is well settled that corporate agents may be held personally responsible and individually liable under the DTPA for wrongful acts. *Light v. Wilson*, 663 S.W.2d 813 (Tex. 1983). It is not necessary to pierce the corporate veil in order to impose personal liability. *Leyendecker v. Wechter*, 683 S.W.2d 369 (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 such an employee to act knowingly or intentionally in order to be personally liable. *Miller v. Keyser*, 90 S.W.3d 712 (Tex. 2002). Furthermore, actionable DTPA violations may include both current misrepresentations as well as a failure to perform a future promise. *Formosa Plastics v. Presidio*, 960 S.W.2d 41 (Tex. 1996). DTPA § 17.46(c)(1) authorizes Texas courts, in actions brought by the Attorney General's Consumer Protection Division, to be guided to the extent possible, 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)]. Federal courts have often held principals or controlling persons of corporations individually liable under the FTCA for the wrongful and deceptive actions of the businesses they control on the basis that they should have had knowledge or awareness of the misrepresentations. See *FTC v. Amy Travel*, 875 F.2d 564 (7th Cir. 1988), and *FTC v. Publishing Clearing House*, 104 F.3d 1168 (9th Cir. 1997), and *FTC v. American Standard*, 874 F.Supp. 1080 (C.D. Cal. 1994), and *FTC v. Pioneer Enterp.*, 1992 WL 372350 (D. Nev. 1992).

additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice.”

9.3 TEX. FIN. CODE ANN. § 394.204(a) provides that, “A person, regardless of whether located in this state, may not provide debt management services to a consumer in this state unless the person is registered with the commissioner.”

9.4 TEX. FIN. CODE ANN. § 394.202(6) defines ‘Debt Management Service’ to mean, “a service in which a provider obtains or seeks to obtain a concession from one or more creditors on behalf of a consumer.”

9.5 TEX. FIN. CODE ANN. § 394.202(3-a) defines ‘Concession’ to mean, “assent to repayment of a debt on terms more favorable to a consumer than the terms of the agreement under which the consumer became indebted to the creditor.”

9.6 TEX. FIN. CODE ANN. § 394.203(e) provides that, “This subchapter applies to a person who seeks to evade its applicability by any device, subterfuge, or pretense.”

9.7 TEX. FIN. CODE ANN. § 394.211(a) requires that, “A provider must use a trust account for the management of all money paid by or on behalf of a consumer and received by the provider for disbursement to the consumer's creditor. A provider may not commingle the money in a trust account established for the benefit of consumers with any operating funds of the provider. A provider shall exercise due care to appropriately manage the funds in the trust account.”

9.8 TEX. FIN. CODE ANN. § 394.211(b) requires that, “The trust account must at all times be materially in balance with and reconciled to the consumers' accounts. Failure to maintain that balance is cause for a summary suspension of registration under Section 394.204.”

9.9 TEX. FIN. CODE ANN. § 394.211 (c) requires that, "If a trust account does not contain sufficient money to cover the aggregate consumer balances, and the provider has not corrected the deficiency within 48 hours of discovery, the provider shall notify the commissioner by telephone, facsimile, electronic mail, or other method approved by the commissioner, and provide written notice including a description of the remedial action taken."

9.10 TEX. FIN. CODE ANN. § 394.202(12) defines a 'Trust Account' to mean an account that is:

- (A) established in a federally insured financial institution;
- (B) separate from any account of the debt management service provider;
- (C) designated as a "trust account" or other appropriate designation indicating that the money in the account is not money of the provider or its officers, employees, or agents;
- (D) unavailable to creditors of the provider; and
- (E) used exclusively to hold money paid by consumers to the provider for disbursement to creditors of the consumers and to the provider for the disbursement of fees and contributions earned and agreed to in advance.

9.11 TEX. FIN. CODE ANN. § 394.213 requires that, "A provider has a duty to a consumer who receives debt management services from the provider to ensure that client money held by the provider is managed properly at all times."

9.12 TEX. FIN. CODE ANN. § 394.2095 requires that, "If a provider or a consumer cancels a debt management service agreement, the provider shall immediately return to the consumer: (1) any money of the consumer held in trust by the provider for the consumer's benefit; and (2) 65 percent of any portion of the account set-up fee received under Section 394.210(g)(1) that has not been credited against settlement fees."

9.13 TEX. FIN. CODE ANN. § 394.215(a) provides that, "An agreement for debt management services between a consumer and a person that is not registered under this subchapter is void."

9.14 TEX. FIN. CODE ANN. § 394.215(b) provides that, "A consumer is entitled to

recover all fees paid by the consumer under a void agreement, costs, and reasonable attorney's fees.”

10. EXHIBITS

10.1 In support of this petition, the State relies upon and adopts by reference for all purposes the attached exhibits as follows:

- (a) Exhibit A, Letter of January 3, 2011, from Bryan Garner, Vice President, Credit Alliance Group, Inc., to the Texas Office of Consumer Credit Commissioner;
- (b) Exhibit B, Excerpts of sworn statement under oath of former CAG employee conducted on February 22, 2013;
- (c) Exhibit C, Letter of August 9, 2012, from the Texas Office of Consumer Credit Commissioner, to CAG, denying registration;
- (d) Exhibit D, Customer Affidavit #1;
- (e) Exhibit E, Customer Affidavit #2 - Credit Services Today customer;
- (f) Exhibit F, CAG Customer Enrollment Marketing Packet and 2009 Contract;
- (g) Exhibit G, CAG Customer Enrollment Marketing Packet and 2010 Contract;
- (h) Exhibit H, Sample Customer Escrow Account Balance Records produced by Credit Alliance Group, Inc.;
- (i) Exhibit I, Credit Services Today documents (a/k/a Credit Alliance Group, Inc.);
- (j) Exhibit J, Affidavit of Kelle Slaughter, Investigator, Office of the Attorney General of Texas

11. FACTUAL ALLEGATIONS

11.1 Credit Alliance Group, Inc., a/k/a Credit Services Today, is a Texas Corporation, with its headquarters in Dallas, Texas. For several years, since at least February 2006, CAG has purported to offer and perform debt management services for consumers having difficulty with their personal finances. Defendants have targeted consumers with unsecured debts, claiming

participation in Defendants' debt management services will result in settlement of the consumers' debts for 20 to 60 percent of the outstanding balances within 6 to 36 months of signing up with CAG.

11.2 For this service, CAG charged service fees, sometimes totaling up to 35% of the client's total debts along with additional monthly fees, to consumers who were already facing serious financial trouble. (Exhibit F, page 7). The cover page of enrollment packages has included the promise that customers would not owe Defendants "a dime" if Defendants failed to perform as promised. (Exhibit G, page 1). CAG failed to provide the debt settlement services for which it charged fees to consumers. (Exhibit D, page 1 and Exhibit E, page 1).

11.3 Shane V. Garner is the owner, Director, President and Chief Executive Officer of Credit Alliance Group, Inc., and the controlling person overseeing CAG's business operations from its corporate headquarters in Dallas, Texas, and also does business as Credit Services Today.

11.4 CAG has marketed its services through its website, www.CreditAllianceGroup.net, as well as emails and marketing materials. CAG has delivered an enrollment package, including a contract, to consumers along with an electronic funds transfer authorization for CAG to begin monthly withdrawals of funds from customers' personal bank accounts. CAG enrollment materials and contracts represent to consumers that their funds will be held in an FDIC insured escrow account under the customer's control. (Exhibit F, pages 2 and 7; and Exhibit G, pages 5-6). CAG has made this representation to the Texas Office of Consumer Credit Commissioner by specifically stating that, "We do not hold any trust accounts for the consumer. The trust accounts are the sole property of the consumer and we do not hold any funds on the consumer's behalf." (Exhibit A, Letter of January 3, 2011, from Bryan Garner, CAG Vice

President, to the Texas Office of Consumer Credit Commissioner). CAG enrollment packages have included an insignia, directly under the CAG corporate logo, stating, "Member, FDIC". CAG is not a member of the FDIC. (Exhibit F, pages 2-10)

11.5 CAG not only charged fees for services never provided, it also diverted customers' funds, entrusted for negotiation and payment of consumer debts, for its own benefit. CAG has commingled its customers' funds in CAG's own operating account, including the account Defendant GARNER used to pay personal bills. (Exhibit B, pages 3-4 and pages 7-15, Excerpts of Sworn Statement of former CAG employee, conducted on February 22, 2013)

11.6 Dissatisfied customers have discovered not only that they cannot get a refund of amounts paid as advance fees, but that they likewise have no control over, and cannot recover any of the funds CAG promised to hold in escrow, for purposes of resolving consumer debts. (Exhibits D & E, Consumer Affidavits). CAG has operated as an unregistered provider of debt management services in Texas. CAG has over 800 client customers (Exhibit B, page 8, line 24 through page 9, line 9). CAG's own records, for 52 of its more than 800 customers, indicate CAG holds over \$180,000.00 for 52 customers in escrow funds alone. (Exhibit H, pages 1-52)

11.7 Credit Alliance Group, Inc. has operated for 7 years without securing a required Texas registration from the Texas Office of Consumer Credit Commissioner (OCCC) (Exhibit C, page 1). CAG failed to disclose this lack of registration in its consumer advertising and communications with clients.

11.8 CAG and GARNER have also continued to do business as "Credit Services Today", receiving customer funds under the unregistered name of "Credit Services Today". GARNER has represented himself to be the CEO and President of "Credit Services Today", and its website has represented that "Credit Services Today" is owned by Credit Alliance Group, Inc.

(Exhibit E, pages 1-6 and Exhibit I, pages 1-3).

12. VIOLATIONS OF TEXAS' CONSUMER DEBT MANAGEMENT SERVICES ACT

12.1 Defendants, in the course and conduct of trade and commerce, have engaged in conduct in direct violation of the Texas Consumer Debt Management Services Act, Texas Finance Code Chapter 394 including, but not limited to:

- a. Providing debt management services in Texas without first securing the legally required registration from the Texas Consumer Credit Commissioner in violation of TEX. FIN. CODE ANN. § 394.204(a);
- b. Acting in reliance on void contractual authorizations from clients and misrepresenting the validity of such void debt management services contracts to clients by failing to disclose to customers that the contracts were void due to Defendants' failures to obtain a registration to provide consumer debt management services in Texas in violation of TEX. FIN. CODE ANN. § 394.215(a);
- c. Failing to use a trust account for the management of money paid by or on behalf of a consumer, and received by the provider of debt management services, for disbursement to the consumer's creditors in violation of TEX. FIN. CODE ANN. § 394.211(a);
- d. Commingling consumers' funds with operating funds of the provider in violation of TEX. FIN. CODE ANN. § 394.211(a);
- e. Failure to maintain a trust account with funds materially in balance with and reconciled to the consumers' accounts in violation of TEX. FIN. CODE ANN. § 394.211(b);

f. Engaging in unfair, deceptive, and unconscionable acts or practices in connection with a service provided to a consumer in violation of TEX. FIN. CODE ANN. § 394.212(a)(9).

g. By failing to maintain a trust account with funds materially in balance with and reconciled to customer accounts at all times, Defendants have breached their duties to ensure that client money held by the provider is managed properly at all times in violation of TEX. FIN. CODE ANN. § 394.213.

13. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

13.1 Defendants, have engaged in false, misleading, and deceptive acts and practices declared unlawful in sections §17.46 (a) and (b) of the DTPA as follows:

a. By offering for sale, and selling, their debt management services without obtaining the required registration to provide debt management services, Defendants have engaged in, or are engaging in, acts or practices that are false, misleading and deceptive acts and practices in violation of §17.46 (a) and (b) (2), (b) (3) and (b) (5) of the DTPA;

b. By advertising, offering and/or performing debt management services without disclosing their failure to secure the prerequisite registration legally required to provide such services pursuant to TEX. FIN. CODE ANN. § 394.204(a), Defendants have misrepresented, or are misrepresenting themselves, and their debt management services, to have sponsorship, approval and characteristics they do not have in violation of §17.46 (b)(5) and (24) of the DTPA;

c. By representing that Defendants typically resolved customer debts for as

little as 20 percent of the outstanding balance of the debt, when such were not typical results for CAG clients, Defendants have engaged in, or are engaging in, false, misleading or deceptive acts or practices in violation of §17.46 (b)(5) and (9) of the DTPA by representing their debt management services have characteristics or benefits which they do not have;

d. By failing to disclose that Defendant Credit Alliance Services, Inc., was illegally offering debt management services when in fact it never obtained an approved registration as a debt management services provider from the Texas Consumer Credit Commissioner Causing confusion and misunderstanding as to the approval and certification of Defendants' debt management services in violation of DTPA §17.46(b)(2);

e. By misrepresenting that each customer's funds would be held in a fully insured individual Comerica savings account, solely under the customer's control, in order to induce customers to enroll, when in fact Defendants never set up such individual accounts for most clients, failed to maintain funds within the individual customer accounts that were created, failed to maintain any trust account with a balance materially in balance and reconciled to the customers' accounts and failing to comply with client requests for refunds of such monies, Defendants are engaging in, or have engaged in, acts or practices that are false, misleading and deceptive acts and practices in violation of §17.46 (a) and (b)(5), (b)(7), (b)(9) and (b)(12) of the DTPA by representing their debt management services to have characteristics, benefits, approvals, and certifications they do not have and by misrepresenting their customer contracts to have rights they did not have and

obligations which are prohibited by law;

f. By failing to disclose that clients' contracts were void as a matter of law due to Defendants' failure to obtain the prerequisite registration from the Texas Consumer Credit Commissioner Defendants have engaged in, or are engaging in, false, misleading or deceptive acts or practices in violation of §17.46 (b)(12) of the DTPA by representing that an agreement confers or involves rights, remedies, and obligations which it does not have or involve and which are prohibited by law;

14. REQUEST FOR INJUNCTIVE RELIEF UNDER THE DTPA.

14.1 DEFENDANTS have engaged, and continue to engage, in the unlawful deceptive acts and practices herein described, and the State has reason to believe that, unless enjoined, Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public.² Upon final trial of these issues against DEFENDANTS, pursuant to § 17.47 of the DTPA, Plaintiff requests a temporary and permanent injunction to restrain DEFENDANTS from engaging in such unlawful acts or practices.

15. IMMEDIATE EX PARTE TEMPORARY RESTRAINING ORDER

² When the State seeks injunctive relief pursuant to an authorized statute [e.g. DTPA §17.47(a)], the Texas Supreme Court has held that the State does not have to prove immediate and irreparable injury. Nor does the Court have to balance equities when the State litigates in the public's interest. When a statute is being violated, it is within the province and duty of the trial court to restrain it. *State v. Texas Pet Foods*, 591 SW2d 800 (Tex. 1979). The State has a relaxed burden because it acts in the public interest. When the State brings an action in the public interest and on behalf of consumers, harm is presumed. *United States v. Odessa Union Warehouse*, 833 F2d 172 (9th Cir. 1987), *Shafer v. United States*, 229 F2d 124 (4th Cir) Cert. Den. 351 US 931 (1956). The statute's express language supercedes the common law injunctive relief elements such as imminent harm or irreparable injury and lack of an adequate remedy at law ... [The State] 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 DTPA, and (2) that the proceedings would be in the public interest. *West v. State*, 212 SW3d 513 (Tex.App.- Austin, 2006, no pet.). The state is likewise not required to prove the likelihood of future violations nor is required to show probable injury. *Ibid at 515*. Injunctive relief may be granted to the State upon a showing of only a violation of a statute. *Gulf Holding Corp. v. Brazoria County*, 497 S.W.2d 614 at 619 (Tex. Civ. App.-Houston [14th] 1973, writ ref'd n.r.e.).

AND INJUNCTIVE RELIEF NECESSARY TO PRESERVE DEFENDANTS' ASSETS

15.1. Pursuant to § 17.47 of the DTPA, the State requests immediate relief by way of an Ex Parte Temporary Restraining Order and Temporary Injunction to prevent continued violation of law by Defendants, their officers, agents, servants, and employees, and to freeze the assets of Defendants to preserve and protect customers' advanced fees and funds that were entrusted to Defendants under the representation that such funds would be held in trust, solely under the customer's control, for use to negotiate and resolve customer debts, so that at final trial identifiable customers of Defendants may obtain restitution to which they are entitled. As described herein, there is evidence that before final trial Defendants are likely to waste or secrete the advanced fees to avoid paying restitution to these consumers. The State's application for a temporary restraining order is authorized by Section 17.47 of the DTPA. TEX. BUS. & COM. CODE §17.47(a).

15.2 Pursuant to § 17.47 of the DTPA and Dallas County Civil Courts Local Rule 2.02(a) and(b), no notice of this suit and application for temporary restraining order along with the proposed order has or will be presented to the opposing parties before the application and proposed order are to be presented to the Court for decision for reason that irreparable harm is imminent and or that relevant records and assets may be removed, secreted or destroyed. A temporary restraining order is necessary because immediate harm and injury are presumed if a law is being violated. Exhibits D, E and J, attached hereto and incorporated herein, are affidavits in support of this request for injunctive relief. Exhibit B, attached hereto and incorporated herein, is the sworn statement under oath of a former CAG accounting department employee taken on February 22, 2013.

15.3 Without such immediate temporary relief, Defendants are likely to waste or

secrete the advanced fees and funds clients entrusted to Defendants to settle clients' debts, to avoid paying restitution to these consumers. Defendants have control/owe consumers' funds entrusted to Defendants for purposes of settling consumers' debts, and advanced fees from consumers, of over \$187,000.00. The Texas Attorney General's Office is in possession of over 100 consumer complaints against Defendants for failure to perform services and failure to make refunds to customers as required by law. According to its own records produced so far for a limited 52 of its over 800 customers, CAG's own records indicate it owes over \$187,000.00 of purportedly escrowed customer funds.

15.4 Defendants maintain and are signatories on the following known accounts, which assets should be frozen pursuant to Temporary Restraining Order issued by this Court:

1. Comerica Bank, Account Numbers:
#####1843 in the name of Credit Alliance Group, Inc.
#####4736 in the name of Shane Garner
2. Unity One Credit Union, Account Number:
#####6S18 in the name of Shane Garner
#####86S1 in the name of Shane Garner

15.5 Pursuant to Dallas County Civil Courts Local Rule 2.02(c), the undersigned counsel hereby certifies that to the best of counsel's knowledge, this case in which the application for temporary restraining order is presented, is not subject to transfer under Dallas County Civil Courts Local Rule 1.06.

16. REQUEST TO CONDUCT EXPEDITED DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

16.1. Plaintiff requests leave of this Court to conduct expedited discovery, including the issuance of subpoenas, taking telephonic, oral, video, written, and other depositions of witnesses, and to require production of documents in connection therewith, prior to any scheduled temporary injunction hearing upon reasonable shortened notice to the Defendants and their

attorneys, if known.

17. DISGORGEMENT

17.1 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 unlawful conduct. 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 identifiable persons, victimized by Defendants, and the State of Texas.

18. WRIT TO ISSUE WITHOUT BOND

18.1. The State requests that the Clerk of the Court issue such Writs of Injunction and/or Writs of Restraint pursuant to any Injunction or Ex Parte Temporary Restraining Order issued by this Court in conformity with the law, and that same be issued and be effective without the execution and filing of a bond as Plaintiff, the State of Texas, is exempt from such bonds under TEX. BUS. AND COM. CODE ANN. § 17.46(b).

19. PRAYER

Wherefore premises considered Plaintiff, the State of Texas, respectfully requests the following relief:

19.1 That Defendants be cited according to law to appear and answer herein;

19.2 That this Court find that Defendants have violated and will continue to violate the law as alleged in this Petition and further find, that unless immediately restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public;

that this Court therefore issue an Ex Parte Temporary Restraining Order with Asset Freeze, without bond, that the Clerk issue writs to be served upon Defendants and other third parties in possession of assets of Defendants, and each officer, agent, servant, employee, attorney and any other person acting in concert or participation with any Defendant, who receives actual notice of the order, including such banking or financial depository institutions holding property or assets in the name of, for the benefit of, or under the control of any of the Defendants, individually or severally, in whole or in part, from withdrawing, spending, concealing, encumbering, removing, dissipating, hypothecating, transferring or releasing any monies or property on deposit in accounts under the name of or under the control of any Defendant, and from making representations, and engaging in the unlawful false, misleading, deceptive acts and practices set out in paragraph 19.2 below, permitting expedited discovery by the State in advance of the Temporary Injunction Hearing, ordering Defendants to provide information about insurance policies, surety bonds, financial accounts, real property and other assets and property prior to the temporary injunction hearing, directing such banking or financial depository institutions and others holding property or assets in the name of, for the benefit of, or under the control of any of the Defendants, individually or severally, to provide information to Plaintiff concerning any and all such accounts, funds or assets of any type, and ordering the Defendants to appear for Temporary Injunction Hearing within 14 days therefrom;

19.2 That after due notice and hearing, a Temporary Injunction be issued; and upon final hearing a Permanent Injunction be issued, restraining and enjoining each Defendant (including any business entities established by Defendants), and each officer, agent, servant, employee, attorney and any other person acting in concert or participation with any Defendant, who receives actual notice of the order, including such banking or financial depository

institutions holding assets in the name of or under the control of any of the Defendants, individually or severally, from making representations, doing the acts, and engaging in the unlawful false, misleading or deceptive acts or practices in the conduct of trade or commerce within the State of Texas as follows:

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. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendants without further order of this Court.

c. Advertising, promoting, facilitating or providing debt management services, credit monitoring services, credit counseling services or otherwise conducting business in Texas as a debt management services organization, or as an agent or employee of any person providing debt management services, credit monitoring services, credit counseling services or debt collection services in the State of Texas.

d. Entering into any contract with any person for the purposes of the Defendant advertising, promoting, facilitating, or providing debt management services, credit counseling services, credit monitoring services or debt collection services

e. Accepting any money or funds from any person for the purpose of advertising,

promoting, facilitating or providing debt management services, credit monitoring services, credit counseling services or debt collection services.

f. Advertising, offering for sale, or selling any good or service without clearly and conspicuously disclosing all the material terms of that good or service prior to accepting any form of payment for that good or service.

g. Representing that a business entity, program or service affiliated with Defendants has benefits, sponsorships or affiliations which it does not have.

h. Misrepresenting the benefits received, or which may be received, by any consumer using a good or service offered for sale by the defendant. This includes, but is not limited to, representing that a customer is able to improve his/her personal credit rating through the use of any program offered by the Defendant.

i. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants or any of Defendants' assumed names, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access.

19.3. That upon final trial additional judgment be granted the State against Defendants, jointly and severally for:

a. civil penalties of up to \$20,000.00, per violation, to the State of Texas for each violation of the DTPA by the Defendants;

b. 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. the disgorgement of Defendants' assets, as provided by law;
- d. Defendants to pay restitution to identifiable consumers and other persons, as provided by law;
- e. Defendants to pay Pre judgment and Post-judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and
- f. Defendants to pay all costs of Court, costs of investigation, and reasonable attorneys' fees pursuant to TEX.GOV.T.CODE ANN. § 402.006(c).

19.4. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled as warranted by the evidence and the Court's authority.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

Attachments:

- Exhibit A** Letter of January 3, 2011, from Bryan Garner, Vice President, Credit Alliance Group, Inc., to the Texas Office of Consumer Credit Commissioner;
- Exhibit B** Excerpts of sworn statement under oath by former CAG accounting department employee, conducted on February 22, 2013;
- Exhibit C** Letter of August 9, 2012, from the Texas Office of Consumer Credit Commissioner to CAG Denying Registration;
- Exhibit D** Customer Affidavit #1;
- Exhibit E** Customer Affidavit #2 - Credit Services Today (a/k/a CAG) customer;
- Exhibit F** CAG Customer Enrollment Marketing Packet and 2009 Contract;
- Exhibit G** CAG Customer Enrollment Marketing Packet and 2010 Contract;
- Exhibit H** Customer Escrow Account Balance Records from Credit Alliance Group, Inc.;
- Exhibit I** Credit Services Today documents (a/k/a Credit Alliance Group, Inc.);
- Exhibit J** Affidavit of Kelle Slaughter, Investigator, Office of the Texas Attorney General