

D-1-GN-16-002964
CAUSE NO. _____

THE STATE OF TEXAS,
Plaintiff,

v.

PC CLEANER, INC; CASHIER
MYRICKS, INDIVIDUALLY.

Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST

_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, KEN PAXTON, complains of PC CLEANER, INC.; CASHIER MYRICKS, INDIVIDUALLY, Defendants, and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Tex. R. Civ. P. 190.3.
2. This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because the relief sought by the State includes non-monetary injunctive relief, and the State’s claims for monetary relief including penalties, consumer redress, and attorneys’ fees and costs are in excess of \$100,000.00 and could exceed \$1,000,000.00.

PUBLIC INTEREST

3. 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 Defendants have caused and will cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State and further, will cause damage to the

State of Texas and to persons from whom moneys or properties are unlawfully acquired by Defendants. 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.

JURISDICTION

4. This action is brought by Attorney General KEN PAXTON, through his Consumer Protection 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. (hereafter the “DTPA”) upon the grounds 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. In enforcement suits filed pursuant to §17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers, and injunctive relief.

DEFENDANTS

5. Defendant PC CLEANER, INC (“PC Cleaner”) is a California corporation that does business nationwide and in Texas, as alleged specifically below, in its own name, and this proceeding arises out of such business done in this state. Its principal place of business is 240 Newport Center Drive #6, Newport Beach, CA 92660. PC Cleaner does not maintain a regular place of business in this state and has not designated or maintained a registered agent for service of process in Texas. Therefore, it may be served with process by serving the Secretary of State pursuant to the Texas Civil Practices & Remedies Code § 17.044. PC Cleaner can be served by certified mail, return receipt requested, directed to PC Cleaner through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

6. Defendant CASHIER MYRICKS is Chief Executive Officer of PC Cleaner and has done business in Texas as alleged below. On information and belief, Defendant Myricks has at all times relevant to this petition either directly engaged in the acts or practices described below, or has directed and controlled others in committing the acts or practices described below. Defendant Myricks can be served with process at PC Cleaner or at his home, 17 Via Palladio, Newport Coast, CA 92657, or at any other place where he may be found.

VENUE

7. Venue of this suit lies in Travis County, Texas because under the DTPA § 17.47(b), Defendants and their agents have done business in Travis County, Texas by marketing and selling its registry cleaner services to consumers in Travis County, Texas.

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 § 17.45(6) of the DTPA.

ACTS OF AGENTS

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

NOTICE BEFORE SUIT

10. 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.

SPECIFIC FACTUAL ALLEGATIONS

11. PC Cleaner purports to be a provider of registry cleaner software. A registry cleaner is a type of software which is designed to remove items from the Windows registry, which is a type of log that stores a user's settings. PC Cleaner advertised its registry cleaner software, PC Cleaner Pro, through internet search engine advertisements, as well as through websites including pccleaners.com, pc-cleaners.com, pccleaner.com, and pccleanerpro.com. PC Cleaner's websites claimed that PC Cleaner Pro can "supercharge" your PC, "Boost PC Performance," "Protect your Privacy," "Protect, Fix, Optimize & Boost PC Performance by up to 200%" and more.

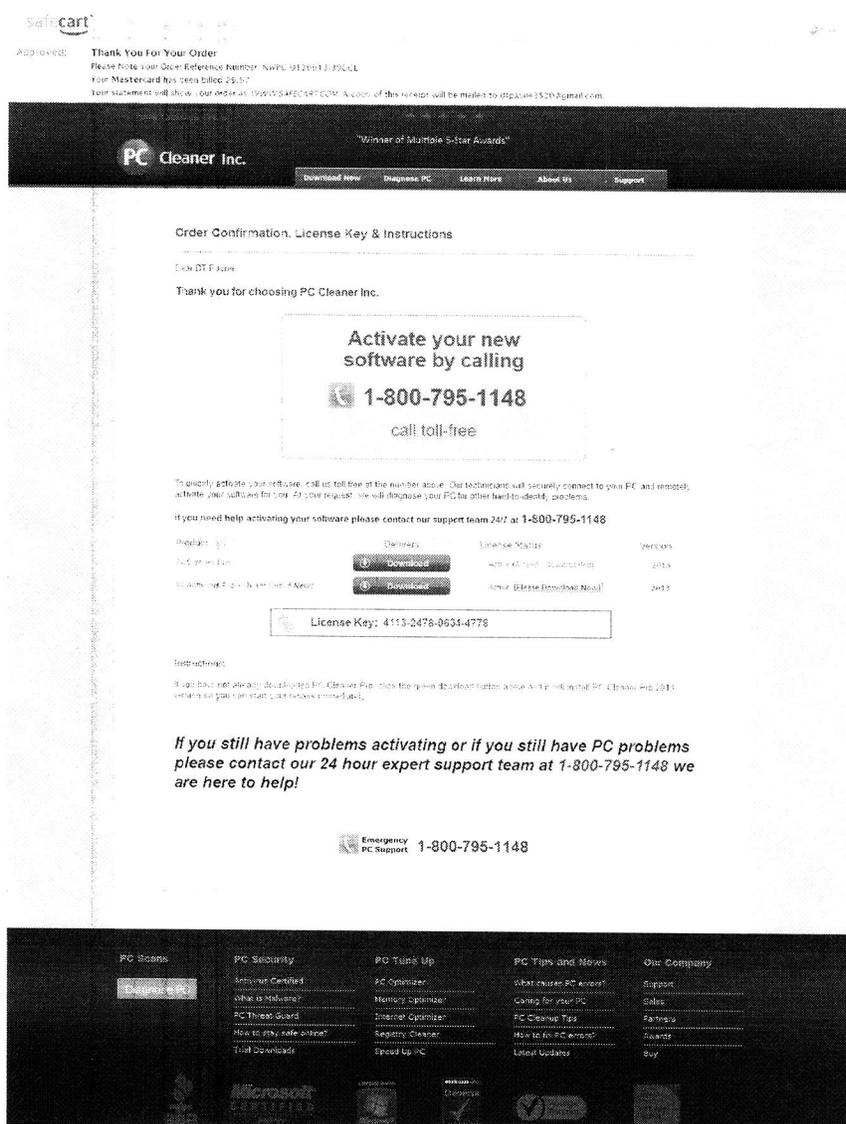
12. On information and belief, PC Cleaner Pro does not and cannot perform as it was advertised. In fact, PC Cleaner's End User License Agreement stated that "The Software will not necessarily increase performance or provide a utility benefit on your computer, and PC Cleaners makes no claim that your computer has any general or specific deficiency, defect, or issue with underperformance...".

13. PC Cleaner's website also promotes its A+ rating with the BBB, when in fact, PC Cleaner is not rated by the BBB, and several of the other affiliations or certifications on its website on information and belief are either unsubstantiated or are in actuality advertisements.

14. On its websites and through third-party websites, PC Cleaner makes available a free 30-day trial, which begins with a diagnostic scan of the consumer's computer. In the past, this free scan inevitably indicated that a consumer's computer "requires attention," warning of hundreds or thousands of so-called "problems." Even when a consumer used a newly re-imaged computer, which means the computer was wiped clean and started fresh with the same settings as when it was delivered from the factory, PC Cleaner's scan found hundreds or thousands of "problems."

15. PC Cleaner’s “free trial” only allows a consumer to scan his or her computer and review the results of the scan. If the consumer wanted to fix his or her computer in response to the problems PC Cleaner represented exist, he would be directed to download the full product, for about \$29.99.

16. After downloading the full version of PC Cleaner Pro, an order confirmation screen appears. This confirmation page in the past contained a prominent instruction in the center of the page to “Activate your new software” by calling the phone number provided, and only in smaller font below provided a license key to activate the product without calling.



Therefore, it was likely consumers will see the phone call activation instruction before seeing the license key, and would call the phone number instead of simply activating with the key.

17. After calling this phone number, a third-party customer service representative (“CSR”) remotely began the install of PC Cleaner Pro, while manually performing a “diagnostic.” According to consumer complaints, during this diagnostic, the CSR made misrepresentations and unsubstantiated claims to convince the consumer that additional services are necessary, when actually the consumer’s computer likely has no serious problems. The CSR -recommended “tune-up” would sometimes cost \$250 with an additional \$19.99 per month charge for continuing maintenance coverage. According to complaints, CSRs sometimes misrepresented that they were from Microsoft or that they are performing repairs as recommended by Microsoft.

18. The PC Cleaner website also offered “Support Experts” who can provide immediate help. On information and belief, these Experts were the same as those who helped activate the product as described above. One of PC Cleaner’s frequently asked questions indicated that if “you have a PC issue that only a technician can fix[,]” PC Cleaner “will be happy to have one of [their] Microsoft certified technicians to do a remote session to diagnose and fix your PC issues. . . .” The website advertised this service as “100% free to all PC Cleaner customers,” when in reality, a heavy fee was associated with the technician’s fix. If a consumer calls the phone number provided in the software for “support,” he or she received the same sales pitch as during activation described above.

19. Defendant Myricks is the CEO of PC Cleaner, and he manages and facilitates virtually all aspects of the business. Defendant Myricks has admitted that he directly engaged in facets of the business.

FALSE, MISLEADING OR DECEPTIVE ACTS

20. Defendants, as alleged above and detailed below, 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. Such acts include:

- A. False, misleading, or deceptive acts or practices in the conduct of any trade or commerce, in violation of DTPA §17.46(a);
- B. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA § 17.46(b)(2);
- C. Causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by, another, in violation of DTPA § 17.46(b)(3);
- D. 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 have, in violation of DTPA §17.46(b)(5);
- E. Knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service, in violation of DTPA §17.46(b)(13);
- F. Failing to disclose information concerning goods or services which was known at the time of the transaction with the intent to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of § 17.46(b)(24).

PRAYER FOR RELIEF

21. Plaintiff further prays that Defendants be cited according to law to appear and answer herein; that upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' 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. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, that they have identified problems or other issues on consumers' computers that will affect the performance or security of consumers' computers, including by:
1. Representing that an entry in a computer's registry, a cookie, or an Active X control, is a "threat," "problem," "issue," "error," or "concern" or similar language if such claim is unsubstantiated;
 2. Directly or indirectly representing that an entry in a computer's registry, a cookie, or an Active X control is a "threat," "problem," "issue," "error," or "concern" or similar language without accurately describing in a Clear and Conspicuous manner, the effect the type of entry in a computer's registry, cookie, or Active X control is likely to have on the computer's security or performance.
 3. Directly or indirectly representing the classification or category of scanned items without accurately describing in a Clear and Conspicuous manner that classification or category.
 4. Representing the "Threat Level" or "Concern Level" or similar language of scanned items if such claim is unsubstantiated;
 5. Misrepresenting a consumer's computer's performance through the use of an image or textual warning;
- B. Misrepresenting, including through unsubstantiated representations, the effectiveness of any software offered for sale;

- C. Including terms in an End User License Agreement that contradict any claims Defendants make, directly or indirectly, about Defendants' goods or services or which otherwise affirmatively disclaim effectiveness of the good or service offered for sale;
- D. Representing goods or services are free when they are not, including representing directly or indirectly that goods or services include free technical support service if free service is not included in the software purchase price;
- E. Contracting with or hiring a company to provide third-party customer support, product support, technical support, or sales without:
 - 1. Requesting for review all scripts or guidelines the company will provide to customer service representatives (if any) and reviewing any such provided scripts for compliance with the terms of this agreement.
 - 2. Monitoring or auditing calls to the company, or hiring a third-party monitor or auditor to do so, on a systematic, regular, and frequent basis to monitor for compliance with the Permanent Injunction terms incorporated into the company's contract or agreement, including making and reviewing recordings of calls for compliance monitoring; and
 - 3. Taking appropriate enforcement action, including termination of the relationship, to ensure that the company complies with the terms of the Permanent Injunction portion of this agreement incorporated into its agreement or contract with Defendants.
 - 4. Displaying, in Direct Proximity to any of the third-party company's contact information on Defendants' website, the name of such third party; and the

fact, if true, that such third party may try to offer for sale or sell goods or services.

- F. Selling any good or service without obtaining Express Informed Consent for such good or service, including any auto-renewal feature.
 - G. Representing that PC Cleaner has an affiliation with, approval or certification by Microsoft, ICSA Labs, the BBB, West Coast Labs, or any other organization unless such affiliation, approval or certification is accurate and current;
22. In addition, Plaintiff State of Texas respectfully prays that this Court will:
- A. Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses;
 - B. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of not more than \$20,000 per violation of the DTPA;
 - C. Order Defendants to pay Plaintiff's attorney fees and costs of court pursuant to the TEX. GOVT. CODE, § 402.006(c);
 - D. Order Defendants to pay both pre-judgment and post judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and
23. Plaintiff further prays that this court grant all other relief to which Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

DAVID A. TALBOT
Chief, Consumer Protection Division

Handwritten signatures of Elizabeth Chun and Paul Singer. Elizabeth's signature is on the left, and Paul's is on the right. Both are written in black ink.

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