



TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General of Texas Greg Abbott, complains of the named Defendants, and for cause of action would respectfully show:

### **I. DISCOVERY**

1. 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 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 \$100,000 and could exceed \$1,000,000.00.

### **II. JURISDICTION**

3. This enforcement action is brought by 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 §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. In enforcement suits filed pursuant to Section 17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers and injunctive relief.

### **III. DEFENDANTS**

***Individual Defendants.***

4. Defendant **David C. Lubbat** a/k/a David Constandi Lubbat (“**David Lubbat**”) is an individual who resides in Harris County, Texas. He is named as a defendant in his individual capacity and in his capacity as a partner in one or more partnerships. He is also named as a defendant in his capacity as trustee for one or more trusts and as a beneficiary of one or more trusts. He may be served with citation at 15106 Chandler Hollow Ln., Houston, TX 77049.

5. Defendant **Charles J. Lubbat** a/k/a Charles Joseph Lubbat a/k/a Charles Joseph [no last name] (“**Charles Lubbat**”) is an individual who resides in Harris County, Texas. He is named as a defendant in his individual capacity and in his capacity as a partner in one or more partnerships. He is also named as a defendant in his capacity as trustee for one or more trusts and as a beneficiary of one or more trusts. He may be served with citation at 430 Overland Park Dr., Houston, TX 77049.

6. Defendant **Nancy P. Lubbat** a/k/a Nancy Parmar Lubbat (“**Nancy Lubbat**”) is an individual who resides in Harris County, Texas. She is named as a defendant in her individual capacity and in her capacity as a partner in one or more partnerships. She may be served with citation at 15106 Chandler Hollow Ln., Houston, TX 77049.

7. Defendant **Catherine Lubbat** a/k/a Cathi Lubbat a/k/a Cathie Lubbat (“**Catherine Lubbat**”) is an individual who resides in Harris County, Texas. She is named as a defendant in her individual capacity and in her capacity as a partner in one or more partnerships. She may be served with citation at 430 Overland Park Dr., Houston, TX 77049.

***Entity and Partnership Defendants.***

8. Defendant **Lincoln Academy (“LAP”)** is an unregistered partnership having its principal place of business in Harris County, Texas, at 12605 E. Freeway, Suites 506 and 508, Houston, TX 77015. The partnership’s partners are David Lubbat, Charles Lubbat, Nancy Lubbat, and Catherine Lubbat; and the partners will be served with citation because they are also individual defendants.

9. Defendant **National Home School Accreditation of America (“NHSAAP”)** is an unregistered partnership having its principal place of business in Harris County, Texas, at 12605 E. Freeway, Suites 506 and 508, Houston, TX 77015. The partnership’s partners are David Lubbat, Charles Lubbat, Nancy Lubbat, and Catherine Lubbat; and the partners will be served with citation because they are also individual defendants.

10. Defendant **High School Diploma Online (“HSDOP”)** is an unregistered partnership having its principal place of business in Harris County, Texas, at 12605 E. Freeway, Suites 506 and 508, Houston, TX 77015. The partnership’s partners are David Lubbat, Charles Lubbat, Nancy Lubbat, and Catherine Lubbat; and the partners will be served with citation because they are also individual defendants.

11. Defendant **Momentive Group, LLC, f/k/a Lincoln Academy, LLC, d/b/a Gates Academy d/b/a Lincoln Academy, including all successors in interest thereof (“Momentive Group” or “Momentive”)**, is a Texas limited liability company located at 12605 East Freeway, Suites 506 and 508, Houston, TX 77015. It may be served with citation by and through its registered agent, David C. Lubbat, who is located at 12605 East Freeway, Ste. 508, Houston, TX 77015.

12. Defendant **Momentive Apps, LLC**, including all successors in interest thereof (“**Momentive Apps**”), is a Texas limited liability company located at 12605 East Freeway, Suites 506 and 508, Houston, TX 77015. It may be served with citation by and through its registered agent, David C. Lubbat, who is located at 12605 East Freeway, Ste. 508, Houston, TX 77015.

13. Defendant **Nyloc Enterprises, LLC**, d/b/a National Home School Accreditation of America (“**Nyloc**” or “**Nyloc Enterprises**”) is a Texas limited liability company located at 1300 Post Oak Boulevard, Suite 2000, Houston, TX 77056 (the office of its agent) and located at 12605 East Freeway, Ste. 508, Houston, TX 77015 (the office of its managers). It may be served with citation by and through its registered agent, Charles Koerth, who is located at 1300 Post Oak Boulevard, Suite 2000, Houston, TX 77056.

14. Defendant **Rylex, LLC**, d/b/a Brownstone Academy d/b/a Brownstone High School a/k/a American Academy (“**Rylex**,” “**Brownstone Academy**,” “**Brownstone**,” or “**American Academy**”) is a Texas limited liability company located at 1300 Post Oak Boulevard, Suite 2000, Houston, TX 77056 (the office of its agent) and located at 12605 East Freeway, Ste. 508, Houston, TX 77015 (the office of its managers). It may be served with citation by and through its registered agent, Charles Koerth, who is located at 1300 Post Oak Boulevard, Suite 2000, Houston, TX 77056.

### ***Trust Defendants***

15. Defendant David Lubbat is trustee of and beneficiary of the **David Lubbat Special Trust**, a trust administered in Harris County, Texas. He is named as a defendant in his capacity as trustee of the David Lubbat Special Trust and in his capacity as a beneficiary of the

David Lubbat Special Trust. He may be served with citation at 15106 Chandler Hollow Ln., Houston, TX 77049.

16. Defendant Charles Lubbat is trustee of and beneficiary of the **Charles Lubbat Special Trust**, a trust administered in Harris County, Texas. He is named as a defendant in his capacity as trustee of the Charles Lubbat Special Trust and in his capacity as a beneficiary of the Charles Lubbat Special Trust. He may be served with citation at 430 Overland Park Dr., Houston, TX 77049.

***Relief Defendant***

17. Defendant **Constandi Lubbat** is an individual who resides in Harris County, Texas. He is named as a relief defendant because on information and belief he holds ill-gotten gains derived from the illegal activities of Defendants that are the subject matter of this lawsuit and, therefore, he is subject to any court orders, injunctions, or equitable disgorgement orders from the Court. He may be served with citation at 15106 Chandler Hollow Ln., Houston, TX 77049.

***Defendant Classifications***

18. For purposes of this petition, the following definitions will apply:
- a. **“Partnership Defendants”** means LAP, NHSAAP, and HSDOP, collectively.
  - b. **“Individual Defendants”** means David Lubbat, Charles Lubbat, Nancy Lubbat, and Catherine Lubbat.

c. **“Trusts”** means the David Lubbat Special Trust and the Charles Lubbat Special Trust.

d. **“Entity Defendants”** means all defendants named in this petition that are business entities that have registered with the Texas Secretary of State.

e. **“Defendants”** means all Individual Defendants, all Partnership Defendants, all Trusts, and all Entity Defendants.

f. **“Relief Defendants”** means Defendants who possess 1) ill-gotten gains derived from the unlawful acts or practices of one or more of the other Defendants named in this petition and/or 2) benefits that would be subject to the equitable remedy of disgorgement.

19. All Defendants are named in their capacity as **Relief Defendants** to the extent that they possess 1) ill-gotten gains derived from the unlawful acts or practices of one or more of the other Defendants named in this petition and/or 2) benefits that would be subject to the equitable remedy of disgorgement (the forced relinquishment of all benefits that would be unjust to retain, including all ill-gotten gains and benefits or profits resulting from an actor or actors putting fraudulently-converted property to a profitable use). Plaintiff reserves the right to name additional Relief Defendants to the extent that additional individuals or entities appear to possess ill-gotten gains and/or benefits subject to disgorgement.

#### IV. VENUE

20. Venue of this suit lies in Harris County, Texas for the following reasons:

a. Under the DTPA §17.47(b), venue is proper because Defendants reside in Harris County, Texas.

b. Under the DTPA §17.47(b), venue is proper because Defendants have done business in Harris County, Texas, including operating businesses engaged in deceptive and misleading practices.

c. Under the DTPA §17.47(b), venue is proper because Defendants' principal places of business are in Harris County, Texas.

d. Under the DTPA §17.47(b), venue is proper because transactions forming the basis of this suit occurred in Harris County, Texas.

## **V. PUBLIC INTEREST**

21. 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 State of Texas has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Plaintiff also has reason to believe that future harm is imminent and that Defendants will continue to cause such adverse effects. 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.

## **VI. TRADE AND COMMERCE**

22. Defendants have, at all times described below, engaged in conduct constituting "trade" and "commerce," as those terms are defined in §17.45(6) of the DTPA.

## **VII. ACTS OF AGENTS**

23. Whenever in this petition it is alleged that a Defendant or Defendants did any act, it is meant that:

- a. The specified Defendant or Defendants performed or participated in the act, or
- b. The specified Defendant's or Defendants' officers, successors in interest, agents, trustees or employees performed or participated in the act on behalf of and under the authority of one or more of the Defendants.

## VIII. FACTUAL BACKGROUND

### *Overview of Lincoln Academy.*

24. Defendants operate a fraudulent online high school diploma mill, headquartered in Houston, Texas, known as Lincoln Academy, which sells bogus online high school diplomas to consumers nationwide, including Texas, for fees starting at \$299.<sup>1</sup> [www.lincolnonlinehs.com](http://www.lincolnonlinehs.com). Defendants claim to provide an “official” and “accredited” high school diploma that consumers can use to apply to college, enlist in the military, or apply for a job. But Defendants’ program provides no coursework, no instruction, and no legitimate textbooks or reference materials. Despite Defendants’ claims that students will have access to “state-certified teachers” and “24/7 tutoring services,” in fact consumers receive little or no value from the goods and services purchased from Defendants. [www.thelincolnhighschool.com](http://www.thelincolnhighschool.com). The alleged benefits of Lincoln Academy “diplomas”—that they are “nationally” accredited and generally accepted by college admissions, potential employers and the U.S. military—are illusory. In the end, consumers pay

---

<sup>1</sup> Defendants advertise through online advertising service providers, such as Google, and by uploading marketing videos to YouTube.com.

hundreds of dollars for a worthless piece of paper that provides none of the promised benefits of a legitimate high school education.<sup>2</sup>

***Defendants Misrepresent Characteristics and Benefits of Their Online High School Program.***

25. Lincoln Academy website pages ([www.lincolnhighschool.com](http://www.lincolnhighschool.com)), both in their present form and recent iterations, are riddled with false and misleading claims designed to lure unsuspecting consumers. The following are some examples:

- Defendants offer an “accredited” high school diploma online program. (Ex. A, Acosta Aff., Ex. A-1, p.2)
- Defendants’ program qualifies as a legitimate “home school program” and is “accredited” by the “National Home School Accreditation of America.”<sup>3</sup> (Ex. A, Acosta Aff., Ex. A-4, p.1)
- Defendants “guarantee” that an “accredited” high school diploma from Lincoln Academy will allow consumers “to apply nationwide to Community Colleges, Four Year

---

<sup>2</sup> Defendants even concede that unaccredited degrees are worthless, especially if attending college is the goal:

“When enrolling in an online high school, check their website to make sure that they are an accredited online high school. Many claim to be accredited, but are not. It should say so somewhere on the school’s homepage. If you do not see anything that substantiates them being accredited, this is not a school you want to enroll in. You may get a decent education, but the certificates and/or diploma you receive will be of little worth—especially if college is part of your future plans.”

See <http://www.thelincolnhighschool.com/online-high-school-classes.php>.

<sup>3</sup> In contrast to Defendants’ offerings, § 29.916(a)(1), Texas Education Code, defines home schooling as follows:

“‘Home-schooled student’ means a student who predominantly receives instruction in a general elementary or secondary education program that is provided by the parent, or a person standing in parental authority, in or through the child’s home.”

Universities, Trade Schools, and Job Employers.” (Ex. A, Acosta Aff., Ex. A-2, p. 2 ;Ex. A-5, p. 4)

- “Lincoln Academy’s high school diploma is accepted nationwide by community colleges, 4 year universities, trade schools, and employers.” (Ex. A, Acosta Aff., Ex. A-5 p.4)

- “Lincoln Academy Benefits: . . . Apply to a Community College, Four-Year University, and Technical/Trade School after graduation[.]” (Ex. A, Acosta Aff., Ex. A-1, p. 2)

- Consumers can obtain their “GED [General Education Development] online with Lincoln Academy by enrolling and then by taking the Lincoln Academy ged (sic) online test.” (Ex. A, Acosta Aff., Ex. A-3, p. 4)

- “Many students who earn their diploma will enroll in a university or trade school, enlist in the military or police academy, get a higher position at their job, earn a higher salary, and many other benefits that you will experience once you have graduated from Lincoln Academy.” (Ex. A, Acosta Aff., Ex. A-3, p. 4)

- Lincoln Academy has been “educating students for over thirty-five years.” (Ex. A, Acosta Aff. Ex. A-5, p.1)

***The Lincoln Academy Program Provides No Educational Benefit Of Any Kind.***

26. The so-called “accredited” high school diploma offered by Defendants provides none of the claimed benefits *because it is not an educational program*. Simply paying the fee of \$299.00 and taking the online test (less than 4 hours) and receiving a passing grade are all that is required for the consumer to receive a Lincoln Academy diploma, along with a falsified transcript—all in as little as one week. (Ex. A, Acosta Aff. ¶¶ 3, 4; *Id.* Ex. B, Roohi Aff. ¶4a) No coursework or preparation is required before taking the online test. The level of difficulty of the

test is far below what would be required of a high school graduate (*e.g.* one question asks, “who was the first President of the United States?”), and the “student” is permitted to re-take the test (or portions of it) as many times as needed to pass. *Id.* A computer instantly grades the essay portion of the testing, in part basing the grade on word count and other educationally-irrelevant criteria. (Ex. A, Acosta Aff. ¶3d; Ex. B, Roohi Aff. ¶4c) To get on the “honor roll,” students must pay extra money, but there is no actual work required to achieve honor roll status. (Ex. A, Acosta Aff. ¶5; Ex. A-29; Ex. B, Roohi Aff. ¶5c).

27. Defendants’ website falsely represents to prospective students that they “will have access to state-certified teachers and our 24/7 tutoring services.” Other promised benefits include a “self-paced system, textbook free schooling, free test prep for the ACT, SAT, and ASVAB tests, and a flexible payment plan that fits anyones (sic) budget.” (Ex. A, Acosta Aff. Ex. A-1-A-5) In fact, no actual instruction is provided. (Ex. A, Acosta Aff. ¶3a) Defendants also falsely claim that they “work with [their] students on a level that is just right for each student,” when, in reality, consumers simply pay a fee to access online materials on Defendants’ VistaCT site. (Ex. A, Acosta Aff. Ex. A-1-A-5) Defendants also falsely promise that consumers will only pay a single flat fee. In reality, virtually everything is purchased *a la carte*, including the study guide handbooks, which are actually owned by the Texas Education Agency, (Ex. A, Acosta Aff. ¶3e), and which Defendants have copied and offer for sale in violation of copyright laws.

28. With respect to Defendants’ claim that they can provide GED testing, this is also false. (Ex. A, Acosta Aff., Ex. A-3, p. 4) The GED exam may be administered only in person at authorized and controlled testing centers. *See* TEX. ADMIN. CODE §89.42. Defendants are not authorized by the State of Texas to provide GED testing, and on information and belief they are

not authorized to provide GED testing by any other state.<sup>4</sup> (Ex. A, Acosta Aff. A-26). *See* TEX. ADMIN. CODE §89.41.

29. Defendants even falsify how long they have been in business, claiming they have been educating students for “over 35 years” when in fact they began operating no earlier than 2010. (Ex. A, Acosta Aff. Ex. A-5 p.1)

***The Nonexistent “National” Accreditation of Lincoln Academy.***

30. Defendants falsely claim their online degree program is *nationally* accredited by the National Home School Accreditation of America partnership (“NHSAAP”). One or more Defendants set up the NHSAAP web site at [www.nhsaamerica.org](http://www.nhsaamerica.org) in 2010 using official sounding words like “National Home School Accreditation of America” to dupe consumers. (Ex. A, Acosta Aff. A-18, A-25) The fraud through which the Defendants “accredited” themselves was revealed when one of Defendants filed an assumed name certificate for the business in September 2013. (Ex. A, Acosta Aff. A-17)

31. Defendants had to create a phony accrediting organization for the simple reason that no legitimate organization would give Lincoln Academy accredited status. In Texas, for example, for non-public schools to achieve legitimate accreditation, they must offer “curriculum, staffing, and instruction” that are “sufficiently comparable to those of a public school.” (Ex. A, Acosta Aff. A-21 (Texas Private School Accreditation Commission (“TEPSAC”) Policy Book at 2.) The recommended high school program for public schools in Texas generally requires four credits of English, four credits of math (including Algebra I, Algebra II, and Geometry), four

---

<sup>4</sup> *See* [http://www.tea.state.tx.us/index2.aspx?id=2147483711&menu\\_id=2147483729](http://www.tea.state.tx.us/index2.aspx?id=2147483711&menu_id=2147483729) (“The Texas High School Equivalency exams are provided by GED Testing Service, LLC.”).

credits of science (including biology, chemistry and physics), three and a half credits of social studies (including world history, world geography, United States history and United States government), and credits in fine arts and elective courses. 19 Tex. Admin. Code §§74.63 and 74.64 (outlining the “Recommended” and “Advanced” High School programs). Since Lincoln Academy offers no instruction or courses of any kind, it does not remotely qualify for legitimate accreditation.

32. On information and belief, neither NHSAAP nor Lincoln Academy is recognized by any legitimate accrediting organization in Texas or any other state. (Ex. A, Acosta Aff. A-22; <http://www.tepsac.org/agencies.cfm> (list of the 15 approved accreditors in Texas). Thus, no one, save Defendants themselves, recognizes Lincoln Academy as an accredited institution.

***Lincoln Academy Diplomas Are Essentially Worthless.***

33. Contrary to Defendants’ money back guarantee claims, Lincoln Academy diplomas and transcripts are not generally accepted by colleges, universities, community colleges, police academies, or the military for the simple reason that they do not represent the recipient has achieved a standard high school education with passing grades.

34. The United States military generally requires a high school diploma from an accredited institution or proof of completion of a comparable course of study. (Ex. A, Acosta Aff. Ex. A-23 (citing the Air Force Recruiting Manual at §2.12), A-24 (citing the Army Education Enlistment Credentials (USAREC Regulation 601-101) at 2-4 & 3-2) The Lincoln Academy diploma and “transcript” do not satisfy either of these criteria.

35. Police academies also generally require a diploma from an accredited high school or proof of an equivalent level of education. Under Texas law, for example, Lincoln Academy

fits the definition of “diploma mill.” 37 Tex. Admin. Code §211.1(a)(19) (a “diploma mill” is “an entity that offers [a diploma] for a fee with little or no coursework”). Therefore, its diplomas do not meet the requirements for admission to Texas law enforcement academies. *See* 37 Tex. Admin. Code §211.1(29) (“[D]ocumentation from diploma mills is not acceptable” for admission).

36. Generally, freshmen applicants to four-year colleges and universities must have satisfactorily completed a standard high school curriculum at either a private or public school. *See e.g.* Tex. Educ. Code §51.805(a)(1) (generally applicants must have completed the “High School Program” or their equivalents described in 19 Tex. Admin. Code §§74.63 and 74.64).<sup>5</sup> In the alternative, freshmen applicants can qualify for admission by achieving a minimum score on the SAT or ACT or similar college readiness exam. *See e.g.* Tex. Educ. Code §51.805(a)(1) (referencing SAT and ACT minimums specified in §51.803(a)(2)(B)). Since Lincoln Academy provides neither an acceptable diploma nor the coursework that would prepare a student for college level courses, its products add nothing of value to the college admissions process.<sup>6</sup>

---

<sup>5</sup> For example, University of Texas admissions requirements state: “To be considered for admission, freshman applicants to UT Austin must submit a complete application and must graduate under the Recommended High School Program or the Distinguished Achievement Program (also known as the Advanced High School Program) . . . (See <http://bealonghorn.utexas.edu/freshmen/admission/hs-courses/>.)

Similarly, University of Houston admissions requirements state: “[A]ll students meet one of the following college readiness standards . . . [including] [s]uccessfully complet[ing] the recommended or advanced high school program . . . .” (See <http://www.uh.edu/admissions/apply/apply-freshman/admissions-criteria/>.)

<sup>6</sup> Nationwide, a range of educational institutions specify that an unaccredited, internet-based high-school diploma is essentially irrelevant in the admission process.

- **DeVry:** Applicants must evidence basic and prerequisite skills proficiency levels appropriate to the chosen program in at least one of the following ways: [S]ubmit ACT or SAT examination scores deemed appropriate by DeVry [list of score levels omitted] [or] Attain appropriate scores on DeVry-administered placement examinations in reading, writing, arithmetic and elementary algebra. (See <http://www.devry.edu/corporate/newpartner/PDFs/AdmissionRequirements.pdf>.)

37. Two-year colleges, community colleges and junior colleges—including those with an open admissions policy—generally rely on placement test scores for admission decisions or in the alternative SAT and ACT scores.<sup>7</sup> See Tex. Educ. Code § 51.3062(b) (junior colleges “shall assess the academic skills of each entering undergraduate student [with the Texas Success Initiative placement test]”). Again, since Lincoln Academy does not offer any instruction in high school level courses, it does not assist the prospective student in preparing for college readiness exams and is essentially irrelevant to the two-year as well as the four-year college admissions determination.

38. Since Lincoln Academy does not instruct students according to any of the recommended curricula, is not accredited by a legitimate accrediting organization, and does not provide any actual instruction or coursework, no aspect of the Lincoln Academy program can

- 
- **Kansas City Kansas Community College**: “Students who have graduated from a non-accredited high school . . . will be admitted to the college based on their ACT, SAT, or GED scores and a personal interview with the Assistant Director of Admissions.” (See <http://www.kckcc.edu/academics/classSchedules/fall/admissionProcedures.aspx>.)
  - **Boise State University**: “If you graduated from an unaccredited high school . . . , you will be considered for provisional admission with an ACT composite score of at least 17 or SAT combined math and critical reasoning score of at least 830 and the following minimum scores on the full COMPASS exam – 46 on Algebra, 68 on Writing and 85 on Reading.” (See <http://admissions.boisestate.edu/question/home-school-or-unaccredited-high-school-graduate/>.)
  - **University of Georgia**: “[O]ur Faculty Admissions Committee has adopted the following criteria in accordance with USG policy for the admission of students . . . who attend non-accredited high schools. [ . . . ] [1] Official scores from the SAT or ACT (for math and English only—see below), SAT II, International Baccalaureate (IB) and/or Advanced Placement (AP) exams; [2] Coursework for credit that appears on an official college or an accredited high school transcript; and/or, [3] An SAT or ACT score in the top five percent of college-bound seniors nationally to satisfy the English and mathematics portions of the CPC (in 2011, the requisite SAT was 1370 and ACT was 31).” (See <https://www.admissions.uga.edu/article/home-educated-or-non-accredited-high-school.html>.)

<sup>7</sup> Lone Star College specifies that “State Law requires all students attending public institutions of higher education be assessed in reading, writing and mathematics before enrolling in classes. The Texas Success Initiative (TSI) is a state legislated program designed to improve student success in college.” (See <http://www.lonestar.edu/placement-testing-info.htm>.)

Houston Community College states that “If you are a first-time student to any Texas college, you will need to take the Texas Success Initiative (TSI) assessment test.” (See <http://www.hccs.edu/district/students/tsi/>.)

assist the prospective college student in gaining college admission. Defendants do not teach students, and thus no “curriculum,” regardless of rigor, even exists. Thus possessing a Lincoln Academy diploma has *no relevance* in the university and college admissions process.<sup>8</sup>

39. Consumers complain that they feel misled and cheated. For example:
- a. “I attended Lincoln Academy in 2011, hoping to receive my high school diploma. But after receiving my diploma, I applied at several colleges, but no one would except me with this diploma, one of the college send me a message staying that my diploma was an "Diploma Mill," which means its a fraud! I really worked my behind off so I could make a better living for my kids, and its not fair to cheat people out of their hard earn money just to make themselves rich or happy! My complaint is to get my money back, because its not profiting me a thing if the diploma is a fraud!”
  - b. “Company stated can use for employment and college and it’s not true. This is a fake and they’re taking innocent people’s money that want an high school education.”
  - c. “I searched online for a high school diploma. The Lincoln Academy came up as accredited. I want on 08/02/2011 to join the U.S. Army and found out they are not [accredited according to the U.S. Army].
  - d. “Once my son finished the program he couldn't get his diploma without paying \$60. This fee was never advertised or mentioned. It is a bait and switch to trick people into paying the \$300.”

(Ex. A, Acosta Aff. A-7)

***Brownstone Academy Makes Similar False And Misleading Claims.***

40. Defendant Rylex LLC d/b/a Brownstone Academy, owned and operated by one or more of the same individuals that own and operate Lincoln Academy, makes similar false and

---

<sup>8</sup> One Lincoln Academy graduate received the following rejection from The Art Institute of Pittsburgh:

“After careful review, the Admissions Committee regrets to inform you that we are unable to accept you for admission at this time for the following reason/s: Appropriate proof of graduation has not been submitted. We cannot accept your high school’s accreditation.”

(Ex. A. Acosta Aff., Ex. A-7)

misleading claims about its online high school degrees.<sup>9</sup> (Ex. A, Acosta Aff. Ex. A-14) Despite repeatedly claiming it is “accredited” and claiming its diploma “will be recognized by all colleges and employers worldwide” Brownstone Academy is not an accredited high school. (Ex. A, Acosta Aff. Ex. A-8 to A-13) Similar to Lincoln Academy, Brownstone’s “fast track” high school program, offered to those who want to “graduate high school quickly,” provides no course work and no instruction. The only requirement for “graduation” is to obtain a passing grade on “five” sections of a test, which the “student” can take as many times as needed to pass. (Ex. A, Acosta Aff. Ex. A-14) Once the “student” passes the test, he or she is sent “graduation documents” including an “official transcript” and “certificate of completion” within one week, which can be used to “apply to community colleges, universities, trade and career schools and for employment.” (Ex. A, Acosta Aff. Ex. A-14)

***Defendants Routinely Have Attempted To Obscure The Actual Ownership Of Their Business Interests.***

41. Defendants have filed false information with the Texas Secretary of State, misrepresenting to the Secretary of State who owns one or more of the Entity Defendants, thus obscuring the identities of the parties actually owning the business from consumers. (Acosta Aff. A-15, A-16) Defendants also filed an assumed name certificate in a remote county where no business operations exist to deceive consumers as to the location of the sham accreditation business (NHSAA).<sup>10</sup> (Ex. A, Acosta Aff. Ex. A-17, A-18)

---

<sup>9</sup> See, e.g., <http://www.brownstonehighschool.com/why-brownstone>.

<sup>10</sup> One or more Defendants had previously filed numerous assumed name certificates in Harris County, including certificates for “Lincoln Academy,” “High School Diploma Online,” and “Web Creations.”

42. All of the named Individual Defendants are closely involved in Defendants' business operations. Additionally, the Individual Defendants have been operating their businesses in the form of unregistered partnerships for years. (Ex. A, Acosta Aff. Ex. A-6, A-15, A-17, A-18, ) From time to time, certain Individual Defendants would register business entities, such as Momentive Group, with the Texas Secretary of State. (Ex. A, Acosta Aff. Ex. A-15) However, the Individual Defendants' and Partnership Defendants' business operations continued without any material operational changes. These partnerships are the mechanism through which the Individual Defendants collaborate and offer products and services related to online education. These partnerships are the alter-egos of the Individual Defendants. The Individual Defendants regularly conduct business in Texas in the name of the Partnership Defendants and maintain business or professional premises in Harris County.

## **IX. FRAUDULENT TRANSFERS**

### ***Fraudulent Transfers to Trust Funds.***

43. Charles Lubbat is trustee of the Charles Lubbat Special Trust and David Lubbat is trustee of the David Lubbat Special Trust. (Ex. A, Acosta Aff. Ex. A-19) At the time of one or more governmental investigations, Defendants transferred assets into the Trusts. (Ex. A, Acosta Aff., Ex. A-19, A-20) Defendants made the transfers without receiving a reasonably equivalent value in exchange pursuant to insider arrangements in which the transferors remained in control. The goal of these transfers was to hinder, delay, or defraud potential and actual creditors.

## **X. VIOLATIONS OF THE DTPA**

44. Defendants, in the course and conduct of trade and commerce, have directly or indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA, §17.46(a) and DTPA, §17.46(b), to wit:

a. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA, §17.46(b)(2);

b. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA, §17.46(b)(3);

c. 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);

d. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of the DTPA, §17.46(b)(7);

e. Advertising goods or services with intent not to sell them as advertised, in violation of the DTPA, §17.46(b)(9);

f. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions, in violation of the DTPA, §17.46(b)(11);

g. Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, §17.46(b)(20);

h. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed, in violation of the DTPA, §17.46(b)(24).

## **XI. VIOLATIONS OF ASSUMED NAME REGISTRATION LAWS**

45. Defendants have, directly or indirectly, engaged in acts that violated TEX. BUS. & COM. CODE Chapter 71, Assumed Business or Professional Name. Such acts include:

a. Not filing a certificate for certain unincorporated persons while regularly conducting business or rendering a professional service in Texas, in violation of TEX. BUS. & COM. CODE §§ 71.051 and 71.054; and

b. Regularly conducting business or rendering professional services in Texas under an assumed name without filing an assumed name certificate for an entity in the office of the county clerk of the county in which the entity's (1) registered office is located or (2) principal office is located, in violation of TEX. BUS. & COM. CODE §§ 71.101 and 71.103.

## **XII. VIOLATIONS OF THE UNIFORM FRAUDULENT TRANSFER ACT**

46. Defendants have, directly or indirectly, engaged in acts that violated TEX. BUS. & COM. CODE Chapter 24, the Uniform Fraudulent Transfer Act. Such acts include:

a. Making transfers, as defined by TEX. BUS. & COM. CODE §24.002(12), with the actual intent to hinder, delay, or defraud any creditor of the debtor, in violation of TEX. BUS. & COM. CODE Chapter 24.

## **XIII. INJURY TO CONSUMERS**

Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored.

#### **XIV. NECESSITY OF IMMEDIATE RELIEF**

47. Pursuant to TEX. BUS. & COM. CODE §§521.151(e) and §17.47(d), Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction, as set forth in the Prayer. Despite these numerous BBB complaints and Defendants' D+ rating, Defendants still continue to engage in the deceptive and fraudulent business practices described herein. *See* <http://www.bbb.org/houston/business-reviews/schools-home-study/lincoln-academy-in-houston-tx-90019953>. Immediate injunctive relief by way of Temporary Restraining Order and Temporary Injunction is, therefore, necessary to prevent continuing harm prior to final trial.

48. In addition to restraining Defendants' conduct to prevent future illegal acts and continuing harm to consumers, Plaintiff requests immediate relief to preserve and protect the fraudulently obtained monies that have been paid by consumers to Defendants. In light of the seriousness of the potential illegal conduct described herein and the efforts to hide assets as described, Defendants are likely to waste or secrete the funds prior to final trial to avoid repaying the funds to the State and consumers.

49. In addition to restraining Defendants' conduct to prevent future illegal acts and continuing harm to consumers, Plaintiff requests immediate relief to preserve and protect the fraudulently obtained monies that have been paid to Defendants. Moreover, Defendants and all Relief Defendants own or control numerous other businesses which have various physical locations and bank accounts which Defendants can hide funds and other valuable assets. These businesses, including 360 Filings LLC, TCLFLP-GP, LLC, The Charles J. Lubbat Family L.P.,

TDLFLP-GP, LLC, and The David C. Lubbat Family L.P., have no business operations unrelated to the online education industry. (Ex. A, Acosta Aff. ¶10)

50. For these reasons, the assets of Defendants and all Relief Defendants are subject to dissipation and secretion and, therefore, should be frozen pending final trial so consumer restitution can be made and full and final relief can be awarded at final trial. TEX. BUS. & COM. CODE §17.47(d). Plaintiff requests that the Court exercise its authority and grant the injunctive relief necessary to prevent additional harm to the Defendants' victims as well as further violation of the DTPA. TEX. BUS. & COM. CODE §17.47(c).

51. Pursuant to TEX. BUS. & COM. CODE §17.47(b), Plaintiff requests that a Temporary Restraining Order be issued without prior notice to Defendants to prevent wasting or secretion of the funds fraudulently obtained by Defendants.

#### **XV. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING**

52. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys. Also, Plaintiff requests that the filing requirements for business records and the associated custodial affidavits be waived for purposes of all temporary injunction hearings.

## **XVI. TRIAL BY JURY**

53. Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and the TEX. GOV'T CODE §51.604.

## **XVII. CONDITIONS PRECEDENT**

54. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

## **XVIII. PRAYER**

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

56. Therefore, Plaintiff requests a Temporary Restraining Order, Temporary Injunction and Permanent Injunction as indicated below. TEX. BUS. & COM. CODE §§17.47(d). The Court shall issue such injunctive relief without requiring a bond. TEX. BUS. & COM. CODE §§17.47(b). Pursuant to TEX. BUS. & COM. CODE §17.47(b), Plaintiff requests that a Temporary Restraining Order be issued without prior notice to Defendants as allowed by statute to prevent irreplaceable loss of funds fraudulently obtained by Defendants.

57. Plaintiff further 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 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 any or all Defendants from engaging in the following acts or practices:

a. Operating any business that provides or advertises any educational services, including online degrees and online educational programs without further order of this Court;

b. Operating any business that violates the TEXAS EDUCATION CODE;

c. Undertaking any action which would violate TEX. BUS. & COM. CODE Chapter 24;

d. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to the business of Defendants currently or hereafter in any of the Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;

e. Transferring, spending, hypothecating, concealing, encumbering or removing 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 possession of, or claimed by any of the Defendants or Relief Defendants, insofar as such property relates to, arises out of or is derived from the business operations of Defendants;

f. Representing, directly or by implication, that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, including specifically and without limitation, that:

i. Defendants products are the equivalent of an accredited high school diploma or GED;

ii. Defendants products are the equivalent of a high school education;

iii. Defendants hold any type of accreditation that they do not actually have;

- iv. Defendants' products or services are accredited or recognized, endorsed, or approved by a legitimate accrediting or sponsoring organization; or
- v. Graduates of Defendants' online program receive diplomas which are generally recognized by colleges, universities, the military, police academies, other academic institutions, or employers.

g. Defendants shall not cause confusion or misunderstanding as to the source, approval, or certification of any good or service sold or offered for sale by Defendants. Specifically and without limitation, Defendants shall not represent that the State of Texas will provide students with a GED after students purchase goods or services from any of Defendants.

h. Defendants shall not represent that any good or service sold or offered for sale by Defendants is of a particular standard, quality or grade of it is of another standard, quality or grade.

i. Defendants shall not fail to disclose information concerning any good or service sold or offered for sale by Defendants when Defendants know at the time of the transaction that such failure to disclose is intended to induce consumers to enter into transactions consumers would not enter into if such information were disclosed. Specifically and without limitation, Defendants shall not fail to disclose to each prospective consumer that:

- i. Lincoln Academy and Brownstone Academy are not accredited high schools by any agency or organization;
- ii. Because Defendants' diplomas are not accredited, they are not generally accepted by colleges, universities, the military, police academies, other academic institutions, and employers;

- iii. Students entering colleges and universities with nontraditional and/or high school equivalency diplomas are required to undergo assessments to determine the best classroom placement and ensure overall success in the program. Defendants' students that do not fare well on these assessments may have to take foundational courses for which they must pay additional fees, but receive no college credit before being allowed to go on to college-level courses for which credit toward a degree will be received; and
- iv. Colleges, universities, the military, police academies, other academic institutions, and employers generally will not accept diplomas from Lincoln Academy or Brownstone Academy.

58. Plaintiff further prays that this Court award judgment for the Plaintiff as follows:

- a. Order Defendants to pay civil penalties to Plaintiff for each violation of the DTPA up to a total of \$20,000.00 per each violation;
- b. Order Defendants and Relief Defendants to restore all money or other property obtained from consumers by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses;
- c. Order disgorgement of all sums, monies, and value taken from consumers by means of deceptive trade practices, together with all proceeds, interest, income, profits, and accessions thereto; making such disgorgement for the benefit of victimized consumers and Plaintiff;

d. Place an equitable lien and constructive trust on all of Defendants' and Relief Defendants' assets, personal property, and real property, and grant the State an interest in said assets and property;

e. Order Defendants' and Relief Defendants' assets be repatriated into the jurisdiction of the Court;

f. Make findings of fact and conclusions of law that (1) all purchases of goods and services consumers from Defendants were the result of Defendants' engaging in actual fraud and making materially false representations with the intent that the materially false representations would be acted upon by the party or consumer to whom the misrepresentations were made; and (2) consumers' reliance on these false representations has resulted in injuries to said consumers;

g. Order avoidance of all of Defendants' transfers that violate TEX. BUS. & COM. CODE §24.007 to the extent necessary to satisfy Plaintiff's claims;

h. Enjoin all further disposition by Defendants or transferees of assets received as a result of transfers that violate TEX. BUS. & COM. CODE Chapter 24;

i. Make findings of fact and conclusions of law that Defendants have committed one or more criminal offenses, as defined in TEX. BUS. & COM. CODE §71.202;

j. Order Defendants to pay all of Plaintiff's expenses to which Plaintiff is entitled to reimbursement, including attorney's fees, pursuant to TEX. BUS. & COM. CODE Chapter 71;

k. Make findings of fact and conclusions of law that that Defendants have violated federal and civil laws pertaining to the protection of copyright holders and intellectual property holders;

l. Order Defendants to pay Plaintiff's attorneys' fees and costs of court pursuant to TEX. GOV'T CODE § 402.006(c) and order Defendants to pay pre-judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and

m. Grant leave to Plaintiff to conduct telephonic, oral, and other depositions prior to Defendants' answer date and any Temporary Injunction hearing and grant leave to Plaintiff to conduct post-judgment discovery.

59. The State further prays that this Court grant all other relief to which the Plaintiff STATE OF TEXAS may show itself entitled.

Respectfully submitted,  
THE STATE OF TEXAS:

GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

JOHN SCOTT  
Deputy Attorney General for  
Civil Litigation

TOMMY PRUD'HOMME  
Chief, Consumer Protection Division



---

DANIEL T. ZWART  
State Bar No. 24070906  
Daniel.zwart@texasattorneygeneral.gov  
ROSEMARIE DONNELLY  
State Bar No. 05983020  
Assistant Attorneys General  
Consumer Protection Division  
808 Travis, Suite 1520  
Houston, Texas 77002

Telephone 713-223-5886  
Facsimile 713-223-5821

**ATTORNEYS FOR PLAINTIFF**

## **VERIFICATION**

The foregoing Original Verified Petition and Application for *Ex Parte* Temporary Restraining Order, Temporary Injunction and Permanent Injunction, is supported and verified by the following affidavits and exhibits, which are incorporated by reference:

### **Exhibit**

- A. Affidavit of Charlene Acosta and Exhibits A-1-A-29;
- B. Affidavit of Amir Roohi Exhibits B1-B3.



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this March 17, 2014

Certified Document Number: 60038142 Total Pages: 31

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**