



LLC; LEADPLEX, INC.; LEADPLEX, LLC; PAYPERACTION, LLC and d/b/a 227 Assumed Names listed in paragraph 8; and EASTMARK TECHNOLOGY LIMITED and for causes of action would respectfully show the Court as follows:

### **JURISDICTION AND VENUE**

1. This action is brought by Attorney General Greg Abbott, through his Consumer Protection & Public Health Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted to him pursuant to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. § 7701 *et seq* (“Can Spam Act”), by the Texas Electronic Mail Solicitation Act, TEX. BUS. & COM. CODE § 46.001 *et seq.* (Vernon Supp. 2004-2005) and by the Deceptive Trade Practices - Consumer Protection Act, Tex. Bus. & Com. Code § 17.41 *et seq.* (Vernon 2002 & Supp.2004-2005) (“DTPA”).

2. The Court has jurisdiction over the subject matter of these claims pursuant to 15 U.S.C. §§ 1331 and 15 U.S.C. § 1337(a). The Court further has supplemental jurisdiction over the subject matter of the state law causes of action pursuant to 28 U.S.C. § 1367 (a).

3. Venue of this suit lies in the Western District of Texas, Austin Division pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims alleged herein occurred within the Western District of Texas, as more specifically described below.

### **DEFENDANTS**

4. Defendant RYAN SAMUEL PITYLAK (PITYLAK) is an individual who resides at 1005 Possum Trot Lane, Austin, Travis County, Texas 78703, and served as a managing member of Defendants PAYPERACTION, LLC and LEADPLEX, LLC.

5. Defendant MARK STEPHEN TROTTER (TROTTER) is an individual who resides

at 1302 Ravean Ct., Encinitas, California 92024. Defendant transacts or has transacted business in Austin, Travis County, Texas, and served as a managing member of Defendants PAYPERACTION, LLC and LEADPLEX, LLC and the sole officer of Defendant LEADPLEX, INC.

6. Defendant, LEADPLEX, INC. (LEADPLEX) is a corporation registered in Nevada. Its principal place of business is the same as that of Defendant PAYPERACTION: 711 South Carson Street, Suite No. 4, Carson City, Nevada, 89701. Defendant LEADPLEX has done business in Texas, receives mail at 2002-A Guadalupe Street, #290, Austin, Texas 78705, but is not registered to conduct business in the State of Texas and has not designated an agent for service of process. This lawsuit arose out of Defendant's business in this State as more specifically described below. Defendant can be served by certified mail, return receipt requested directed to Defendant at its principal place of business through the Texas Secretary of State as its agent for service of process at Citations Division, 1019 Brazos, Austin, Texas 78701: 711 South Carson Street, Suite No. 4, Carson City, Nevada, 89701.

7. Defendant, LEADPLEX, LLC (LEADPLEX, LLC) is a corporation registered in Nevada. Its principal place of business is the same as that of Defendant PAYPERACTION: 711 South Carson Street, Suite No. 4, Carson City, Nevada, 89701. Defendant LEADPLEX, LLC has done business in Texas, but is not registered to conduct business in the State of Texas and has not designated an agent for service of process. This lawsuit arose out of Defendant's business in this State as more specifically described below. Defendant can be served by certified mail, return receipt requested directed to Defendant at its principal place of business through the Texas Secretary of State as its agent for service of process at Citations Division, 1019 Brazos, Austin, Texas 78701: 711 South Carson Street, Suite No. 4, Carson City, Nevada, 89701.

8. Defendant, PAYPERACTION, LLC (PAYPERACTION) is a limited liability company registered to do business in Texas. PAYPERACTION's principal place of business is reported in its corporate records as: 711 South Carson Street, Suite No. 4, Carson City, Nevada 89701. PAYPERACTION has a designated agent for service in Texas and thus, may be served through its registered agent: National Registered Agents, Inc., at 1614 Sidney Baker Street, Kerrville, Texas 78028. Records of the Texas Secretary of State reflect that since January 7, 2004, Defendant PAYPERACTION has filed over two hundred certificates listing the following as assumed names under which it conducts business: 1 Minute Debt Reduction, 1 Minute Loan Center, 1 Minute Mortgage Quote, 1 Minute Refinancing, 30 Second Mortgage Quote, Access Advertising Solutions, Accurate Media Group, Adaptive Possibilities, Advanced Information Systems, Alternative Media Systems, Alliance Advanced, Alliance Aggregate, Alliance Exchange, Alliance Expeditors, Alliance Guild, Alliance Planning, Allied Credit Counseling, Alpha Barter, Alpha Expeditors, Alpha West, Alternative Media Systems, America Aggregate, America East, America Specialties, America Trading, American Debt Eliminators, American Debt Network, American Loan Expo, American Loan Getaway, American Loan Group, American Rate Network, American Refinance Gateway, American Refinance Group, American Refinance Network, Apex Concepts, Associated Partners Group, Atlantic Continuum, Atlantic Development, Atlantic Guild, Atlantic Solutions, Balanced Performance Network, Basic Media Center, Beta Alternative, Beta Availability, Beta Business, Beta Exchange, Beta Industries, Beta Trade, Certified Quotes, Champion Alternative, Champion General, Champion Trade, Charter Acceptance, Charter Aggregate, Charter Association, Charter Barter, Charter Industries, Charter Operating, Charter Planning, Choice Technology Network, Classic Advanced, Classic Associates, Classic Business, Classic Diagnostics, Classic Distribution, Classic

General, Classic Industrial, Classic Operating, Client Venture Communications, Coastal Continuum, Common Wealth Association, Common Wealth West, Commonwealth Comerica, Continental Guild, Continental Holdings, Continental Cyclical, Creative Results, Crown Aggregate, Crown Continuum, Crown Expeditors, Crown Specialists, Debt Counseling Group, Debt Reduction Professionals, Discount Movers Network, Eastern Acceptance, Eastern Specialties, Effective Marketing Ventures, Efficient Technology, Elending Market, Enhanced Advertising, Essential Media, Expert Debt Reduction, Extend Your Warranty, Extended Warranty Center, Federated Continuum, Federated Distribution, Federated Exchange, Federated Holdings, Financial Mortgage Center, First Advanced, First Amalgamated, First Availability, First West, Freedom Quote, Fundamental Communications, Gamma Coalition, Gamma Distribution, Gamma General, Gamma Trade, General Mortgage Associates, Global Communications, Global Media Enterprises, Industry Standard Solutions, Information Fusion, Instant Credit Counseling, Instant Refinance Quotes, Intelligent Refinance Group, Interstate Moving Network, Knowledge Enterprises, Lendbridge, Lender Education Group, Lending Gateway, Lending Horizons, Lending Span, Liberty Refinancing, Link Response, Loan Market Group, Loan Quote Center, Low Refinance Rates, Lowest Rates in 40 Years, Maximum Debt Relief, Maximum Response, Media Touch Services, Mega Mortgage Man, Millennium Planning Partners, Mirror Media Technology, Modern Media Associates, Mortgage Rate Network, National Debt Reduction, National Digital Alliance, National Insurance Exchange, National Movers Network, National Refinance Center, National Refinance Exchange, National Refinance Group, Northern Acceptance, Northern Alternative, Northern Business, Northern Coalition, Northern Operating, Pacific Acceptance, Pacific Advanced, Pacific Alternative, Pacific Amalgamated, Pacific Availability, Pacific Barter, Paradigm Communications, Platinum Direct Advertising, Point Digital,

Potential Media Partners, Precision Resources, Premier Credit Counseling, Premium Associates, Premium Barter, Premium Business, Premium Cyclical, Premium Direct Media, Premium General, Premium Trade, Principle Interactive Enterprises, Project Placement Network, Rate Quote Center, Refinance Doctor, Refinance Rate Hound, Refinancing Advisors, Royal Alternative, Royal Continuum, Royal Diagnostics, Royal Guild, Royal Service, Sapphire Access, Sapphire Advanced, Sapphire American, Sapphire Cyclical, Sapphire Distribution, Sapphire Enterprises, Sapphire Expeditors, Sapphire Holdings, Sapphire Industries, Smart Debt Reduction, Smarter Mortgage Rates, Source Creations Worldwide, Southern Alternative, Southern Amalgamated, Southern Continuum, Southern West, Spectrum Connections Group, Standard Interactive Network, Structure Aggregate, Structure Associates, Structure Industries, Synergy Group Worldwide, Traditional Trade Center, True Market Media, Unique Refinance Group, United Coalition, United Debt Counseling, United Diagnostics, United Guild, USA Lending Network, Visionary Advanced, Visionary Advisory, Visionary Aggregate, Visionary Association, Visionary Service, Visionary Specialties, Western Advisory, Western Amalgamated, Western Barter, World American, World Continuum, World Distribution, World East, World Operating, Your Debt Source, Your Loan Success, and Your Warranty Source.

9. Defendant Eastmark Technology Limited (EASTMARK) is a foreign corporation that transacts or has transacted business in Austin, Travis County, Texas but is not registered to conduct business in the State of Texas and has not designated an agent for service of process. EASTMARK is currently the sole member of PAYPERACTION, LLC and LEADPLEX, LLC. This lawsuit arose out of Defendant's business in this State as more specifically described below. Defendant can be served by certified mail, return receipt requested directed to Defendant at its principal place of

business through the Texas Secretary of State as its agent for service of process at Citations Division, 1019 Brazos, Austin, Texas 78701; 711 South Carson Street, Suite No. 4, Carson City, Nevada, 89701.

10. Defendants use various other addresses in Austin, Travis County, Texas including: 8500 North MoPac; 1615 W. 6<sup>th</sup> Street, Suite D, Austin, Texas; 603 W. 13<sup>th</sup> Street 1A-486, Austin, Texas; and 1214 W. 6<sup>th</sup> Street, Austin, Texas.

11. At all times material to this Complaint, acting alone or in concert with others, Defendants PITYLAK and TROTTER have formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint.

12. “Defendants” refers to the entities and persons referenced in the preceding paragraphs four through nine.

#### **“SPAM” AND THE FEDERAL CAN SPAM ACT AND THE TEXAS ELECTRONIC MAIL SOLICITATION ACT**

13. In passing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. § 7701 et seq (“TCPA”) known as the “Can Spam Act,” Congress found that the “...convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail” and estimated that in 2003 such unsolicited commercial electronic mail “...accounted for over half of all electronic mail traffic, up from an estimated 7 percent in 2001.”

14. Congress further found that “...the growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment...” and

that “the receipt of a large number of unwanted messages...decreases the convenience of electronic mail and creates a risk that wanted...messages...will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.”

15. Congress specifically found that “many senders of unsolicited commercial electronic mail purposefully include misleading information in the messages’ subject lines in order to induce the recipients to view the messages.”

16. In passing the Can Spam Act, Congress did not declare the sending of all unsolicited commercial e-mail to be unlawful, but rather addressed the problems associated with the rapid growth and abuse of unsolicited commercial electronic mail and specifically declared it unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if the subject heading would be likely to mislead a recipient acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

17. The State of Texas has also acted to protect the public interest from problems associated with the abuse of unsolicited commercial electronic mail and enacted the Electronic Mail Solicitation Act which like the federal law, does not prohibit the sending of all unsolicited commercial electronic mail, but rather addresses problems related to its use.

### **PUBLIC INTEREST**

18. Plaintiff, STATE OF TEXAS, has reason to believe that Defendants have engaged in and continue to engage in a pattern or practice of unlawful practices as set forth below. Plaintiff has reason to believe that an interest of the residents of Texas have been or are threatened or adversely affected by Defendants’ practices as alleged herein. Plaintiff also has reason to believe

that Defendants have caused and will continue to cause 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.

### **ACTS OF AGENTS**

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

### **NATURE OF DEFENDANTS' OPERATION AND STATEMENT OF FACTS**

20. Defendants have been and continue to be involved in sending unsolicited commercial electronic mail (e-mail) to consumers in Texas and throughout the United States. Defendants utilize misleading subject lines in many of their e-mails and further make numerous misrepresentations in the body of these e-mails as well as in the related pages to which those e-mails direct consumers. These misleading subject lines are used in an attempt to trick consumers into opening e-mails which they otherwise would delete or would not open. The exact number of such e-mails sent by Defendants are unknown to Plaintiff at this time, but on information and belief, Plaintiff alleges that Defendants have sent hundreds of thousands of such e-mails between September 1, 2003 and the present. For example, between February 18, 2004 and July 4, 2004 Defendants sent more than 42,000 commercial emails to MSN Hotmail "spam traps."<sup>1</sup> Those 42,000 emails that Defendants sent to Hotmail's spam traps contained more than 24,000 instances of misleading subject lines.

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<sup>1</sup>These traps are e-mail accounts owned and maintained by Microsoft. Microsoft examines the e-mails received by these accounts as one of the methods it uses to determine whether incoming mail complies with the Terms of Use and Anti-Spam Policy for its MSN and MSN Hotmail services. The identity of these accounts is confidential, and the account names must remain confidential, so that spammers cannot avoid detection by removing the accounts' e-mail addresses from their lists.

21. Defendants own or operate a number of Internet domains associated with websites that promote numerous types of services, including mortgage services, debt counseling services and warranty services. Those web sites are operated using the assumed names obtained by Defendants.

22. Many of Defendants' e-mails contain false, misleading or deceptive information in the subject line or subject heading, including but not limited to the following:

- (a) Re: your past due bills;
- (b) Equity Release;
- (c) Equity Release Statement;
- (d) Mortgage Notice;
- (e) Urgent: Household Loan Memorandum: Please Read;
- (f) Residence Loan Memorandum: Please Read;
- (g) Household Warranty Notification;
- (h) Warranty Expiration Notice; and
- (i) Warranty Announcement.

23. In some instances, Defendants "personalize" their e-mails by including the name or address of the recipient in the subject line. Thus, the subject line of Defendants' e-mail might read: "Ed Jones: Regarding your past due bills" or "123 Happy Lane: Equity Statement." In some instances, Defendants' e-mails fail to clearly and conspicuously disclose that they are advertisements.

24. Contrary to the impression created by Defendants' misleading subject lines, the body or text of these e-mails did not provide information specific to the recipient's mortgage, unpaid bills or warranties. Instead, these e-mails promote services related to those topics including mortgage loans, debt counseling services and automobile service contracts and many of these e-mail messages

contain false, misleading and deceptive representations.

25. For example, the body of some of the e-mails Defendants sent using the assumed name “Refinance Doctor” included the following representations:

“Our new programs [in] created a frenzy because every property owner wanted what we had to offer. Isn’t the reason obvious, their rates dropped! And we know we can do the same for you...Even if you think you can’t be helped or get any lower, just let us work with you and we will prove that we can...Anybody that is in need of our service will be helped by our new plan...You are one step away from the Cure to Your Refinancing Wishes!”

26. Other e-mail messages related to mortgage services included statements designed to make the recipient believe Defendants are actual lenders and exercise some control over the interest rates or terms available to the recipient. (Exhibit 1-3)

27. In other mortgage related e-mails, Defendants represent that they will take extensive steps to help find the best rate and mortgage available for the recipient. For example, one such e-mail represents that Defendants search “over 300 lenders” and “match you instantly with the lowest rate lender.” (Exhibit 4-5)

28. In truth and in fact, Defendants are not licensed mortgage brokers or mortgage bankers and are therefore legally prohibited from offering or providing any lending packages.

29. Defendants’ e-mails all invite the recipient to “click” on a link. If the recipient scrolls down past that link to the bottom of the e-mail he or she will generally find a statement in a reduced font size and type which provides further information regarding Defendants’ services. For example, Defendants’ d/b/a Refinance Doctor e-mails include the following:

“See lender for details...Your contact information will be forwarded to one or more qualified lenders who will be contacting you by telephone or e-mail. Refinance Doctor is not a lender. Further, Refinance Doctor does not sell mortgage products or is affiliated with any mortgage company. Nothing on this email/web site should be construed as an offer for mortgage products, but merely a confidential

informational inquiry.”

30. This disclaimer regarding the Refinance Doctor’s status as a lender or its affiliation with a mortgage company is confusing because it is in direct contradiction of Defendants’ representations offering to provide services such as finding the best rate and mortgage for recipients.

31. This disclaimer is also false, misleading and deceptive since it references “this e-mail/web site” as a “confidential informational inquiry.” In truth and in fact, information provided by consumers in response to Defendants’ e-mails is sold by Defendants to various lead generating entities for up to \$28 per lead. Those lead generating companies in turn sell that information to various service providers or other lead generators.

32. Consumers who “click” on the indicated link find that the link opens a second page referred to as a “landing page” branded as a “Refinance Doctor” page which asks consumers to fill out “applicant information” including their current property value, existing loan balance and desired loan amount. In small type at the bottom of the landing page and after the “submit” button, Defendants include a one line sentence advising consumers:

“By submitting this form you are authorizing us to send your loan request to multiple qualified lenders, who will be calling you with no obligation mortgage quotes.”

33. In truth and in fact, Defendants do not forward this information to qualified lenders but sell it to lead generating entities which in turn, sell the information.

34. The very bottom of these “landing” pages includes a link labeled “privacy policy” which consumers may elect to read. In that privacy policy, Defendants represent that they are “...committed to keeping your personal information accurate, secure, and confidential.”

35. Other of Defendants e-mails falsely represent that Defendants have some prior relationship with the recipient or have specific information about the recipient. One e-mail

Defendants commonly send seeking leads for debt management and debt counseling services, for example, starts out, “We haven’t heard from you in a while & wanted to check in to see how the bill situation was going.” (Exhibit 6) Another email states that “[m]ost of your information is already on file.” (Exhibit 7) An e-mail Defendants send to collect automobile extended warranty leads represents that “According to our records, the manufacturer’s warranty has or is about to expire...” (Exhibit 8) In truth and in fact, Defendants have no relationship with the recipient of the email and generally do not have any information about the recipient other than the email address, and possibly name, address, and other basic information.

**FIRST CAUSE OF ACTION  
VIOLATIONS OF THE CAN SPAM ACT**

36. Plaintiff realleges paragraphs one through thirty-five in this Complaint and incorporates them here as if set forth in full.

37. Defendants engaged in a pattern or practice of initiating, to protected computers, commercial e-mail messages that:

- a) contained subject headings that Defendants knew, or reasonably should have known, were likely to mislead recipients, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the messages; and
- b) failed to include a clear and conspicuous identification that the message was an advertisement or solicitation.

38. Defendants’ conduct violated 15 U.S.C. § 7704(a)(2) and (a)(5) of the Can Spam Act.

**SECOND CAUSE OF ACTION  
VIOLATIONS OF THE TEXAS ELECTRONIC MAIL SOLICITATION ACT**

39. Plaintiff realleges paragraphs one through thirty-five of this Complaint and incorporates them here as if set forth in full.

40. Defendants intentionally transmitted commercial electronic mail messages that contained false, deceptive or misleading information in the subject line.

41. Defendants' conduct violated § 46.002(a)(2) of the TEXAS ELECTRONIC MAIL SOLICITATION ACT which prohibits the intentional transmission of commercial electronic mail messages that contain false, misleading or deceptive information in the subject line.

**THIRD CAUSE OF ACTION  
VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

42. Plaintiff realleges paragraphs one through thirty-five and incorporates them herein as if set forth here in full.

43. Defendant utilized misleading subject lines, caused confusion regarding their services and failed to disclose to consumers that information provided by them to Defendants would be sold to lead generators.

44. Such false, misleading or deceptive acts and practices are in violation of DTPA §§ 17.46(a), 17.46(b)(5), 17.46(b)(12); and 17.46(b) (24).

**PRAYER**

45. Because Defendants have engaged in the acts and practices described above, Defendants have violated the law as alleged in this Complaint and unless restrained by this Honorable Court, Defendants will continue to violate the laws of the UNITED STATES OF AMERICA and the STATE OF TEXAS and will cause injury, loss and damage to the STATE OF TEXAS and to the general public.

46. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear

and answer herein; and that upon notice and hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' agents, servants, employees, successors, assigns, attorneys and any other person in active concert or participation with Defendants from continuing to violate the Can Spam Act, the Texas Electronic Mail Solicitation Act or the Texas Deceptive Trade Practices Act.

47. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court adjudge against Defendants civil penalties in favor of Plaintiff STATE OF TEXAS as follows:

- a. Two Hundred and Fifty and No/100 Dollars (\$250.00) for each violation of 15 U.S.C. § 7704(a)(2) and (a)(5) of the Can Spam Act.
- b. Two Hundred and Fifty and No/100 Dollars (\$250.00) for each violation of 15 U.S.C. § 7704 (a)(5) of the Can Spam Act.
- c. Ten Dollars (\$10.00) for each unlawful message or action or Twenty-five Thousand Dollars (\$25,000) for each day an unlawful message is received or an action was taken by Defendants in violation of § 46.002(a)(2) of the TEXAS ELECTRONIC MAIL SOLICITATION ACT; and
- d. Twenty Thousand Dollars (\$20,000) for each violation of § 17.46(a) and (b) of the Texas Deceptive Trade Practices Act.

48. Plaintiff STATE OF TEXAS further prays that this Court order Defendant to pay all costs of Court, costs of investigation, and reasonable attorneys' fees authorized pursuant to 15 U.S.C. § 7706(f)(4) of the Can Spam Act. and TEX. GOV'T CODE § 402.006(c) (Vernon Supp 2004-2005).

49. The Plaintiff further prays that the Court grant all other relief to which the Plaintiff may show itself entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY R. MCBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

PAUL D. CARMONA  
Chief, Consumer Protection & Public Health Division

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C. BRAD SCHUELKE  
D. ESTHER CHAVEZ  
Assistant Attorneys General  
Consumer Protection & Public Health Division  
State Bar No.24008000  
State Bar No.04162200  
P. O. Box 12548  
Austin, Texas 78711  
(512) 463-1269  
FAX (512) 473-8301