

NO. \_\_\_\_\_

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
	§	
v.	§	
	§	HIDALGO COUNTY, TEXAS
	§	
LA JOYA WATER SUPPLY	§	
CORPORATION,	§	
Defendant	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION  
FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION**

COMES NOW, the STATE OF TEXAS, hereinafter referred to as Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of LA JOYA WATER SUPPLY CORPORATION, hereinafter referred to as Defendant, and for cause of action would respectfully show:

**DISCOVERY CONTROL PLAN**

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.2(b)(3).

**NATURE OF THIS SUIT**

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection Division against Defendant for violations of the Texas Debt Collection Act, TEX. FIN. CODE ANN. § 392.001, *et seq.* (Vernon 1998), (hereinafter “TDCA” or “Act”) and the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (Vernon 2002) (hereinafter “DTPA”). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. BUS. & COM CODE ANN. § 17.47. The Texas Debt Collection Act

also grants authority to the Attorney General to seek injunctive relief for violations of its provisions.  
TEX. FIN. CODE ANN. §392.403(d).

### **DEFENDANT**

3. Defendant LA JOYA WATER SUPPLY CORPORATION (“LJWSC”) is a domestic corporation, regularly conducts business in Hidalgo County, Texas, and may be served with process by serving Defendant’s registered agent for service of process, Leo Montalvo, at 900 N. Main, McAllen, Texas, 78501.

### **JURISDICTION**

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

### **VENUE**

5. Venue of this suit lies in Hidalgo County, Texas, for the following reasons:

- a. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1) (Vernon Supp. 2004), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and
- b. Under DTPA § 17.47(b), venue is proper because Defendants have done business in the county of suit.

### **PUBLIC INTEREST**

6. Plaintiff STATE OF TEXAS has reason to believe that Defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below, that Defendant has, by means of these unlawful acts and practices, caused damage to and acquired money or property from persons, and that Defendant adversely affects the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer

Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

### **TRADE AND COMMERCE**

7. Defendant has, 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**

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

### **NOTICE BEFORE SUIT NOT GIVEN**

9. There is good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary restraining order to enjoin Defendant from continued violation of the TDCA and DTPA. If Defendant is not immediately restrained, it will continue to engage in unlawful debt collection practices and thereby cause immediate and irreparable injury, loss, or damage to persons whose water service is wrongly disconnected or persons who pay unfair and unwarranted bills in fear that their service will be disconnected. Namely, said individuals will be deprived the use of water for drinking, sanitation, food preparation, and personal hygiene. As such, the Consumer Protection Division filed this lawsuit without notice to Defendant, as authorized by § 17.47(a) of the DTPA.

### **NATURE OF DEFENDANT’S OPERATIONS**

10. Defendant LJWSC is a non-profit water supply corporation, incorporated for the purpose of furnishing a potable water utility service. Defendant also maintains its own billing and collection

system. Defendant uses this system in collecting charges for water service.

### **FACTUAL ALLEGATIONS**

11. Defendant LJWSC is a non-profit water supply corporation, incorporated for the purpose of furnishing a potable water utility service. Its operating policies, rates, tariffs, and regulations are formulated and effected by a Board of Directors, elected by the members of the corporation. Consumers arrange with Defendant LJWSC to obtain water service for their homes and to be billed directly for this service through an assigned account number. Each month, Defendant LJWSC generates a paper water bill that it mails to each consumer account holder. The water bill provides meter readings, water usage in gallons, a description of charges including a Texas Water Development or “TWC” fee, and the date payment is due.

12. Defendant LJWSC represents that estimations of water fees are done when there is a conflict in getting to a consumer’s water meter. Defendant LJWSC represents that when bills are estimated, the letter “E” will be found next to the present reading portion of the billing statement.

13. Defendant LJWSC engages in certain business acts or practices in collecting, or attempting to collect, the obligations that are due or alleged to be due, which may include the mailing of water bills, sending notice of overdue balances, making payment arrangements for delinquent accounts, receiving payment, and discontinuing water service by locking or removing water meters.

14. Defendant LJWSC generates water bills that are inaccurate and thereby misrepresents to consumers the amount of debt that is owed. Instances include, but are not limited to the following:

- a. Consumer Rodolfo Pena resides at Pinto Road, Lot 38, Los Ebanos, Texas, and receives water service from Defendant. In January 2004, Mr. Pena received a bill from Defendant dated January 14, 2004, stating that in a period of 29 days Mr. Pena had used

3,263,000 gallons of water. The bill stated that Mr. Pena currently owed \$13,977.57 for water and a TWC fee of \$69.89. The bill then lists the total amount due from Mr. Pena as \$14,047.46.

b. Consumer Tom Polosky resides at 700 N. Bentsen Palm Dr., Lot 151, Mission, Texas, and receives water service from Defendant. Mr. Polosky received a bill from Defendant dated July 29, 2004, stating that in a period of 40 days Mr. Polosky had used 9,912,400 gallons of water. The bill stated that Mr. Polosky's previous balance was \$15.84, that Defendant had received a \$20.00 payment on July 28, 2004, and that Mr. Polosky currently owed \$2,558.99 for water and a TWC fee of \$212.79. The bill lists the total amount due from Mr. Polosky as \$42,767.62.

c. Consumer Jim Cantwell resides at 700 N. Bentsen Palm Dr., Lot 82, Mission, Texas, and receives water service from Defendant. Mr. Cantwell received a bill from Defendant dated July 29, 2004, stating that in a period of 40 days Mr. Cantwell had used 9,999,100 gallons of water. The bill stated that Mr. Cantwell's previous balance was \$15.41, that Defendant had received a \$16.41 payment on July 8, 2004, and that Mr. Cantwell currently owed \$2,931.80 for water and a TWC fee of \$214.66. The bill lists the total amount due from Mr. Cantwell as \$43,146.46.

d. Consumer Cipriano Garcia resides at 17627 Sago Palm Dr., Penitas, Texas, and receives water service from Defendant. Mr. Garcia received a bill from Defendant dated January 5, 2005, stating that in a period of 30 days Mr. Garcia had used 185,400 gallons of water. The bill stated that Mr. Garcia's previous balance was \$38.37, that Defendant had received a \$38.37 payment on January 3, 2005, and that Mr. Garcia currently owed \$732.89

for water and a TWC fee of \$3.66. In the six months prior to January, Mr. Garcia's bill had ranged from \$15.62 to \$38.37. January's bill was approximately nineteen times larger than the average bill received by Mr. Garcia. When Mr. Garcia complained regarding the \$732.89 bill, Defendant reduced the bill to \$467.36. This reduced bill is still 12 times larger than the average bill received by Mr. Garcia.

e. Consumer Delia Pena resides at 215 S. Bentsen Palm Drive, Mission, Texas, and receives water service from Defendant for the RV park that she owns. Ms. Pena received a bill dated July 22, 2004, stating that her previous meter reading was 632,100, her present meter reading was 632,100, and her units used were 0 gallons. This bill showed a previous balance of \$334.90, a present charge of \$20.00 for water usage, and a TWC fee of \$0.10, for a total of \$355.00 owed. Ms. Pena did not receive a bill for August. Ms. Pena received a bill dated September 15, 2005, stating that her previous meter reading was 632,100, that her present meter reading was 632,100, and that her units used were 0 gallons. This bill showed a previous balance of \$458.28, a present charge of \$456.00 for water usage, and a TWC fee of \$2.28, for a total of \$916.56 owed. Ms. Pena received a bill dated October 13, 2004, stating that her previous meter reading was 632,100, that her present meter reading was 632,100, and that her units used were 0 gallons. This bill showed a previous balance of \$916.56, a present charge of \$456.00 for water usage, and a TWC fee of \$2.28, for a total of \$1,374.84 owed. Despite the fact that each of these 3 bills showed zero gallons of usage, and there was no letter "E" on any of the bills to show that the bill was estimated, Ms. Pena was charged the \$20.00 for July, \$456.00 for September, and \$456.00 for October for water usage.

f. Consumer Carlos Cobos resides at 175 Moorefield Road, Palmview, Texas and receives water service from Defendant. Mr. Cobos received a bill dated March 29, 2005, stating that his previous meter reading was 90,000, that his present meter reading was 90,000, and that he had used 7,700 gallons of water in a period of 14 days. This bill showed a present charge of \$33.62 for water and a TWC fee of \$0.17. Despite the fact that both the previous and present readings were the same, and there was no letter “E” on this bill to show that the bill was estimated, Mr. Cobos was charged \$33.62.

15. Defendant LJWSC misrepresents the extent of debt by disconnecting consumers’ water service when they have not defaulted on their debt. Instances include, but are not limited to the following:

a. Consumer Janie Hatch resides at 700 N. Bentsen Palm Drive, Lot 97, Mission, Texas, and receives water service from Defendant. Mrs. Hatch did not receive a bill from Defendant for the month of January 2005. Mrs. Hatch received a bill dated February 8, 2005, titled “Final Notice” indicating that she had a previous balance of \$10.00 and owed a total of \$19.43 which was due by February 22, 2005. Mrs. Hatch mailed her payment of \$19.43 by check to Defendant on February 14, 2005. However, on February 16, 2005, eight days before the due date listed on the bill Mrs. Hatch had received, an employee of LJWSC disconnected Mrs. Hatch’s water service.

b. Consumer Carlos Cobos resides at 175 Moorefield Road, Palmview, Texas and receives water service from Defendant. Mr. Cobos did not receive a bill from Defendant for the month of June 2004. Mr. Cobos received a bill dated July 22, 2004, titled “Final Notice” indicating that he had a previous balance of \$68.39 and owed a total \$77.44 which was due

by August 10, 2004. However, on August 2, 2004, eight days before the due date listed on the bill Mr. Cobos had received, an employee of LJWSC disconnected Mr. Cobos' water service.

### **DEBT COLLECTION ACT VIOLATIONS**

16. Defendant, as alleged above, has in the course of debt collection used fraudulent, deceptive, or misleading representations prohibited by § 392.304 of the Texas Debt Collection Act as follows:

a. By representing that the total balance of consumer debt is greater than what it in fact is, Defendant is misrepresenting the amount of debt in violation of § 392.304(a)(8) of the Texas Debt Collection Act; and

b. By disconnecting water service and thereby representing that consumers have defaulted on their consumer debt when they have in fact not, Defendant is misrepresenting the extent of debt in violation of § 392.304(a)(8) of the Texas Debt Collection Act.

### **DTPA VIOLATIONS**

17. By engaging in prohibited debt collection practices, Defendant is in violation of §17.46(a) of the DTPA. Section 392.404 of the Texas Debt Collection Act provides that a violation is a deceptive trade practice and actionable under the DTPA.

### **INJURY TO CONSUMERS**

18. Defendant has, by means of these unlawful acts and practices, obtained money or other property from persons to whom such money or property should be restored or, in the alternative, has caused damages to identifiable persons who are entitled to an award of damages.

19. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as alleged in this petition. Unless restrained by this Honorable Court,

Defendant will continue to violate the laws of the STATE OF TEXAS and cause damage to the general public.

**PRAYER**

20. WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that before notice and a hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice to Defendant and a hearing, a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, its officers, agents, servants, employees, and attorneys and any other persons in active concert or participation with Defendant, from:

- a. Suspending, disconnecting, or terminating water service to any consumer for any reason without approval of the Court;
- b. Billing for, collecting, or attempting to collect any charge or fee for water usage unless such fee is based on an accurate meter reading or is estimated based on prior accurate meter readings;
- c. When a bill is estimated, failing to include a written statement on the bill identifying that the bill is estimated;
- d. Failing to send consumers a water bill on a monthly basis; and
- e. Representing, directly or by implication, that this Court or the Office of the Attorney General has approved any good or service sold or offered for sale by Defendant, or has approved any business practice of Defendant.

21. Plaintiff, STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction

Hearing and prior to Defendant's answer date, with reasonable shortened notice to Defendant and its attorney, if known.

22. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:
- a. Adjudge against Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in the amount of \$20,000 per violation of the DTPA;
  - b. Order Defendant to restore all money or property acquired by means of any unlawful act or practice, or in the alternative, award judgment for damages to compensate identifiable persons for such losses;
  - c. Adjudge against Defendant reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006 (Vernon 1990);
  - d. Adjudge against Defendant prejudgment and postjudgment interest at the highest lawful rate; and
  - e. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. § 523(a)(7).

Further, Plaintiff STATE OF TEXAS respectfully prays for all other relief to which Plaintiff STATE OF TEXAS may be justly entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY McBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

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

---

RIC MADRIGAL  
Assistant Attorney General  
State Bar No. 12802200  
Office of the Attorney General  
Consumer Protection and  
Public Health Division  
3201 N. McColl, Suite B  
McAllen, TX 78501  
(956) 682-4547; Fax (956) 682-1957

**VERIFICATION**

STATE OF TEXAS           §  
  §  
COUNTY OF HIDALGO   §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF’S ORIGINAL PETITION, and has reason to believe that each and all said factual allegations are true and correct; and affiant sign this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

\_\_\_\_\_  
ROZANNE LOPEZ  
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS