

Attorney General would respectfully show the Court as follows:

1. DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under Level 2 of rule 190.3 of the Texas Rules of Civil Procedure.

2. AUTHORITY

2.1. This action is brought by Attorney General Greg Abbott through his Consumer Protection and Public Health Division in the name of the STATE OF TEXAS (referred to herein as the “State”) under the authority granted to him pursuant to Section 17.47 of the Texas Deceptive Trade Practices–Consumer Protection Act (“DTPA”), TEX. BUS. & COM. CODE § 17.41 *et seq.*, permitting the Consumer Protection and Public Health Division of the Attorney General’s office to bring an action to restrain, by temporary restraining order, temporary injunction, or permanent injunction, the use of any method, act or practice declared to be unlawful by DTPA Section 17.46, TEX. BUS. & COM. CODE § 17.46, where such proceedings are in the public interest.

2.2. The Attorney General files this suit against Defendants on the grounds that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined herein and as declared unlawful pursuant to the DTPA. TEX. BUS. & COM. CODE § 17.41 *et seq.* This suit is brought against Defendants for injunctive relief, restitution, civil fines and penalties, costs, and attorneys’ fees as a result of the violations of the DTPA.

3. PARTY DEFENDANTS

3.1. Defendant LUCIANO MARTINEZ (referred to herein as “Defendant Martinez”) is an individual residing in Dallas, Dallas County, Texas and is doing business in the State of Texas under

the assumed name of *Twin Tax Service*. Defendant Martinez may be served with citation and process at his place of business at 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231, or at his place of residence at 728 Summerfield Drive, Allen, Texas 75002, or wherever he may be found.

3.2. Defendant ANTHONY BARBER (referred to herein as “Defendant A. Barber”) is an individual residing in Dallas, Dallas County, Texas and is doing or has done business in the State of Texas under the names of *Twin Tax Service*, *TWIN Tax Service*, and/or *Tax Works International*. Defendant A. Barber may be served with citation and process at his place of business at 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231, or at his places of residence at 14332 Montfort Drive, Apartment 4112, Dallas, Texas 75254-8488 and/or 4345 Benton Elm Drive, Plano, Texas 75024, or wherever he may be found.

3.3. Defendant KENNETH BARBER (referred to herein as “Defendant K. Barber”) is an individual residing in Dallas, Dallas County, Texas and is doing or has done business in the State of Texas under the names *Twin Tax Service*, *TWIN Tax Service*, and/or *Tax Works Inter-National*. Defendant K. Barber may be served with citation and process at his place of business at 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231, or at his place of residence at 4345 Benton Elm Drive, Plano, Texas 75024, or wherever he may be found.

3.3. Defendant LARRY RODRIGUEZ (referred to herein as “Defendant Rodriguez”) is an individual residing in Dallas, Dallas County, Texas and is doing or has done business in the State of Texas under the names *Twin Tax Service*, *TWIN Tax Service*, and/or *Tax Works Inter-National*. Defendant Rodriguez may be served with citation and process at his place of business at 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231, or wherever he may be found.

3.4 Defendant RAMON PEREZ (referred to herein as “Defendant Perez”) is an individual residing in Dallas, Dallas County, Texas and is doing or has done business in the State of Texas under the names *Twin Tax Service*, *TWIN Tax Service*, and/or *Tax Works Inter-National*. Defendant Rodriguez may be served with citation and process at his place of business at 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231, or wherever he may be found.

3.5 Defendant TAX WORKS INTER-NATIONAL, INC. a/k/a Tax Works Inter-National a/k/a T.W.I.N. a/k/a T.W.I.N. Tax Service (Defendant TWIN) is domestic corporation doing business in the State of Texas. The business address of Defendant TWIN’s registered agent and registered office is 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231. Defendant TWIN may be served with process by serving its registered agent and director JENS SCHOEMER at either of the following addresses: 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231; 4300 Benton Elm Drive, Plano, Texas 75204.

3.6. Defendant JENS L. SCHOEMER (referred to herein as “Defendant Schoemer”) is an individual residing in Plano, Collin County, Texas. Defendant Shoemer is the incorporator and a director of Defendant TWIN, and is doing or has done business in the State of Texas under the names, *Tax Works Intern-National*, *T.W.I.N.*, *TWIN Tax Service*, and/or *Twin Tax Service*. Defendant Schoemer is also doing business in the State of Texas under the assumed name of *TWIN Tax Solutions*. Defendant Schomer may be served with citation and process at his place of business at 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231, or at his places of residence at 4300 Benton Elm Drive, Plano, Texas 75024, or wherever he may be found.

3.7. Defendant ANDREW MANNING is an individual residing in Garland, Dallas County,

Texas. Defendant Manning is a director of Defendant TWIN, and is doing business in the State of Texas under the assumed name of *Tax Works Inter National*. Additionally, Defendant Manning and is doing or has done business in the State of Texas under the names, *Tax Works Intern-National*, *T.W.I.N.*, *TWIN Tax Service*, and/or *Twin Tax Service*. Defendant Manning may be served with citation and process at his place of business at 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231, or at his places of residence at 4313 Crystal Lane, Garland, Texas 75043, or wherever he may be found.

4. VENUE

4.1. Venue of this suit lies in Dallas County, Texas for the following reasons:

A. Under the DTPA Section 17.47(b), venue is proper because Defendants reside and/or have done business in Dallas County, Texas. TEX. BUS. & COM. CODE § 17.47(b).

B. Under the DTPA Section 17.47(b), venue is proper because many of the allegations and transactions complained of herein occurred in Dallas County, Texas. *Id.*

C. Under the DTPA Section 17.56, venue is proper because Defendants have done business in Dallas County and all or part of the actions arose in Dallas County. Dallas County, Texas is the county in which Defendants, or authorized agents of Defendants, solicited the transactions made the subject of this action. *Id.* at §17.56; *see also* TEX. CIV. PRACT. & REM. CODE ANN. § 15.002 (a)(1)-(3).

5. ACTS OF AGENTS

5.1. Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that:

A. Defendants performed or participated in the act; or

B. Defendants' officers, trustees, employees, agents, representatives, or successors, performed or participated in the act on behalf of and under the authority of the Defendants.

6. PUBLIC INTEREST

6. Because Plaintiff State of Texas has reason to believe that the 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. Therefore, the Consumer Protection and Public Health Division of the Attorney General of the State of Texas believes, and is of the opinion that, these proceedings are in the public interest.

7. TRADE AND COMMERCE

7.1. Defendants have at all times described herein, engaged in conduct constituting "trade" and "commerce," as those terms are defined in Section 17.45(6) of the DTPA. TEX. BUS. & COM. CODE § 17.45(6).

8. NOTICE BEFORE SUIT NOT GIVEN

8.1. Plaintiff did not inform Defendants herein at least seven (7) days before instituting this action of the alleged unlawful conduct of which complaint is now made, pursuant to DTPA Section 17.47(a), for the reason that Plaintiff is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants would evade service of process, destroy relevant records, and secrete assets if prior notice of this suit were given.

9. SPECIFIC FACTUAL ALLEGATIONS

9.1. Defendants are engaged in the business enterprise of income tax return preparation. That is, Defendants prepare income tax returns for consumers in exchange for fees and/or charges. Defendants have operated under various assumed names and aliases, including Twin Tax Service, TWIN Tax Service, T.W.I.N. Tax Service, TWIN Tax Solutions, T.W.I.N., and Tax Works International. Defendants most recently operated this business at 8061 Walnut Hill Lane, Suite 928, Dallas, Texas 75231. *See Exhibits A, B, C, D, E, F, G, H, I, J, K, & L.*

9.2. Defendants, purport to be “Tax Professionals” and “Electronic Filing Specialists” with between 12 and 16 years of experience. Further, Defendants represent to consumers that they are particularly adept at lawfully and accurately preparing consumers’ income tax returns in ways that decrease the consumers’ income tax liabilities and qualify the consumers for the best income tax refunds possible. Defendants claim to be so adept because of their years of experience, knowledge of tax law, and their expertise in the business of income tax return preparation. In some instances, Defendants even claim to be former employees of the United States Internal Revenue Service. *See Exhibits F, G, H, I, & J.*

9.3. Defendants target and solicit consumers with little knowledge of the laws governing federal income taxes. In doing so, Defendants advertise that their, “the knowledgeable agents will answer all of your questions and will get you the best return possible.” Further, Defendants try to obtain consumers’ trust by advertising that, “our knowledgeable staff are always looking out for your best interest.” Defendants also target and solicit consumers who do not read or speak English as their first language through advertisements representing that Defendants “Se Habla Espanol.” *See*

Exhibits I & J.

9.4. Defendants represent to consumers that Defendants will truthfully, correctly, completely, and/or accurately prepare income tax returns on behalf of consumers. Moreover, Defendants represent that they will provide consumers with checks for income tax refunds issued to the consumers by the United States Internal Revenue Service (hereinafter referred to as “IRS”). Defendants interview consumers in Defendants’ places of business, and purport to correctly and accurately prepare the consumers’ tax return forms based upon the consumers’ information. In some instances, Defendants charge an up-front fee to prepare the returns. In other instances, Defendants tell consumers that Defendants will receive their compensation by deducting the fees from the consumers’ income tax refunds. *See Exhibits A, B, C, & D.*

9.5. As a matter of course, Defendants prepare the consumers’ income tax return forms, making claims for falsely inflated personal and/or business expenses, false deductions, unallowable credits, and/or excessive exemptions. This false, incorrect, and inaccurate preparation is done without the consumers’ knowledge. Frequently, the false claims are added to the consumers’ income tax return forms after the consumers leave Defendants’ office, but before Defendants file the returns electronically. In many other instances, particularly when consumers do not read English, Defendants simply fill out the return forms making claims for false personal and/or business expenses, false deductions, unallowable credits, and/or excessive exemptions, without the consumers’ knowledge. Once the Defendants have prepared the income tax return forms, they file the forms electronically, without disclosing that the Defendants have falsely undervalued the consumers’ tax liability, and/or increased the amount of the refunds. *See Exhibits A, B, C, & D.*

9.6. While consumers are in the Defendants' business office, Defendants represent to consumers that they are eligible for income tax refunds of particular amounts. Further, Defendants represent to consumers that the consumers will receive checks for those particular amounts. While preparing consumers' income tax return forms, Defendants indicate on those forms that the income tax refunds should be directly deposited into checking accounts controlled by Defendants. As a result, Defendants obtain electronic money transfers directly from the IRS for income tax refunds issued to Defendants' client consumers. Defendants fail to inform consumers that Defendants prepare consumers' income tax return forms with false and/or erroneous information in efforts to increase the amount of the refund. As a consequence, the amounts of the refunds electronically deposited into Defendants' bank accounts are generally greater than the amounts Defendants represented to their client consumers. Defendants then keep the falsely inflated refund amounts, and provide consumers checks drawn on Defendants' checking accounts for the difference. Defendants do not disclose this practice to consumers. Further, the consumers never receive the fraudulently inflated refund amounts. *See Exhibits A, B, C, & D.*

9.7 At no point do Defendants disclose to consumers that as a result of Defendants preparing the consumers' federal income tax returns so that false expenses, deductions, exemptions and/or credits are shown on the consumers' federal income tax returns, the Internal Revenue Service will require that the consumers pay additional taxes and interest thereon. Similarly, Defendants fail to disclose to consumers that if Defendants prepare the consumers' federal income tax returns so that false expenses, deductions, exemptions, and/or credits are shown on the consumers' federal income tax returns, the consumers may be subject to penalties and criminal prosecution for the Defendants'

erroneous, false, and/or fraudulent preparation of the consumers' federal income tax returns. *See Exhibits A, B, C, & D.*

9.8. In several instances, the IRS has discovered that the consumer income tax returns prepared by Defendants make claims for false personal or business expenses, false deductions, unallowable credits and/or excessive exemptions. Concomitantly, the IRS has determined that those consumers' tax liabilities have been undervalued and/or the consumers have received tax refunds or fraudulently inflated income tax refunds, to which they were not entitled. As a result, the IRS has demanded that the consumers repay the refunds, fraudulently inflated refund amounts, and/or unpaid taxes. Further, the IRS has demanded that consumers pay monetary penalties and compounded interest on the penalties and amounts owed. The IRS makes these demands upon the consumers, notwithstanding their protestations that Defendants falsely prepared their income tax forms, and withheld the fraudulently inflated refund amounts. *See Exhibits A, B, C, D, & M.*

9.9. On several occasions, Twin Tax Services' customers have notified Defendants that the IRS has audited their income tax returns, and detected false personal and/or business expenses, false deductions, unallowable credits, and/or excessive exemptions. Those consumers have requested help from Defendants so that the consumers can understand why the IRS has made such claims and/or help resolve the IRS's demands that the consumers pay additional taxes, penalties, and/or interest thereon. In response to several of their customers' pleas, Defendants have promised to help. Particularly, Defendants have instructed consumers to produce nonexistent documents that will support the false expenses, deduction, credits, and/or exemptions. Additionally, Defendants have offered to represent the consumers before the IRS. In some instances, Defendants have gone so far

as to request that the consumers execute IRS forms, providing Defendants with powers of attorney and declaring Defendants as their representatives. Despite all of Defendants promises and offers of help, Defendants neither help their customers, nor resolve the IRS demands that the consumers pay additional taxes, penalties, and/or interest. To make matters worse, Defendants closed their office at 8061 Walnut Hill Lane, Suite 928, in Dallas, Texas around October 31, 2005 for what Defendants' described as their "off-season program." Defendants represent that the "off-season" ends January 16, 2006, and that Defendants will be available by appointment during the "off-season." Nevertheless, Defendants have not responded to consumer phone calls, and have been totally unwilling to provide consumers answers and help. *See Exhibits B, D, & I*

9.10. Defendants' failure to disclose their efforts to fraudulently inflate and obtain consumers' income tax refunds is intended to induce consumers into transactions which they would not have entered if the information had been disclosed to the consumers. *See Exhibits A, B, C, & D.*

10. VIOLATIONS OF THE DTPA

10.1. The State has reason to believe that Defendants have engaged in and will continue to engage in false, misleading, and deceptive acts and practices, unless restrained by this Court from doing so.

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

A. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of Section 17.46(a) and (b)(3), by Defendants'

representing, directly or indirectly, a past or present affiliation, connection, or association with the IRS. TEX. BUS. & COM. CODE §§ 17.46(a) and 17.46(b)(5).

B. Representing that services have characteristics, uses, or benefits, which they do not have, in violation of Sections 17.46(a) and (b)(5), by falsely representing that Defendants will truthfully, correctly, completely and/or accurately prepare consumers' federal income tax returns. *Id.* at §§ 17.46(a) and 17.46(b)(5).

C. Representing that services have characteristics, uses, or benefits, which they do not have, in violation of Sections 17.46(a) and (b)(5), by falsely representing that Defendants are knowledgeable with regard to the preparation of federal income tax returns. *Id.* at §§ 17.46(a) and 17.46(b)(5).

D. Representing that services have characteristics, uses, or benefits, which they do not have, in violation of Sections 17.46(a) and (b)(5), by falsely representing that Defendants have over twelve years of experience preparing consumers' federal income tax returns. *Id.* at §§ 17.46(a) and 17.46(b)(5).

E. Representing that services are of a particular standard, quality, or grade if they are of another, in violation of Section 17.46(b)(7), by falsely representing that Defendants will truthfully, correctly, completely and/or accurately prepare consumers' income tax returns. *Id.* at §§ 17.46(a) and 17.46(b)(7).

F. Representing that services are of a particular standard, quality, or grade if they are of another, in violation of Section 17.46(b)(7), by falsely representing that Defendants are knowledgeable with regard to the preparation of federal income tax returns. *Id.* at §§ 17.46(a)

and 17.46(b)(7).

G. Representing that services are of a particular standard, quality, or grade if they are of another, in violation of Section 17.46(b)(7), by falsely representing that Defendants have over twelve years of experience preparing consumers' federal income tax returns. *Id.* at §§ 17.46(a) and 17.46(b)(7).

H. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of Sections 17.46(a) and (b)(12), by falsely representing that Defendants will provide consumers with the entire amounts of income tax refunds issued to those consumers by the IRS, less only the Defendants' agreed upon charges/fees. *Id.* at §§ 17.46(a) and 17.46(b)(12).

I. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of Sections 17.46(a) and (b)(12), by falsely representing that if Defendants prepare consumers' federal income tax returns such that false expenses, deductions, exemptions and/or credits are shown on the consumers' federal income tax returns, the Internal Revenue Service will not require that the consumers pay additional taxes and interest thereon. *Id.* at §§ 17.46(a) and 17.46(b)(12).

J. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of Sections 17.46(a) and (b)(12), by falsely representing that if Defendants prepare consumers' federal income tax returns such that false expenses, deductions, exemptions and/or credits are shown on the consumers' federal income tax returns, the consumers will not be subject to penalties and

criminal prosecution for the Defendants' erroneous, false, and/or fraudulent preparation of the consumers' federal income tax returns. *Id.* at §§ 17.46(a) and 17.46(b)(12).

K. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of Sections 17.46(a) and (b)(12), by falsely representing that Defendants will represent consumers before the IRS and assist them in the resolution of claims by the IRS that the consumers' federal income tax returns were prepared showing false expenses, deductions, exemptions and/or credits. *Id.* at §§ 17.46(a) and 17.46(b)(12).

E. Failing to disclose information concerning 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 into which the consumer would not have entered had the information been disclosed, in violation of Section 17.46(b)(24), by failing to disclose to consumers that Defendants will erroneously, falsely, and/or fraudulently prepare the consumers' income tax return in efforts to undervalue the consumers' tax liability, and/or qualify the consumer for an income tax refund, and/or increase the amounts of the consumers' income tax refunds. *Id.* at §§ 17.46(a) and 17.46(b)(24).

F. Failing to disclose information concerning 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 into which the consumer would not have entered had the information been disclosed, in violation of Section 17.46(b)(24), by failing to disclose to consumers that Defendants will obtain erroneously, falsely, and/or fraudulently inflated refund amounts from the

IRS and retain the inflated amounts without the consumers' knowledge. *Id.* at §§ 17.46(a) and 17.46(b)(24).

G. Failing to disclose information concerning 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 into which the consumer would not have entered had the information been disclosed, in violation of Section 17.46(b)(24), by failing to disclose to consumers that if Defendants prepare the consumers' federal income tax returns such that false expenses, deductions, exemptions and/or credits are shown on the consumers' federal income tax returns, the Internal Revenue Service will require that the consumers pay additional taxes and interest thereon. *Id.* at §§ 17.46(a) and 17.46(b)(24).

H. Failing to disclose information concerning 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 into which the consumer would not have entered had the information been disclosed, in violation of Section 17.46(b)(24), by failing to disclose to consumers that if Defendants prepare the consumers' federal income tax returns such that false expenses, deductions, exemptions, and/or credits are shown on the consumers' federal income tax returns, the consumers may be subject to penalties and criminal prosecution for the Defendants' erroneous, false, and/or fraudulent preparation of the consumers' federal income tax returns. *Id.* at §§ 17.46(a) and 17.46(b)(24).

10.3. By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money or property should be restored,

or who in the alternative are entitled to an award of damages. *See* TEX. BUS. & COM. CODE § 17.47(d).

11. DISGORGEMENT

11.1. All of the Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

12. REPATRIATION OF ASSETS

12.1. After due notice and a hearing, the court should order that all of the Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

13. REQUEST FOR FINDINGS OF ACTUAL FRAUD AND FALSE REPRESENTATION

13.1. The Court should make findings at the conclusion of this case that the Defendants engaged in actual fraud and false representations in that Defendants have made repeated and materially false representations to the IRS and consumers concerning the Defendants' services, consumers' income tax liabilities, and the ability of consumers to obtain income tax refunds from the IRS, which was known to be false when made. Such false representations were made with the intention that they be acted upon by the parties to whom the misrepresentations were made.

Reliance upon these false representations has resulted in injury to numerous consumers in the State of Texas, and violates laws enacted by the State of Texas to protect the citizens from persons engaged in deceptive trade practices.

14. NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS' ASSETS AND PREVENT FURTHER HARM

14.1. Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction to prevent Defendants from causing further harm, and to preserve and protect the Defendants' assets from dissipation so that the many victims of Defendants' actions can receive the restitution to which they are entitled. The Defendants receive sums of money for services proffered which Defendants do not provide. The Defendants also receive sums of money from the IRS through the falsification of consumers' income tax returns. Thus, the money collected from consumers and the IRS by Defendants constitutes contraband which should be returned to its rightful owners. Defendants' ability to continue receiving sums of money from consumers and the IRS allows Defendants to continue receiving contraband. The 2005 tax season is upon us, and Defendants have stated their intention to resume operating Twin Tax Service on January 16, 2006. Consequently, Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction to prevent Defendants from causing further harm. To that end, the **assets** of the Defendants should therefore be **frozen** pending final trial so that Defendants can be enjoined from continuing to harm consumers. *See* TEX. BUS. & COM. CODE § 17.47(a). Furthermore, the **assets** of the Defendants are subject to dissipation and secretion and therefore should also be **frozen** pending final trial so restitution can be made, and full and final relief can be awarded at the resolution of this litigation. *See* Id. at §§ 17.47(a) and 17.47(d).

15. TRIAL BY JURY

15.1. Plaintiff herein requests a jury trial and will tender the jury fee to the Dallas County District Clerk's office pursuant to Texas Rule of Civil Procedure 216 and Texas Government Code Section 51.604. TEX. GOVT. CODE ANN. §51.604; TEX. R. CIV. P. 216;

16. APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, PERMANENT INJUNCTION AND ASSET FREEZE

16.1. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. What is more, Defendants have stated their intention to resume doing business as Twin Tax Service on January 16, 2006 in efforts to exploit consumers filing their 2005 income tax returns. The tax season is upon us. Unless *immediately* restrained and further enjoined 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. The interests of the State of Texas and the public require an Ex Parte Asset Freeze to prevent Defendants from causing further harm and to preserve monies for consumer restitution. Therefore, Plaintiff requests an Ex Parte Temporary Restraining Order, Temporary Injunction, Permanent Injunction and Asset Freeze as indicated below. See TEX. BUS. & COM. CODE §§ 17.47(a) and 17.47(d).

17. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

17.1. The STATE OF TEXAS requests leave of this Court to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of witnesses who may need to be

deposed prior to any scheduled Temporary Injunction Hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable shortened notice to Defendants and their attorneys if known.

18. PRAYER

18.1. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; 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' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A. Transferring, concealing, destroying or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to Defendants' business, which are in Defendants' possession, custody, or control except in response to further orders or subpoenas in this cause;
- B. Transferring, spending, hypothecating, concealing, encumbering, depleting, modifying, dissipating, distributing, 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 Defendants;

- D. Soliciting or accepting compensation of any type to obtain relief of any kind on behalf of another from any officer, agency, or employee of the State of Texas, any other state, or the United States;
- E. Falsely representing to any person, expressly or by implication, that Defendants can or will honestly and accurately prepare federal income tax returns;
- F. Falsely representing, expressly or by implication, that Defendants are able to prepare federal income tax returns in a manner that will produce the best federal income tax refund possible;
- G. Falsely representing, expressly or by implication, that Defendants are knowledgeable with regard to the preparation of federal income tax returns;
- H. Falsely representing, expressly or by implication, that Defendants will look out for consumers' best interest when preparing those consumers' federal income tax returns;
- I. Falsely representing, expressly or by implication, that Defendants will provide consumers with the entire amounts of federal income tax refunds issued to those consumers by the Internal Revenue Service, less only the Defendants' agreed upon charges/fees;
- J. Erroneously, falsely, and/or fraudulently preparing consumers' federal income tax returns;
- K. Failing to disclose to consumers that Defendants may erroneously, falsely, and/or fraudulently prepare the consumers' federal income tax returns;

- L. Obtaining from the Internal Revenue Service erroneously, falsely, and/or fraudulently inflated federal income tax refunds, or amounts thereof;
- M. Retaining erroneously, falsely, and/or fraudulently inflated federal income tax refunds, or amounts thereof;
- N. Falsely representing that Defendants will represent consumers before the IRS and assist those consumers in the resolution of claims by the Internal Revenue Service that the consumers' federal income tax returns were prepared such that false expenses, deductions, exemptions and/or credits are shown on the consumers' federal income tax returns.
- O. Failing to disclose to consumers that Defendants may obtain erroneously, falsely, and/or fraudulently inflated federal income tax refunds, or amounts thereof, from the Internal Revenue Service and retain the inflated refunds, or amounts thereof, without the consumers' knowledge;
- P. Failing to disclose to consumers that if the Internal Revenue Service detects false expenses, deductions, exemptions and/or credits are shown on taxpayers' federal income tax returns, then the taxpayers must pay additional taxes and interest and may be subject to penalties and criminal prosecution.
- Q. Failing to disclose to consumers that if Defendants prepare the consumers' federal income tax returns such that false expenses, deductions, exemptions and/or credits are shown on the consumers' federal income tax returns, the Internal Revenue Service will require that the consumers pay additional taxes and interest

thereon;

- R. Failing to disclose to consumers that if Defendants prepare the consumers' federal income tax returns such that false expenses, deductions, exemptions, and/or credits are shown on the consumers' federal income tax returns, the consumers may be subject to penalties and criminal prosecution for the Defendants' erroneous, false, and/or fraudulent preparation of the consumers' federal income tax returns.

18.2. Because Defendants have engaged in the unlawful acts and practices described herein, Defendants have violated and continue to violate the laws as herein alleged. Defendants, unless enjoined by this Court, will continue in violation of the laws of the State of Texas, and loss and damage will result to the State of Texas and to the general public.

18.3. The State further prays that upon final hearing this Court order Defendants to pay civil penalties of \$20,000.00 per violation to the State of Texas for violations of the DTPA. *See* TEX. BUS. & COM. CODE § 17.47(c).

18.4. The State further prays for the Court to order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative, award judgment for damages to compensate for such losses. *See* TEX. BUS. & COM. CODE § 17.47.

18.5. The State further prays for attorneys' fees and costs pursuant to the laws of the State of Texas, including but not limited to the Texas Government Code. *See* TEX. GOV. CODE ANN. §§

402.006(c) and 2107.006.

18.6. The State further prays for prejudgement interest on all awards of restitution, damages, and civil penalties as provided by law.

18.7. The State further prays that Defendants' assets be repatriated into the jurisdiction of this court, that Defendants' assets be subject to disgorgement, and that an equitable lien be placed upon Defendants' property for the benefit of consumer victims.

18.8. The State requests that all attached exhibits are incorporated by reference as if stated verbatim herein.

18.8. The State further prays for any other relief to which the State may be justly entitled under the law.

Respectfully submitted,

GREG ABBOTT
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