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STATE OF TEXAS,
Plaintiff,

v.

AMERICAN SENIOR ALLIANCE, INC. AND
GEORGE R. KATOSIC,
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF THE COURT:

Plaintiff the STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, files this action against AMERICAN SENIOR ALLIANCE, INC. and GEORGE R. KATOSIC (collectively referred to as “Defendants”), and respectfully alleges the following claims:

I.

SUBJECT MATTER JURISDICTION / DISCOVERY CONTROL PLAN

1. This suit is brought against Defendants by the Attorney General, acting through his Consumer Protection and Public Health Division, for violations of the Texas Deceptive Trade Practices--Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41, *et seq.* (the “DTPA”), former TEX. INS. CODE art. 21.21, current TEX. INS. CODE §§ 541.003 and 541.052, and the rules promulgated thereunder. This suit is filed in the name of the State of Texas by 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. The discovery in this case is intended to be conducted under Level 2, pursuant to TEX. R. CIV. P. 190.2.

II.

DEFENDANTS / PERSONAL JURISDICTION

2. a. Defendant AMERICAN SENIOR ALLIANCE, INC. (also referred to herein as “ASA”) is a Nevada corporation with a principal office and place of business in Texas at 300 N. Coit Rd., Suite 1050, Richardson, Texas, 75080-5439, and may be served with citation by serving its registered agent, GEORGE R. KATOSIC, at that address.

b. Defendant GEORGE R. KATOSIC (also referred to herein as “KATOSIC”) is a resident of Texas and an insurance agent practicing in the State of Texas. KATOSIC also serves as president of ASA, and may be served at his residence at 1002 Riva Ridge, Wylie, Texas 75098.

III.

VENUE

3. Venue is proper in state district court in Travis County, Texas pursuant to former TEX. INS. CODE art. 21.21 § 15(b) and current TEX. INS. CODE § 541.202(3).

IV.

PUBLIC INTEREST

4. The Texas Attorney General’s Consumer Protection Division (“CPD”) believes that ASA and/or KATOSIC have mailed and continue to mail unsolicited, deceptive and misleading mailers to seniors (persons 65 years of age or older) or retirees which purport to be for informational purposes only, but are actually for the purpose of obtaining personal information from postage paid cards that the seniors or retirees return to an anonymous post office box in another state. The personal information received from the seniors or retirees on the returned cards (“lead cards”) is used by Defendants in Texas to develop sales leads for themselves or their clients. Such sales leads are

intended to result in subsequent direct sales pitches to seniors or retirees for insurance or related products that may be unsuitable or unnecessary. Therefore, the CPD believes that bringing this claim is in the public interest and, having so concluded, brings this action pursuant to the Texas Deceptive Trade Practices-Consumer Protection Act § 17.47(a), former TEX. INS. CODE art. 21.21 § 15(a) and current TEX. INS. CODE § 541.201, and seeks injunctive relief against Defendants to restrain the use of such unlawful practices and other remedies specified below.

V.

**DEFENDANTS HAVE BEEN AND ARE ENGAGED IN “TRADE AND COMMERCE”
AND “THE BUSINESS OF INSURANCE” IN TEXAS**

5. Each Defendant is a “person,” as defined by the DTPA § 17.45(3), former TEX. INS. CODE art. 21.21 § 2(a), and current TEX. INS. CODE § 541.002(2), has engaged in “trade” and “commerce” in Texas as those terms are defined by the DTPA § 17.45(6), and also in conduct which constitutes the “business of insurance” in Texas under former TEX. INS. CODE art. 21.21 § 4, and current TEX. INS. CODE § 541.052. The unlawful conduct of Defendants has affected and continue to affect persons in the State of Texas.

VI.

DECEPTIVE TRADE PRACTICES ACT NOTICE

6. Defendants have been notified in general of the alleged unlawful conduct described herein in accordance with TEX. BUS. & COM. CODE § 17.47(a). All conditions precedent to this suit have been met.

VII.

ACTS OF AGENTS

7. An allegation that Defendants or a Defendant engaged in any act or practice means:
 - a. that a Defendant performed, authorized or participated in the act or practice; or
 - b. that one of more of the Defendants' officers, agents, representatives or employees performed or participated in the act or practice on behalf of and under the authority or direction of the Defendants.

VIII.

ADDITIONAL FACTUAL ALLEGATIONS

8. AMERICAN SENIOR ALLIANCE, INC. and GEORGE R. KATOSIC are and have been in the business of creating, mailing, and processing from Texas intentionally deceptive and misleading "lead card" solicitations for use as sales leads by Defendants, insurance agents or other salespeople for the purpose of directly soliciting the sale of insurance or discount cards to the unfortunate citizens who respond to these mailings. KATOSIC is an attorney and a licensed insurance agent in Texas, and is also president, registered agent and a director of a company he created called AMERICAN SENIOR ALLIANCE, INC. Although ASA purports to be a Nevada non-profit corporation, its sole office is in Richardson, Texas, and its office is the same office as KATOSIC's personal office in Richardson, Texas. ASA letterhead, complete with a red, white and blue American flag emblem, lists KATOSIC's Richardson, Texas office as its address for ASA administrative offices. KATOSIC has claimed that ASA is a non-profit corporation "formed for the purpose of providing senior education" or "to provide a website for senior education." In reality,

ASA and its assumed name, American Senior Alliance, are deceptive names and a conduit for KATOSIC to obtain insurance sales leads and information for himself or his clients. The assumed name “American Senior Alliance” and its American flag logo are also used to “endorse” certain insurance or insurance-related products and services of KATOSIC or his clients to give a false aura of non-profit senior advocacy or government approval. KATOSIC has admitted ASA “does not maintain any financial statements.” According to a statement by KATOSIC, ASA’s sole asset is a checking account at Compass Bank in Texas which lists ASA’s address as that of KATOSIC’s law office. KATOSIC has admitted in writing that the main source, if not the sole source, of funding for ASA’s checking account is a sales lead company called Prospect Pros, L.L.C. Prospect Pros, L.L.C. is a Texas limited liability company based in Plano, Texas, and is not, by any stretch of the imagination, in the business of non-profit senior education.

9. Defendants’ “lead card” mailers are developed in and mailed from Texas, typically under a Fort Worth, Texas, postal permit, and are targeted to retired persons or seniors whose names and addresses are obtained from demographic lists or other marketing compilations. Such “lead card” mailers are designed to alarm or interest the recipient into providing personal information on the postage paid return card, and into agreeing to be contacted with what is claimed to be important or essential information about Medicare, retirement, probate, taxes, health care, changes in the law or government benefits. The reality is that these “lead cards,” which are completed and mailed back to Defendants by consumers to an anonymous post office box in another state, are merely used as sales leads and information to KATOSIC or undisclosed sales people for direct sales pitches to the seniors or retired persons for insurance or substitutes for insurance such as health or pharmacy discount cards. Defendants’ or their clients seek to market or assist in selling various insurance or

insurance-related products, such as long term care insurance, medicare supplement insurance, funeral expense insurance, health or pharmacy discount cards, or annuities. Defendants' mailings target seniors or retirees as the most likely prospective buyers of these products.

10. Defendants send the mailing that includes the "lead card" to solicit personal information from seniors or retirees for sales leads to assist Defendants or Defendants' clients to further solicit and sell insurance and other insurance-related products to the recipients. Defendants' mailings do not disclose the true purpose of the mailings and do not identify a real insurance agent, insurer or salesperson who will use the completed lead cards. Defendants intentionally disguise their motives, location, and the identity of their clients by using aliases such as the assumed name "American Senior Alliance" with no information on how or where to reach American Senior Alliance except an out of state post office box. These mailings also have American flag emblems and official-looking disclosures, law updates and warnings calculated to leave the impression with the unfortunate recipient that the mailing is associated with, or endorsed by, a legitimate non-profit seniors advocacy group or with a government program.

IX.

EXHIBITS OF DEFENDANTS' MAILINGS

11. Copies of exemplar mailers by Defendants are attached as Exhibits A, B, C, D, E, F, G, H, and I and are incorporated by reference herein. These attached exhibits display examples of the deceptive and misleading content of Defendants' mailers from Texas to the public.

X.

DTPA VIOLATIONS

12. Defendants, as alleged above, have in the course of trade and commerce, engaged in false, misleading or deceptive acts and practices declared unlawful in the DTPA §§ 17.46(a) and (b).

Defendants' unlawful acts and practices include:

- a. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, as alleged more specifically above, in violation of DTPA § 17.46(b)(2);
- b. Causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by, another, as alleged more specifically above, in violation of DTPA § 17.46(b)(3);
- c. Passing off goods or services as those of another, as alleged more specifically above, in violation of DTPA § 17.46(b)(1);
- d. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have, as alleged more specifically above, in violation of DTPA § 17.46(b)(5); and
- e. Failing to disclose information, which was known at the time of the transaction, with the intent to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, as alleged above, in violation of DTPA § 17.46(b)(24).

XI.

TEXAS INSURANCE CODE VIOLATIONS

13. Defendants have engaged in unfair methods of competition and unfair or deceptive acts and practices in the business of insurance in violation of former TEX. INS. CODE art. 21.21 § 4(2), and current TEX. INS. CODE §§ 541.003 and 541.052 by engaging in one or more of the following acts or practices:

- a. Failing to disclose the fact that insurance is the subject of the solicitation and which type of insurance is being solicited;
- b. Using misleading and deceptive statements to obtain personal information from potential insurance consumers;
- c. Failing to disclose the name of the insurer or agent for whom personal information is being solicited; and
- d. Other acts and practices as more specifically alleged above.

XII.

TEXAS ADMINISTRATIVE CODE VIOLATIONS

14. Defendants have engaged in unfair competition and unfair trade practices in the business of insurance, in violation of 28 TEX. ADMIN. CODE, Chapter 21, Subchapters A and B. Defendants' mailers are advertisements in the form of lead card solicitations, as defined by 28 TEX. ADMIN. CODE §21.102(1)(F). Defendants' mailers include the following unfair competition and unfair trade practices:

- a. Failing to disclose the fact that insurance is the subject of the solicitation in violation of 28 TEX. ADMIN. CODE §§ 21.3, 21.4,

- 21.103, 21.104 (d) & (f) and 21.112;
- b. Failing to explicitly and conspicuously disclose that the product being solicited is life insurance or other insurance or an annuity in violation of 28 TEX. ADMIN. CODE §§ 21.3, 21.4, 21.103, 21.104 (d) and 21.112;
 - c. Failing to disclose the full name of the insurer as required to be stated in each of its advertisements and the portion of the advertisement to be returned to the insurance company or agent in violation of 28 TEX. ADMIN. CODE §§ 21.104 (a) and 21.112;
 - d. Failing to provide information that is sufficiently complete and clear to avoid deception or capacity or tendency to mislead or deceive as to the origin, nature, and purpose of the advertisement in violation of 28 TEX. ADMIN. CODE §§ 21.103 (b) and 21.112;
 - e. Using advertisements which contain words, phrases, statements, or illustrations therein or have information omitted therefrom which have the capacity and tendency to mislead or deceive purchasers or prospective purchasers in violation of 28 TEX. ADMIN. CODE §§ 21.103 (d) and 21.112;
 - f. Omitting information, or creating a false implication or impression which is misleading or deceptive or has the tendency or capacity to be misleading or deceptive in violation of 28 TEX. ADMIN. CODE § 21.112;
 - g. Failing to disclose all information required to be disclosed

conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or interrupted with the context of the advertisement so as to be confusing or misleading in violation of 28 TEX. ADMIN. CODE §§ 21.103 (c) and 21.112;

- h. Referring to Medicare without giving the required legal information and/or disclosures in violation of 28 TEX. ADMIN. CODE §§ 21.113 (d)(11)-(14); and
- i. Misleading the recipient to believe the sources of the mailing and/or information referenced in the mailing are approved by, related to or connected with the federal government in violation of 28 TEX. ADMIN. CODE §§ 21.3, 21.4, 21.103, and 21.104 (c).

XIII

REQUEST FOR INJUNCTION

15. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the law as alleged in this Petition. Unless restrained by this Honorable Court, Defendants can continue to violate the laws of the STATE OF TEXAS and cause irreparable injury, loss and damage to the STATE OF TEXAS, to its citizens and to the general public.

16. Plaintiff the STATE OF TEXAS respectfully requests that after notice and hearing this Court issue a permanent injunction restraining and enjoining Defendants, Defendants' 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, 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 Defendants, insofar as such property relates to, arises out of or is derived from the business operations of any Defendant within the State of Texas, save and except for reasonable and necessary expenditures in the ordinary course of business;
- b. Failing to disclose that the purpose of a communication is a solicitation to sell insurance and/or other financial product;
- c. Using a name, emblem, insignia or text which:
 - (1) causes confusion or misunderstanding as to the source, sponsorship, or approval of Defendants' goods or services;
 - (2) causes confusion or misunderstanding as to Defendants' affiliation, connection, or association with unidentified insurance agents or companies for whom personal information is being solicited to sell unidentified insurance and/or other financial products;
 - (3) represents or implies that Defendants' goods or

services have sponsorship, approval, characteristics, uses, or benefits which they do not have;

- d. Failing to identify the licenced insurance agent and/or company on whose behalf the communication is sent or who will be receiving the personal information gathered through the use of the communications to elderly persons;
- e. Failing to identify the type of insurance and/or other financial product that may be attempted to be sold by an insurance agent and/or company on whose behalf the communication is sent or who will be receiving the information gathered through the use of the communication; and
- f. Using the words “important update,” or similar urgent terms, or otherwise purporting to notify recipients of changes in the law without a specific reference to the law which has changed and the date on which the change became effective; and
- g. Such other relief which would require Defendants to comply with Texas law.

XIV.

REQUEST FOR CIVIL PENALTIES

- 17. In addition, Plaintiff the STATE OF TEXAS respectfully requests that this Court:
 - a. Adjudge against each Defendant civil penalties in favor of Plaintiff the STATE OF TEXAS in the amount of not more than \$20,000.00

per violation of the DTPA, plus an additional amount of not more than \$250,000.00 under the DTPA regarding acts or practices calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the acts or practices occurred, pursuant to DTPA §17.47(c); and

- b. Order Defendants to pay civil penalties of up to \$10,000.00 per violation pursuant to former TEX. INS. CODE art. 21.21 § 15 (c), current TEX. INS. CODE §541.204, and the administrative rules promulgated under these statutes.

XV.

REQUEST FOR ATTORNEY’S FEES AND COSTS OF COURT

18. In addition, Plaintiff the STATE OF TEXAS respectfully requests that this Court further order Plaintiff the STATE OF TEXAS recover from Defendants, jointly and severally, reasonable attorney’s fees, investigative costs and costs of court pursuant to the TEX. GOV’T CODE § 402.006(c).

XVI.

PRAYER

19. Plaintiff the STATE OF TEXAS respectfully prays that Defendants be served with citation as required by law and that this Court grant judgment to Plaintiff against Defendants for all relief requested above and other relief to which Plaintiff may show itself entitled.

Respectfully submitted,

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