

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

STATE OF TEXAS,	§	IN THE _____ DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
EMO CORPORATION;	§	
TODD L. TREDEAU, Individually and	§	
as Chairman of the Board;	§	
TRACEY L. JONES, Individually and as	§	
President and Chief Executive Officer; and	§	
NANCY C. HUMPHRIES, Individually	§	
and as Chief Operating Officer,	§	
	§	
Defendants.	§	JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL VERIFIED PETITION AND APPLICATION FOR  
TEMPORARY RESTRAINING ORDER, TEMPORARY AND PERMANENT  
INJUNCTION, AND APPOINTMENT OF RECEIVER**

The State of Texas, Plaintiff in the above-entitled and numbered cause, (the “State”), acting by and through Greg Abbott, Attorney General of Texas, and at the request of Randall S. James, the Commissioner of Banking (the “Commissioner”), files this Original Verified Petition complaining of EMO Corporation (“EMO”); Todd L. Tredeau, Individually and as Chairman of the Board (“Tredeau”); Tracey L. Jones, Individually and as President and Chief Executive Officer (“Jones”); and Nancy C. Humphries, Individually and as Chief Operating Officer (“Humphries”) (collectively referred to as the “Defendants”) and makes this application for temporary restraining order, temporary and permanent injunction, and appointment of receiver, as to Defendants, and in support thereof would show the Court the following:

**I.**

**Discovery Level**

1. Discovery is intended to be conducted under Level 2, as set out in Texas Rules of Civil Procedure 190.

## II.

### Nature of Action

2. This action is brought in the name of the State of Texas by the Attorney General of Texas, acting within the scope of his official duties under the authority granted him under the Constitution of the Laws of Texas. It is brought for injunctive relief, the appointment of a receiver and to freeze assets at the request of the Commissioner, who, in making such a request, is acting within the scope of his official duties and authority under Chapter 151 of the Texas Finance Code.

3. Plaintiff seeks immediate injunctive relief pursuant to Section 151.701 of the Texas Finance Code in the form of a Temporary Restraining Order against Defendants, affiliated companies, and their officers, directors, principals, partners, employees, salesmen, agents, and representatives, to enjoin further operation EMO Corporation which has been conducting money services business without a license; and to prevent disposing of, concealing, or altering, in any manner, any property, assets, books and records; and to protect any funds obtained from consumers who have deposited funds with Defendant EMO or its employees or agents, and any funds and other assets derived therefrom.

4. Pursuant to Section 151.701 (d) of the Texas Finance Code, Plaintiff also seeks the appointment of a receiver for Defendant EMO.

5. Pursuant to Section 151.701 (d) of the Texas Finance Code, Plaintiff also seeks an order freezing all assets legally or beneficially owned by, held, maintained, managed by or in the

possession or control of Defendant EMO, including all corporate funds and all funds held by Defendant EMO for the benefit of its customers and clients.

### III.

#### Jurisdiction and Venue

6. The Court has jurisdiction over this action under Section 151.701© of the Texas Finance Code.

7. Venue is proper in Travis County, Texas pursuant to Section 151.701(c) of the Texas Finance Code.

### IV.

#### Defendants

8. Defendant EMO Corporation is a Texas corporation authorized to do business in Texas and who may served with process by delivering same to its registered agent, **Tracey Jones**, at **7301 Ranch Road 620N, Ste. 155-328, Austin, Travis County, Texas 78726-4537**; or at **5806 Mesa Drive, Suite 302, Austin, Travis County, Texas 78731**; or at **12012 Portofino Drive, Austin, Travis County, Texas 78732**.

9. **Todd L. Tredeau** is a natural person who is the Chairman of the Board and a majority stockholder for EMO Corporation Inc. and who may be served with process in person at **3224 Magenta Sky Trail, Austin, Travis County, Texas 78732**.

10. **Tracey L. Jones** is a natural person who is the President, Chief Executive Officer and a stockholder for EMO Corporation Inc. and who may be served with process in person at **12012 Portofino Drive, Austin, Travis County, Texas 78732.**

11. **Nancy C. Humphries** is a natural person who is the Chief Operating Officer and a stockholder for EMO Corporation Inc. and who may be served with process in person at **103 Weston Lane, Austin, Travis County, Texas 78733.**

**V.**

**Facts**

12. EMO is currently operating its business in Austin, Texas at 5910 Courtyard Drive, Suite 150, Austin, Texas 78731, and on the internet at its webpage located at <https://www.emocorp.com>.

13. The Texas Department of Banking (“Department”) has not licensed Defendants to operate a money services business in the State of Texas.

14. Upon information and belief after diligent inquiry, it appears Defendants do not possess a charter, license, permit, registration, or other authority issued or granted by another appropriate federal or state regulatory authority that authorizes Respondents to operate a money services business in the State of Texas as required by Chapter 151 of the Texas Finance Code.

15. Failure of a money services business to obtain and operate pursuant to a state issued Money Services Business license is a federal felony offense under the provisions of Title 18 U.S.C. Section 1960 and is a state felony offense under the provisions of Texas Finance Code, §151.708.

16. Defendants registered EMO as a money services business with the U. S. Department of the Treasury on or before December 20, 2004.

17. Defendants have admitted that the business of EMO is subject to regulation as a money services business and requires a license to operate in the State of Texas and have submitted an application for a temporary license and a permanent license pursuant to *Texas Finance Code*, Chapter 151. **Exhibit A.**

18. Defendants have admitted EMO has been operating in Texas as a money services business without a license since 2004 (**Exhibit A**) and currently have accepted deposits from the public and maintain customer accounts in excess of \$7,000,000.

19. The financial statements submitted by the EMO Corporation indicate the company is insolvent by approximately \$2,000,000. **Exhibit B** which is to be submitted for *in camera* inspection.

20. Defendants have admitted EMO currently has a net worth of approximately **negative** \$1,100,000. **Exhibit C.**

21. In the letter accompanying its application for a temporary license, EMO alleges to have received “Pledged Investments” in the amount of \$1,000,000 and commits to obtaining a net worth of \$100,000 on or before April 24, 2006. **Exhibit C.** However, it further admits the “Pledged Investments” have not yet closed for the following reasons:

- (1) EMO has not yet generated the investment documentation;
- (2) Investors will then need to review the documentation; and
- (3) Investors need to liquidate certain assets to enable them to deliver the funds.

**Exhibit C.** Based upon EMO’s own admissions, the alleged “Pledged Investments” are not commitments at all and there is nothing to indicate that it will actually receive \$1,000,000 in funds, if any.

22. Defendants further admit EMO currently fails to meet the \$500,000 net worth requirement for obtaining a temporary or permanent license. **Exhibit C.**
23. Defendants have acknowledged a recent increase in EMO's customer base to over 110,000 as well as an approximate \$4,000,000 increase in customer funds during the month of January 2006 for a total of approximately \$7,000,000. However, EMO has failed, refused and continues to refuse to provide a sufficient or valid explanation for said increases in such a short period of time.
24. Rather than provide the \$300,000 bond required for obtaining a money services business license, EMO has tendered a deposit, in lieu of bond, consisting of a "Money Market Trust Account". However, it is unclear who owns the account and what amount of funds, if any, are in the account.
25. According to Defendant EMO's Business Description submitted to the Department, it represents that it *must* hold its clients' funds in pooled bank accounts *in readiness for immediate use by the clients*. [Emphasis Added]. **Exhibit D** submitted for *in camera* inspection. However, according to its January 31, 2006 Balance Sheet, it has received \$2,000,000 more in client funds than it currently has cash on hand. **Exhibit B.**
26. The Department has denied the application of EMO for a license for failure to meet the minimum net worth requirements and other statutory requirements. **Exhibit E.**

## VI.

### **Request for Injunctive Relief**

27. Section 151.701 (d) of the Texas Finance Code provides that on a proper showing, the court may issue a restraining order, a preliminary or a permanent injunction.
28. The continued operation of EMO without a license in violation of the provisions of

Sections 151.302 (civil violation) and 151.708 (criminal violation) of the Texas Finance Code.

29. Defendants' intentional operation of a money services business based in Texas during the past year and its continued unauthorized and unlicensed activity in the future, coupled with its past and future acceptance of money from the public as deposits, without the protections afforded the public by compliance with the provisions of Chapter 151, Texas Finance Code, including the provision of a bond, a minimum net worth, and regular examinations by the Texas Department of Banking, threatens immediate and irreparable harm to the public.

30. The credible evidence of the above-described violations of the *Texas Finance Code* is sufficient cause for issuance of an temporary restraining order to Defendants under Section 151.701 (a) and (d) of the Texas Finance Code.

31. Immediate injunctive relief in the form of a temporary restraining order against the Defendants is necessary to restrain the Defendants from continuing the unauthorized activity as an unlicensed money services business and its acceptance of money from the public; and to restrain Defendants from further wasting, secreting, and otherwise dissipating its customers' funds, revenues, and other assets acquired and held in connection with its money service business activities. Defendants have acknowledged a recent increase in EMO's customer base to over 110,000 as well as an approximate \$4,000,000 increase in customer funds during the month of January 2006 for an approximate total of \$7,000,000.

32. All of the above-stated harm to present and future depositors and to the general public of the State of Texas resulting from Defendants' unlicensed activities is substantial and immediate and will be irreparable without immediate injunctive relief. There is no adequate remedy at law.

33. Immediate injunctive relief should be granted without notice by temporary restraining order. After notice and hearing, it is necessary that the injunctive relief be granted and extended

by a temporary injunction, and after final hearing, it is necessary that Defendants be permanently enjoined by the permanent injunction.

34. All injunctive relief sought in this case is available to the State of Texas as Plaintiff without bond under Section 6.001 of the Civil Practice and Remedies Code.

## VII.

### **Request for Appointment of Receiver**

35. Section 151.701 (d) of the Texas Finance Code provides that on a proper showing, the court may appoint a receiver.

36. The State of Texas would show that an imperative and immediate necessity exists to appoint Gary Barton, employed by FTI Consulting, as a Temporary and Permanent Receiver of Defendant EMO under Section 151.701 (d) of the Texas Finance Code, and grant him all powers under the statutes and the common law of the State of Texas to conduct the business of Defendant EMO, and take any other actions as he deems necessary.

37. Upon final hearing, the State of Texas requests that this Court appoint Gary Barton, employed by FTI Consulting, as Permanent Receiver of Defendant EMO.

38. The State of Texas further requests that, pursuant to Section 151.701 (d) of the Texas Finance Code, this Court issue an order finding that all of Defendant EMO's assets of any kind or nature, wherever situated, whether real, personal, or mixed, including intellectual property, and whether held in Defendant EMO's name or for Defendant EMO's benefit, including but not limited to cash, accounts, funds, stocks, bonds, statutory deposits (including deposits otherwise made by Defendant EMO with any agency of a state or the federal government), trust funds, funds held for the benefit of customers, letters of credit, safe deposit boxes, notes, books, records, documents, furniture, equipment, real estate, retainages and retainers, and rights or

causes of actions of any kind, including, but not limited to, accounts receivables, contract rights, insurance proceeds, and all licenses held by Defendant EMO, are placed in *custodia legis*, and that title to such property is vested in the Temporary and Permanent Receiver.

39. The State of Texas further requests that, upon trial of the merits, this Court appoint Gary Barton, employed by FTI Consulting, as Permanent Receiver of Defendant EMO, and that he be authorized to liquidate the Defendant EMO's affairs.

### VIII.

#### **Request for Order to Freeze Assets**

40. Section 151.701 (d) of the Texas Finance Code provides that on a proper showing, the court may issue an order freezing assets, including accounts belonging to or under the control of Defendant EMO, including accounts containing corporate funds or funds held for the benefit of Defendant EMO's customers or clients.

41. EMO has acknowledged a negative net worth of at least \$1,100,000. **Exhibit C.** In addition, EMO's financials show a negative net worth of at least \$2,000,000. **Exhibit B.**

42. EMO further acknowledges it has been operating in Texas as a money services business without a license since 2004 and has accepted and continues to accept deposits from the public, and currently holds customer funds of approximately \$7,000,000.

43. The State of Texas would show that an imperative and immediate necessity exists to freeze assets belonging to or under the control of Defendant EMO under Section 151.701 (d) of the Texas Finance Code to prevent dissipation of customers' funds and further harm to the public.

44. First, the financial statements submitted by the company were admittedly not audited (**Exhibit C**) and may be inaccurate.

45. Second, the publicity of this regulatory action creates the potential of a panic run on the

customer funds which are contained in large aggregate accounts. Unless Defendant EMO's assets are frozen, first withdrawals from Defendant EMO's accounts will prejudice the later withdrawals since there appears to be insufficient cash to satisfy customer demands. **Exhibit B.** It is therefore necessary to freeze Defendant EMO's assets so the Receiver may inventory the resources and determine a plan for refunding deposits on a pro rata basis.

## **IX.**

### **Request for Civil Penalties and Restitution**

46. Section 151.701 (f) of the Texas Finance Codes provides that an action brought under Section 151.701 may include a claim for ancillary relief, including a claim for civil penalties authorized under Chapter 151 of the Texas Finance Code, or for restitution or damages on behalf of the persons injured.

47. Pursuant to Section 151.707 of the Texas Finance Code, the Commissioner may assess an administrative penalty not to exceed \$5,000 for each violation or, in the case of a continuing violation, \$5,000 for each day that the violation continues.

48. In determining the amount of the penalty, the factors to be considered include the following:

- a. The seriousness of the violation;
- b. The person's compliance history; and
- c. the person's good faith in attempting to comply with Chapter 151 of the Texas Finance Code.

Texas Finance Code, § 151.707(d).

49. In addition, if the person has demonstrated willful disregard for the requirements of or the rules adopted under Chapter 151 of the Texas Finance Code, the trier of fact shall recommend the maximum penalty be imposed. Texas Finance Code, § 151.707 (d).

50. The State of Texas requests this Court order Defendants pay civil penalties, restitution and

damages for those injured by Defendants unauthorized and unlicensed activities as authorized under Chapter 151 of the Texas Finance Code.

**X.**

**Attorney's Fees**

51. Section 151.701 (f) of the Texas Finance Code provides that an action brought under Section 151.701 may include a claim for ancillary relief, including a claim for costs. The State therefore requests an award for all reasonable and necessary attorney fees incurred in preparing and prosecuting this action.

WHEREFORE, PREMISES CONSIDERED, The State of Texas prays that:

1. The Court grant a temporary restraining order, rendered before notice and hearing and without bond by the Attorney General and Commissioner of Banking, until determination of Plaintiff's Motion for Temporary Injunction, or other order of the Court, enjoining each Defendants and their officers, directors, principals, partners, joint venturers, successors, shareholders, employees, salesmen, agents, representatives, attorneys, family members, and others acting in concert with the Defendants who receive actual notice of the Court's Order by personal service, facsimile transmission, or otherwise, from engaging in the following acts:
  - a. Conducting any money service business in the State of Texas, including the business of Defendant EMO;
  - b. Disposing of, transferring, selling, assigning, negotiating, expending, encumbering, partitioning, canceling, concealing, secreting, disguising, pledging, or removing from the jurisdiction of this Court, money, assets, notes, equipment, fixtures, receivables, expectancies, funds or other property or objects of value, whether real, personal, or mixed and whether tangible or intangible, wherever situated, belonging to, owned by, in the possession of, acquired by, or claimed by Defendant EMO, its affiliated companies, and its officers, directors, principals, partners, joint venturers, successors, shareholders, employees, salesmen, agents, representatives, attorneys, family members, and others acting in concert with or in behalf of Defendant EMO, or insofar as such property relates to, arises out of, or is derived from the business or operation of the Defendant EMO.
2. The Court appoint Gary Barton of FTI Consulting, Inc. as a Temporary Receiver of Defendant EMO.

3. The Court grant such other legal and equitable relief that the Court deems just and proper.
4. After notice and hearing, the Court grant a temporary injunction enjoining the Defendants and their affiliated companies, employees and agents from conducting a money services business without obtaining a license and complying with all statutory requirements of Chapter 151 of the Texas Finance Code.
5. After notice and hearing, the Court appoint FTI Consulting as a continuing temporary Receiver.
6. No bond be required by the State.
7. Upon final hearing hereof, the temporary injunction be made a permanent injunction.
8. Upon final hearing hereof, the temporary receivership be made a permanent receivership.
9. Upon final hearing, the court order civil penalties and restitution or damages to be made to those injured by Defendants' unauthorized activities identifiable at the final hearing pursuant to Section 151.701 (f) of the Texas Finance Code.
10. The State of Texas recover all investigative costs and all costs of this litigation and be awarded attorney's fees pursuant to Section 151.701 (f) of the Texas Finance Code; and
11. Such further relief to which the State of Texas may be justly entitled.

Respectfully

submitted,

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Attorney General of Texas

BARRY R. McBEE  
First Assistant Attorney General

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**VERIFICATION**

STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Stephanie Newberg, Deputy Banking Commissioner of the State of Texas, who, being by me first duly sworn, deposed and said that he has read the allegations in the foregoing application for temporary restraining order, temporary and permanent injunction, and appointment of receiver, and each and every fact and matter therein stated is within his personal knowledge and is true and correct.

STEPHANIE NEWBERG, Deputy Banking  
Commissioner of the State of Texas

SUBSCRIBED AND SWORN to before me, this the \_\_\_\_ day of March, 2006.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas