

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT

v.

BEXAR COUNTY, TEXAS

LARRY EUGENE BERRY D/B/A
BLINDS DEPOT D/B/A BUDGET
BLINDS,
Defendant

_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION, APPLICATION FOR TEMPORARY
INJUNCTION AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS, acting by and through Attorney General of Texas Greg Abbott, complains of LARRY EUGENE BERRY D/B/A BLINDS DEPOT D/B/A BUDGET BLINDS, Defendant, and for cause of action would respectfully show as follows:

A. DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 1 pursuant to TEX. R. CIV. P. 190.2.

B. AUTHORITY

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the State of Texas and in the public interest under the authority granted to him by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (hereafter the “DTPA”) upon the ground that Defendant has engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b)(5)(7) of the DTPA.

C. DEFENDANT

3. Defendant LARRY EUGENE BERRY D/B/A BLINDS DEPOT D/B/A BUDGET BLINDS is an individual doing business in BEXAR County, Texas as alleged specifically below and may be served with process at 21518 Roan Bluff, San Antonio, Texas 78259.

D. VENUE

4. Venue of this suit lies in BEXAR County, Texas for the following reasons:

A. Under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in BEXAR County, Texas.

B. Under the DTPA §17.47(b), venue is proper because Defendant has done business in BEXAR County, Texas as follows: Defendant's place of business is located in BEXAR County, Texas and Defendant has entered into contracts with consumers for supplying and installing window blinds and shutters at their residences located in BEXAR County, Texas. The Defendant fails to complete the job as represented by the agreements. Furthermore, Defendant enters into these contracts with consumers at their residences but does not provide them with a three day right to cancel notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c).

E. PUBLIC INTEREST

5. Because Plaintiff State of Texas has reason to believe that Defendant has engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff State of Texas has reason to believe Defendant has, by means of these unlawful acts and practices, caused damage to and acquired money or property from persons of this State and caused and will continue to cause adverse effects to legitimate business enterprises which lawfully conduct trade

and commerce in the 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.

F. TRADE AND COMMERCE

6. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and commerce” as those terms defined by §17.45 (6) of the DTPA.

G. ACTS OF AGENTS

7. Whenever in this Petition it is alleged that Defendant did any act, it is meant that:

A. Defendant performed or participated in the act; or

B. Defendant’s officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

H. NOTICE BEFORE SUIT

8. The Consumer Protection Division informed Defendant in general of the alleged unlawful conduct described below, at least seven days before filing suit, as may be required by §17.47(a) of the DTPA.

I. NATURE OF DEFENDANT’S OPERATION

9. Defendant owns and operates a business that supplies and provides for the installation of window blinds, shutters, and treatments. The Defendant enters into contracts with consumers to supply and install window blinds and shutters at their residences. Before ordering the supplies purchased by consumers, Defendant requires a seventy-five percent down payment of the total purchase price. After receiving this initial payment, Defendant fails to completely perform his agreements with consumers. Despite the efforts of consumers to obtain the goods and services they

purchased or a refund of the amount already paid to Defendant, Defendant makes excuses regarding the status of the goods, misleads the consumers regarding the timetable of when the Defendant will perform his end of the agreement, or completely ignores the consumers when they attempt to contact the Defendant. In response to consumer inquiries regarding the products they purchased, the Defendant states that the delay is due to the manufacturer. The truth is, however, that the delay is due to the fact that the Defendant never placed an order for the consumer's products with the manufacturer. Furthermore, Defendant engages in false, misleading, or deceptive acts by not providing consumers who enter a contract to purchase goods, at a place other than the Defendant's place of business, a three day right to cancel notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The Defendant began operating as Budget Blinds, located at 15743 San Pedro, San Antonio, Texas 78232. Although the Defendant was operating a franchise granted by Budget Blinds Corporate Office of California, consumers could settle disputes only with the local franchise because each location is independently owned and operated. This fact led to many consumers relying on the Defendant's use of Budget Blinds, a nationally known business. Unknown to consumers, however, Budget Blinds Corporate Office will not, in any manner whatsoever, attempt to solve any disputes that a consumer may have with a local franchise. Due to the fact that Budget Blinds Corporate Office will not become involved, a consumer's only available recourse is through the franchise owner, or in this case, the Defendant. Because the Defendant's actions are responsible for the creation of disputes with consumers in the first place, the consumers have no other reasonable method to obtain the products they purchased or a refund of the purchase price. After taking money from consumers and failing to deliver the products as alleged specifically below, the Defendant filed for bankruptcy on February 24, 2005. This, however, did not stop the Defendant from engaging in

false, misleading, and deceptive acts similar to those he carried out as owner of Budget Blinds. The Defendant opened Blinds Depot at 18160 US HWY 281, Suite 108, San Antonio, Texas 78232. This location, because it is a mail drop box, does not offer consumers the opportunity to physically enter the Defendant's place of business. During this time, the Defendant came into contact with consumers by placing solicitations door-to-door in residential neighborhoods. Due to the fact that Defendant operated on a door-to-door basis, every commercial transaction he conducted occurred in the residences of consumers. Furthermore, because Defendant operated a blinds business under a new name, consumers who attempted to research Blinds Depot would not discover the complaints against Budget Blinds.

J. SPECIFIC FACTUAL ALLEGATIONS

10.1 Defendant entered into a sales agreement with Glenn T. Bernard, a consumer over the age of 65, at his residence to supply and install window blinds and shutters on September 9, 2004. During this transaction, the Defendant was doing business as Budget Blinds, located at 15743 San Pedro, San Antonio, Texas 78232. The consumer paid the Defendant \$1,555.00, the full purchase price, by personal check to order the window blinds and shutters. The Defendant supplied and installed the window blinds but not the shutters. Despite repeated inquiries by the consumer, the Defendant could not provide a reasonable explanation for the delay in delivering the window shutters. As of January 10, 2005, the Defendant had not provided the consumer with the shutters he purchased, a refund of the purchase price, or a reasonable solution to settle the dispute. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at the consumer's residence but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The consumer filed a complaint with the Attorney General's Office on January

10, 2005. The Defendant responded to the complaint by stating that Budget Blinds was experiencing financial difficulties and the Defendant was currently in bankruptcy. The Defendant further stated that Budget Blinds was working vigorously with creditors and manufacturers to either provide the consumers with the products they purchased or a refund of the purchase price. The consumer also filed a complaint with the Bexar County Dispute Resolution Center and requested a mediation session with the Defendant. The Defendant did not respond to the communications from the Dispute Resolution Center nor did he appear at a scheduled mediation session arranged by the Dispute Resolution Center.

10.2 Defendant entered into a sales agreement to supply and install window shutters with Ronald Schiller on July 11, 2004. During this transaction, the Defendant was doing business as Budget Blinds, located at 15743 San Pedro, San Antonio Texas 78232. The consumer cancelled the order but did not receive a refund of the deposit paid to Defendant. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at the consumer's residence but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The consumer filed a complaint with the Attorney General's Office on March 11, 2005. The Defendant responded to the complaint in the exact language that he responded to the above complaint; the Defendant stated that Budget Blinds was experiencing financial difficulties and the Defendant was currently in bankruptcy. The Defendant further stated that he was working with creditors and manufacturers to either provide the consumers with the products they purchased or a refund of the purchase price. The consumer also sent a complaint to Budget Blinds Corporate Office in California, asking them to stand behind the use of their license. Budget Blinds Corporate Office responded by stating that each location is independently owned and operated and that the only

method of recourse the consumer had was through the Defendant. As of July 5, 2005, almost one year after the original transaction date, the consumer had not obtained the products they purchased, a refund of the purchase price, or a solution to the dispute with Defendant.

10.3 Defendant entered into a sales agreement to supply and install window blinds with Cathy Villanueva at her residence on February 14, 2005. During this transaction, the Defendant was doing business as Budget Blinds, located at 15743 San Pedro, San Antonio, Texas 78232. The consumer paid the Defendant \$941.00, a seventy-five percent deposit, to order the window blinds. The Defendant never returned to install the window blinds and gave the consumer excuses regarding his lack of performance. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at the consumer's residence but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The consumer filed a complaint with the Attorney General's Office on March 22, 2005. The Defendant responded to the complaint in the exact manner as he did to the first two complaints identified above; he stated that Budget Blinds was experiencing financial difficulties and the Defendant was in bankruptcy. The Defendant further stated that he was working vigorously with creditors and manufacturers to either provide the consumers with the products they purchased or a refund of the purchase price. The consumer also contacted Budget Blinds Corporate Office in California. Budget Blinds Corporate Office responded by stating that the consumer had to address any problems with the local franchise because each Budget Blinds is independently owned and operated.

10.4 Defendant entered into a sales agreement to supply and install window blinds with Juanita M. Mathis at her residence on February 4, 2005. During this transaction, the Defendant was doing business as Budget Blinds, located at 15743 San Pedro, San Antonio, Texas 78232. The

consumer paid Defendant \$938.00 to order the window blinds. The consumer never received her window blinds and received excuses from the Defendant regarding his lack of performance. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at the consumer's residence but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The consumer filed a complaint with the Attorney General's Office on March 25, 2005. The Defendant responded to the complaint in the same exact manner as the previous three complaints; he stated that Budget Blinds was experiencing financial difficulties and the Defendant was in bankruptcy. The Defendant further stated that he was working vigorously with creditors and manufacturers to either provide the consumers with the products they purchased or a refund of the purchase price.

10.5 Defendant entered into a sales agreement to supply and install window blinds with Chong H. Zac at her business on August 21, 2004. During this transaction, the Defendant was doing business as Budget Blinds, located at 15743 San Pedro, San Antonio, Texas 78232. The consumer paid the Defendant \$900.00, a seventy-five percent down payment, but never received the window blinds. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at a place other than the Defendant's place of business but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The consumer filed a complaint with the Attorney General's Office on March 30, 2005. The Defendant responded to the complaint by stating that he was not able to cancel the order at the consumer's request because the blinds were a special made custom product. The Defendant further stated that a date for installation was never set because he never received the product and that the Defendant was more than willing to provide the consumer with her product. The Defendant, however, did not specifically outline any plan

regarding the fulfillment of this statement. The Defendant also stated that it was unfortunate for the consumer because she agreed, which was illustrated by her signature on the sales agreement, that there could be no partial or full refund. The consumer also contacted a private attorney at law to identify any available methods of recourse regarding this dispute.

10.6 Defendant entered into a sales agreement with Kelly Zeitler to supply and install window blinds on February 10, 2005. During this transaction, the Defendant was doing business as Budget Blinds, located at 15743 San Pedro, San Antonio, Texas 78232. The consumer paid the Defendant \$2,249.44 to order the window blinds but never received them. The Defendant stated that the reason for the delay for delivering the blinds was due to the fact that they were on back order with the manufacturer. When the consumer personally contacted the manufacturer, however, she was informed that the Defendant had not ordered the blinds as he previously stated. The consumer attempted to contact the Defendant by calling him often and leaving messages. These calls and messages went unreturned by Defendant. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at a place other than the Defendant's place of business but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The consumer filed a complaint with the Attorney General's Office on April 4, 2005. The Defendant has not responded to the complaint that was filed with the Attorney General's Office.

10.7 Defendant entered into a sales agreement with Maria and Michael Vogt to supply and install wood shutters and pleated shades at their residence on October 29, 2004. During this transaction, the Defendant was doing business as Budget Blinds, located at 15743 San Pedro, San Antonio, Texas 78232. The consumers paid the Defendant \$1,965.00, the full purchase price, to order the materials. The consumers received the shades but not the shutters. In response to the

consumer's inquiries regarding the shutters, the Defendant stated that the delay was due to the manufacturer. The Defendant would not, however, provide the consumers with proof that the shutters had in fact been ordered from the manufacturer. The consumer attempted to obtain a refund of the purchase price at the Defendant's business but the Defendant refused to issue the refund. Subsequent calls to Defendant made by the consumer went unanswered and unreturned. Furthermore, the Defendant entered into an agreement to sell goods with the consumers at the consumer's residence but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The consumers filed a complaint with the Attorney General's Office on April 7, 2005. In addition, the consumers contacted Budget Blinds Corporate Office in California. The Corporate Office stated that there was nothing they could do because each store is an independently owned and operated franchise.

10.8 Defendant entered into a sales agreement to supply and install window blinds with Kristina L. Benca at her residence on February 14, 2005. During this transaction, the Defendant was doing business as Budget Blinds, located at 15743 San Pedro, San Antonio, Texas 78232. The consumer paid \$1234.05 by personal check for the blinds; the Defendant requested that the check be made out to him personally not Budget Blinds. The Defendant stated that the blinds would be delivered in ten days. The consumer did not receive the blinds within the stated time period. In response to the consumer's inquiries regarding the delay, the Defendant stated that the delay was due to the manufacturer. When the consumer personally contacted the manufacturer, she was informed that her order had not been processed because the Defendant had not submitted the order. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at the consumer's residence but failed to include the necessary cancellation notice as required by TEX.

BUS. & COM. CODE ANN. §39.004(c). In addition to filing a complaint with the Attorney General's Office on June 24, 2005, the consumer filed an incident report with the San Antonio Police Department as well.

10.9 Defendant entered into a sales agreement with Dee Ann Chandler at her residence to supply and install window shutters on July 14, 2005. During this transaction, the Defendant was doing business as Blinds Depot, located at 18160 US Hwy 281, Suite 108, San Antonio, Texas 78223. This transaction occurred after the Defendant filed bankruptcy and opened another blinds business at a new location and under a different name. This location, however, is not a business that offers consumers the ability to physically enter but a mail drop box. The consumer became aware of the Defendant's business after he placed an advertisement on the front door of her residence. The consumer paid the full purchase price of \$8,906.00 by personal check, made out to the Defendant. After receiving the payment, the Defendant returned to the consumer's residence to measure her windows a week later. At this time, the Defendant stated that he would return in mid-August to obtain a paint sample so that the shutters would match the consumer's windows exactly. After this statement, the Defendant did not contact the consumer or come by her residence to obtain the paint sample. The consumer began calling the Defendant daily but her phone calls went unreturned. The consumer asked for her money back, but the Defendant told her that the manufacturer was finishing up her shutters and that he would return in September to obtain a paint sample. Weeks passed and the Defendant did not contact the consumer to arrange a time to obtain the paint sample. The consumer began to call and leave messages for the Defendant, but they went unreturned. In the consumer's last call to Defendant, she stated that she would like her money back. Defendant finally traveled to the consumer's house to obtain the paint sample. The consumer did not hear from the

Defendant for weeks and began calling on a daily basis for five consecutive days before stopping. Three days later on October 1, 2005, Defendant called the consumer apologizing profusely and stating that he was busy assisting a family in need after Hurricane Katrina. He further stated that the consumer's shutters were almost ready and asked the consumer to call two or three hours later to arrange an installation date. Despite repeated phone calls by the consumer, she has not heard from the Defendant since October 1, 2005. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at the consumer's residence but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. § 39.004(c). The consumer filed a complaint with the Attorney General's Office on October 10, 2005. The Defendant did not respond to the consumer's complaint despite two attempts made by the Attorney General's Office to obtain a response.

10.10 Defendant entered into a sales agreement with Cynthia Gomez at her residence to supply and install window blinds on December 2, 2005. During this transaction, the Defendant was doing business as Blinds Depot, located at 18160 US Hwy 281, Suite 108, San Antonio, Texas 78223. The consumer paid the Defendant \$900.00 by personal check, a seventy-five percent down payment, to order the blinds. The Defendant stated that the blinds would take two weeks to come in. This was the last contact the consumer had with the Defendant; the Defendant did not respond to the consumer's repeated phone calls to his business and cell phone nor did he respond to a certified letter requesting a refund of the down payment paid sent to his business and home address. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at the consumer's residence but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The consumer filed a complaint with the Attorney

General's Office on January 1, 2006.

10.11 Defendant entered into a sales agreement with Valerie Tolhurst to supply and install window blinds at the consumer's residence on January 23, 2005. During this transaction, the Defendant was doing business as Blinds Depot, located at 18160 US Hwy, San Antonio, Texas 78223. The consumer paid the Defendant \$655.00 by personal check, a seventy-five percent down payment, to order the window blinds. The Defendant installed paper shades on February 1, 2005, but did not supply the window blinds. The consumer's check to Defendant was cashed on February 1, 2005, but the Defendant did not return the consumer's repeated phone calls. Furthermore, the Defendant entered into an agreement to sell goods with the consumer at the consumer's residence but failed to include the necessary cancellation notice as required by TEX. BUS. & COM. CODE ANN. §39.004(c). The consumer filed a complaint with the Attorney General's Office on February 15, 2006.

K. FALSE, MISLEADING, OR DECEPTIVE ACTS

11.1 Defendant, as alleged above and detailed below, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§17.46(a) and (b)(5)(7) of the DTPA. Such acts include:

A. Engaging in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce, as alleged more specifically in paragraphs 10.1 through 10.11 above, in violation of §17.46(a) of the DTPA;

B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, as alleged more specifically in

paragraphs 10.1 through 10.11 above, in violation of §17.46(b)(5) of the DTPA;

C. Representing that goods and services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, as alleged more specifically in paragraphs 10.1 through 10.11 above, in violation of §17.46(b)(7) of the DTPA;

11.2 The Defendant, as alleged above and detailed below, has also violated TEX. BUS. & COM. CODE ANN. §39.004(c), which requires a merchant to provide a consumer with a three day right to cancel notice in consumer transactions that occur at a place other than the merchant's place of business. Such acts include:

A. Not incorporating a three day cancellation notice in sales agreements formed with consumers at a place other than the Defendant's place of business as alleged specifically in paragraphs 10.1 through 10.11 above.

L. INJURY TO CONSUMERS

12. Defendant has, by means of these unlawful acts and practices, obtained 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.

M. REQUEST FOR DISCLOSURE

13. Under Texas Rule of Civil Procedure 194, Plaintiff requests that the Defendant disclose, within 30 days of service of this request, the information or material described in Rule 194.2(a)-(c), (e)-(g) and (i).

N. PRAYER

14.1 Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate 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 immediate, irreparable injury, loss, and damage to the State of Texas and to the general public.

14.2 WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, it's officers, agents, servants, employees, and attorneys and any other person in active concert or participation with Defendant 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 the business of Defendant currently of hereafter in their possession, custody, or control except in response to further orders or subpoenas in this cause;

B. 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 Defendant, insofar as such property relates to, arises out of or is derived from the business operation of Defendant within the State of Texas, save and except for reasonable and necessary expenditures in the ordinary course of business;

C. Entering into sales agreements with consumers for the sale of window blinds, window shutters, and other related window products without entering a date on the sales agreement identifying the date that the goods will be delivered to the Defendant and the date on which the

consumer can expect installation of the goods they purchased;

D. Failing to deliver window blinds, window shutters, and other related window products as represented to consumers after receiving payment;

E. Failing to refund money paid by consumers when window blinds, window shutters, and other related window products are not delivered;

F. Conducting new business, either by acquiring new consumers or opening a new blinds store, in the sale of window blinds, window shutters, or other related window products without first supplying the goods purchased by identifiable consumers or refunding the money already paid by identifiable consumers; and

G. Entering into agreements with consumers at a place other than the Defendant's place of business without incorporating the three day right to cancel notice required by TEX. BUS. & COM. CODE ANN. §39.004(c).

14.3 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 an amount of not more than \$20,000 per violation of the DTPA and an additional amount up to \$250,000 for consumers over the age of 65;

B. Order Defendant to restore all money or other property taken from identifiable consumers by means of unlawful acts or practices, or in the alternative, award judgment for damages to compensate for such losses;

C. Order Defendant to pay Plaintiff State of Texas' attorney fees and costs of court pursuant to the TEX. GOVT. CODE, §402.006(c);

D. Order Defendant to pay pre-judgment interest on all awards of restitution, damages, or

civil penalties, as provided by law; and

E. Grant all other relief to which Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

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