

II. JURISDICTION

2. This action is brought by Attorney General GREG ABBOTT, through his Consumer Protection & Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code Ann. §§17.41 - 17.63 (hereafter the "DTPA"), upon the ground that Defendants have 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) of the DTPA.

III. DEFENDANTS

3. Defendant Forum Trading, Inc. ("Forum Trading") is a Texas corporation with headquarters in Cedar Park, Texas. Forrest Watson¹ is Forum Trading's President, Chairman, and Chief Executive Officer. On June 29, 2006, Forrest Watson filed an assumed-name certificate on behalf of Forum Trading, registering the name Forum Technologies, Inc. Both the Xpower Energy Saver and the Mega Power Saver have been sold by Forum Technologies, Inc., and its website www.myfti.biz. Forum Technologies, Inc. does business at 4616-2 W. Howard Lane, Suite 550, Austin, Texas, 78728. **Defendant Forum Trading, may be served by serving its registered agent Forrest E. Watson, at 3011 Lombardi Way, Cedar Park, Texas, 78613.**

4. Defendant Forrest Watson is an individual. Forrest Watson is Forum Trading's President, Chairman, and Chief Executive Officer. On June 29, 2006, Forrest Watson filed an assumed-name certificate on behalf of Forum Trading, registering the

¹ Forrest Watson also goes by the spelling Forest Watson.

name Forum Technologies, Inc. Defendant Watson has corresponded directly with Forum Technology, Inc.'s consumers to handle their complaints. **Defendant Watson may be served with process at his home, 3011 Lombardi Way, Cedar Park, TX 78613.**

5. Defendant Robert Carpus is an individual. Robert Carpus is a signatory on Forum Technologies, Inc.'s bank account number XXXXX8274 with JP Morgan Chase Bank into which consumer monies were directed. Robert Carpus is also a signatory on SRIG, L.L.C.'s bank account number XXXXXXXXX8265 with JP Morgan Chase Bank, into which consumer funds were directed from Forum Technologies, Inc. **Robert Carpus may be served with process at his home, 16628 Bridgefarrow Blvd., Pflugerville, TX, 78660.**

6. Defendant Xium Technologies, Inc. ("Xium"), is a Texas corporation with headquarters in Amarillo, Texas. Greg Dockery is Xium's President and CEO. Greg Dockery is on the signature card for Xium's bank account. Consumers bought the Xpower Energy Saver from Forum Technologies. Money from Forum Technologies bank account at JP Morgan Chase Bank was transferred into Xium's JP Morgan Chase Bank account. In short, Xium acquired money from Forum Technology's Xpower sales. Xium does business at 4720 N.E. 24th Avenue, Amarillo, Texas, 79107. **Defendant Xium may be served by serving its registered agent Greg Dockery, at 4720 N.E. 24th Avenue, Amarillo, Texas, 79107.**

7. Defendant Xedia Technologies, Inc. ("Xedia"), is a Texas corporation with headquarters in Amarillo, Texas. Greg Dockery is Xedia's President and CEO. Xedia continues to sell the Xpower Energy Saver. Xedia does business at 4720 N.E. 24th

Avenue, Amarillo, Texas, 79107. **Defendant Xedia may be served by serving its registered agent Greg Dockery, at 4720 N.E. 24th Avenue, Amarillo, Texas, 79107.**

8. Defendant Greg Dockery is an individual. He has conducted seminars marketing Xpower and other Forum Technologies and Xedia products. Defendant Dockery also owned three websites which advertise and promote the Xpower Energy Saver: one located at www.myfti.biz, www.thexpowerenergysaver.com, and www.myxedia.com. Defendant Dockery is also doing business as the President and CEO of Xedia. He is also a corporate officer at Forum Trading, Inc. **Defendant Dockery may be served with process at his home, 2002 Lakeline Oaks Dr., Cedar Park, Texas 78613.**

IV. VENUE

9. Under the DTPA §17.47(b), venue of this suit lies in TRAVIS County, Texas because Defendants and their agents have done business and undertaken transactions in Travis County as follows: Defendant Forum Technologies, Inc. is headquartered at 4616-2 W. Howard Lane, Suite 550, Austin, Texas, 78728.

V. PUBLIC INTEREST

10. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State.

11. Deceptive trade practices are declared unlawful pursuant to §§17.46(a) and (b) of the Texas Business and Commerce Code. The promotion of deceptive trade

practices on the Internet is of concern because the Internet makes it possible for operators to quickly reach thousands of consumers and to obtain payments from them through the electronic transfer of monies. Further, the promotion of deceptive trade practices via the Internet may serve to undermine consumer confidence in electronic commerce. Accordingly, the Consumer Protection & Public Health Division of the Office of the Attorney General believes and is of the opinion that these proceedings are in the public interest.

VI. TRADE AND COMMERCE

12. Defendants have, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by §17.45(6) of the DTPA.

VII. ACTS OF AGENTS

13. Whenever in this Petition it is alleged that any Defendants did any act, it is meant that:

- A. Defendants performed or participated in the act; or
- B. Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

VIII. NOTICE BEFORE SUIT

14. Pursuant to §17.47(a) of the Deceptive Trade Practices Act, contact has not been made with the Defendants herein to inform them of the unlawful conduct alleged herein, for the reason that the Consumer Protection Division 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 might evade service of process, destroy relevant records and secrete assets if prior notice of this suit were given. If the assets are secreted, consumers will be unable to recover damages from Defendants.

IX. NATURE OF DEFENDANTS' OPERATIONS

15. Defendants promote, market, and advertise to consumers a variety of questionable products including electronic devices called the Xpower Energy Saver and the Mega Power Saver. These two products are small capacitors, a device that can store electric energy, which produce, at best, a *de minimus* effect on consumers' electricity consumption. Defendants charge \$200.00 to \$300.00 each for these products while falsely claiming that these devices will significantly lower consumers consumption of electricity. Specifically, Defendants falsely claim that the Xpower Energy Saver will lower consumers' electric bills by up to 25% and the Mega Power Saver will lower consumers' electric bills by over 10%. Defendants have also falsely claimed that consumers who purchase the Xpower Energy Saver are eligible for a \$200.00 tax credit from the federal government when no such tax credit exists. Defendants have primarily marketed these products through websites, distribution networks, and seminars.

X. SPECIFIC FACTUAL ALLEGATIONS

Xpower

16. Defendants have advertised and promoted an electronic device called the Xpower Energy Saver ("Xpower"). Defendants represent Xpower will save consumers up to 25% off of their electricity bills. Defendants' advertisements include testimonials claiming up to 52% savings on electric bills.

17. Consumers bought Xpower from Defendants for \$199.99 through the www.myfti.biz or www.xpowerenergysaver.com web sites, the product is also marketed through multi-level marketing and seminars.

18. According to Defendants' website, the Xpower device reduces the consumption of electricity through "power factor correction." The product manual posted on the Defendants' website states that, "The Xpower Saver stabilizes the voltage and evens out the peaks and valleys in electricity usage, thus reducing the waste of electricity in the energy flow." The Defendants' website claims that Xpower may actually extend the life of consumers' appliances.

19. Defendants' website includes a PDF chart called "Xpower Savings" which purports to demonstrate the amount of money saved by the use of the Xpower device. However, the chart is merely a multiplication table which includes the amount of money a consumer would hypothetically save at a given rate of energy savings. For example, the chart indicates that 20% of \$50.00 is \$10.00 and then extrapolates that a consumer would save \$120.00 if they had fifty dollar electric bills each month for a year.

20. Defendants have also represented that the Xpower device was eligible for an energy tax credit of \$200 from the federal government; in effect paying for itself. Their website also included a link to a PDF file called, "the 2005 Energy Tax Credit," but the link only contained information referring to the tax credit legislation generally. Xpower was not mentioned. Additionally, Google searches for "Forum Technology" have resulted in a sponsored link to www.thexpowerenergysaver.com which stated: "Save up to 25% on

Electricity Bill and Get a \$200 Federal Tax Credit.” However, there is no evidence that consumers could get any tax credit if they bought Xpower.

21. Consumers have complained to the Consumer Protection & Public Health Division that: they have tried the product and they do not see the advertised savings on their electricity bills; they have attempted to get the tax credit for the cost of the device and have been unable to get it; they pay but do not get the product; and when they request refunds from the company, the company refuses to refund any money. Consumer complaints from the Attorney General office and the Better Business Bureau. See Affidavit of John C. Flores and Exhibits A and B (attached).

22. Defendants Xedia, Xium, and Dockery continue to offer Xpower, primarily through the website www.myxedia.com. Defendants now claim that Xpower will save consumers up to 30% in consumption of electricity.

Mega Power Saver

23. Defendants Forum Technologies, Watson, and Carpus now sell another product called the Mega Power Saver. Defendants’ website lists the price of one Mega Power Saver at \$279.95.

24. Defendants Watson and Forum Technologies falsely claim that the Mega Power Saver will reduce consumers’ energy consumption by 10% or more. Defendants also claim that the Mega Power Saver is seven times more powerful than Xpower and that it will pay for itself in less than one year. Finally, Defendants claim that, “[o]ver 2 million customers are saving money right now!”

25. Again, Defendants' ads for Xpower and the Mega Power Saver are false and misleading because in fact Xpower and the Mega Power Saver are not capable of reducing a consumer's electricity bill by up to 25% or even over 10%.

Expert Report

26. The State of Texas has retained an expert, Professor W. Mack Grady, Ph.D., P.E.. Professor Grady has tested the effects of Xpower on electricity consumption. The tests and calculations conducted by Professor Grady show that Xpower is a capacitor, a power factor correction device designed to limit additional energy consumption due to wiring losses.

27. Professor Grady has conducted tests on Xpower. The tests show that a small capacitor, such as the Xpower, could produce, *at most*, a 0.06% savings in electricity consumption in an average house. Professor Grady states, "The Xpower device as tested is too small to provide any significant reduction in electrical losses to a residence."

28. Professor Grady also tested the Mega Power Saver and its effect on electricity consumption. Although the Mega Power Saver is sold for \$279.95, Professor Grady determined that it is merely a simple capacitor that would retail for approximately \$10-\$20. Again, Professor Grady determined that the effect of the Mega Power Saver on consumers' electricity consumer is much lower than advertised, no more than 1% total energy savings for a consumer. Additionally, Professor Grady states that the Defendants' assertion that the Mega Power Saver will extend the life span of appliance motors is false.

29. In short, Defendants sell products that are advertised to reduce consumers' consumption of electricity and, consequently, their electric bills. However, these products are merely capacitors with an enormous markup and only produce, at best, a *de minimus* effect on consumers' consumption of electricity.

XI. FALSE, MISLEADING OR DECEPTIVE ACTS

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

- A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA § 17.46(b)(2);
- B. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA §17.46(b)(3);
- C. 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, in violation of DTPA §17.46(b)(5);
- D. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of DTPA § 17.46(b)(7);

- E. Advertising goods or services with the intent not to sell them as advertised in violation of § 17.46(b)(9); and
- F. Failing to disclose information concerning goods or 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 § 17.46(b)(24).

XII. INJURY TO CONSUMERS

31. Defendants have, 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.

XIII. NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS' ASSETS

32. Plaintiff requests immediate relief by way of a temporary restraining order and temporary injunction to preserve and protect Defendants' assets from dissipation so that the victims of defendants' actions can receive the restitution to which they are entitled. Defendants' assets are subject to dissipation because they market a bogus product which produces no significant reduction in consumers' electric bills.

33. The Consumer Protection Division has previously sued Defendant Dockery for selling a faulty electronic device and failing to return consumers' money. Complaints filed with the Consumer Protection Division indicate that consumers are not receiving refunds when they attempt to return the bogus Xpower device. Additionally, the Lakelike Oaks Owners Association holds an outstanding lien on Defendant Dockery's property. All

of these factors demonstrate fiscal irresponsibility and a history of failing to make appropriate refunds to consumers.

34. After reviewing Defendants' bank accounts, it appears that most consumers pay for Defendants' products through Epay. The bank records for Epay show a large number of chargebacks to Defendants for various reasons, including but not limited to: charges made without permission, charges processed to the same cardholder twice, and attempts to return goods that did not meet the characterization of such goods.

35. Plaintiff has located three bank accounts at JPMorgan Chase Bank where significant amounts of money from consumers have been placed. The funds are then transferred to Forum Technologies's accounts and then paid out to bank accounts in the name of SRIG, L.L.C. and Xium, Inc. Defendants' bank records indicate that from December 2006 to June 2007, approximately \$2,500,000.00 has been received from consumers in an account belonging to Forum Technologies, Inc. These same bank records reveal that significant sums of this money are being diverted to an account in the name of the Xium Corporation belonging to the individual Defendant Dockery as well as an account in the name of SRIG, L.L.C. belonging to the individual Defendant Carpus.

36. If Defendants' assets representing proceeds from the sale of these products are not immediately frozen pending a temporary and permanent injunction hearing, such assets may be subject to dissipation, may be removed from the jurisdiction of this Court, and/or may be secreted, all of which would eliminate any possibility that Defendants' victims will receive any restitution at final trial.

XIV. EQUITABLE RESCISSION

37. All agreements between consumers and Defendants for the purchase of Xpower or the Mega Power Saver should be subject to the equitable remedy of rescission.

XV. CONSTRUCTIVE TRUST

38. Any of Defendants' assets derived from the sale of Xpower or the Mega Power Saver should be subject to the equitable remedy of a constructive trust.

XVI. DISGORGEMENT

39. All of Defendants' assets gained from the sale of Xpower or the Mega Power Saver 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 resulted from their putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from consumers 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.

XVII. REPATRIATION OF ASSETS

40. After due notice and a hearing, the Court should order that all of Defendants' assets gained from the sale of Xpower and Mega Power Saver that are situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court or into the Court's registry.

XVIII. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

41. Plaintiff requests leave of this Court to conduct expedited telephonic, oral, written and other depositions of witnesses with requests for production prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of victims and other witnesses who reside out of this State and/or subpoena range who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

XIX. CONDITIONS' PRECEDENT

42. All conditions precedent to Plaintiff's right to recover and Defendants' liability have occurred or have been waived.

XX. TRIAL BY JURY

43. Plaintiff herein requests a jury trial pursuant to TEX. R. CIV. P. 216 and the TEX. GOV'T CODE ANN. § 51.604.

XXI. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

44. 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. Unless immediately restrained 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.

45. 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 Defendant, including but not limited to other corporate officers such as Forrest Watson and Greg Dockery, or Robert Carpus from engaging in the following acts or practices:

- A. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, dissipating, distributing, or allowing the transfer, removal, withdrawal or encumbering from any financial institution or from any other entity or location or from the jurisdiction of this Court, any money, cash, 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 or custody of, standing in the name of, or claimed by Defendants which were derived, in any manner, from the sale of Xpower or the Mega Power Saver; except in response to further orders or subpoenas in this cause;
- B. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of one or more Defendants or subject to access, ownership or control by one or more Defendants, without providing

Plaintiff and the Court prior notice by motion seeking to open such box or facility;

- C. Selling, marketing, promoting, distributing, advertising or allowing others to sell, market, promote, distribute, or advertise, the sale of Xpower or the Mega Power Saver by representing, expressly or by implication, that this product 1) will reduce consumers' consumption of electricity or will reduce consumers' electricity bills; or 2) may be eligible for a tax credit from the federal government;
- D. Accepting or paying monies or remuneration of any type or character for, or in furtherance of, the sale, distribution, marketing, promotion, or advertising relating to the sale of any product that claims to reduce consumers' consumption of electricity, including but not limited to Xpower or the Mega Power Saver, wherein it is represented, expressly or by implication, that these products 1) will reduce consumers' consumption of electricity or will reduce their electricity bills, or 2), may be eligible for a tax credit from the federal government, unless Defendants have in their possession at the time of the sale, distribution, marketing, promotion or advertising, double-blinded, peer-reviewed scientific evidence substantiating such representations;
- E. Selling, distributing, sending, mailing, printing, giving, disseminating, advertising, referencing, or allowing any other person, entity or business affiliated with Defendants or subject to their control, directly or indirectly,

to sell distribute, send, give, mail, print, advertise, reference, or disseminate, any materials that in any manner represent, expressly or by implication, that any product, including but not limited to Xpower or the Mega Power Saver, 1) will reduce consumers' consumption of electricity or will reduce consumers' electricity bills, or 2) may be eligible for a tax credit from the federal government, unless Defendants have in their possession at the time of the selling, distributing, sending, mailing, printing, giving, disseminating, advertising, or referencing, double-blinded, peer-reviewed scientific evidence substantiating such representations; and

F. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer generated materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause.

46. In addition, Plaintiff State of Texas respectfully prays that this Court will:

A. 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;

B. Order that Defendants notify each and every agent, independent business owner, manager, area manager, or any other person who Defendants have reason to know or believe are marketing Xpower or the Mega Power Saver, of the content and prohibitions contained in any of this Court's Temporary

Orders by 1) posting the full text of the Orders on the home page of their websites, including but not limited to www.myfti.biz and www.myxedia.com, and include a link to any notice of these Orders on the website of the Office of the Attorney General of Texas, and 2) sending a copy of any Temporary Orders by first class mail within 72 hours after Defendants receive actual notice of the Order, to each and every agent, independent business owner, manager, area manager, or any other person who Defendants have reason to know or believe are marketing Xpower or the Mega Power Saver.

- C. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of not more than \$20,000 per violation of the DTPA;
- D. Order Defendants to pay Plaintiff State of Texas' attorney fees and costs of court pursuant to the TEX. GOV'T CODE, § 402.006(c)
- E. Order Defendants to pay both pre-judgment and post judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and
- F. Grant all other relief to which Plaintiff State of Texas may show itself entitled.

XXII. VERIFICATION

I hereby certify that the facts contained in this petition are within my personal knowledge and true and correct.



John C. Flores

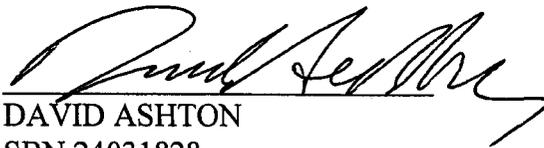
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

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



DAVID ASHTON

SBN 24031828

PAT TULINSKI

SBN 20283485

Assistant Attorneys General

Consumer Protection & Public Health Division

Capitol Station, P.O. Box 12458

Austin, Texas 78711-2548

Tel: (512) 463-2185

Fax: (512) 473-8301

Attorneys for Plaintiff

Addendum to Cause No. D-1-GV-08-000935

The State of Texas

v.
Forum Trading, Inc., et. al.

Defendant SRIG, L.L.C. is a Texas Corporation doing business in this State. SRIG, L.L.C. may be served by serving its Registered Agent, Forest E Watson at:

SRIG, LLC
Forest E. Watson
3011 Lombardi Way
Cedar Park, TX 78613

AFFIDAVIT 1

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

AFFIDAVIT OF W. MACK GRADY

“My name is W. Mack Grady, I am over 18 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated herein, and verify that they are true and correct.

I have a Bachelor's degree in Electrical Engineering from the University of Texas at Arlington, a Master's degree in Electrical Engineering from Purdue University, and a PhD with a specialization in electrical engineering from Purdue University. I have been employed since 1983 at the University of Texas, Austin, Texas, in the Electrical and Computer Engineering Department. I am currently the Jack S. Josey Centennial Professor in Energy Resources, and the Associate Chair of Electrical & Computer Engineering at the University of Texas at Austin campus. I have been involved in research in the area of electric power systems, power system engineering, harmonics and power quality, and electrical circuits for over 23 years. I have done research and worked as a consultant to the Office of Naval Research and various utilities and industries on power quality-related issues. I was the Chairman of the IEEE-PES Transmission & Distribution Committee until my term ended December 31, 2006.

On December 19, 2006, I was provided an XPOWER device by the Office of the Attorney General of Texas to evaluate the energy savings claims made for this device. I examined the device and performed various tests of the device in my laboratory at the University of Texas. I energized the XPOWER device, and observed the voltage and current waveforms on an oscilloscope, and made the appropriate calculations. I have concluded that the device is a capacitor with an approximate value of 10 μ F.

A capacitor is an electrical device that can store energy in the electrical field between a pair of closely spaced conductors (called 'plates'). When voltage is applied to the capacitor, electric charges of equal magnitude but opposite polarity build up on each plate. Capacitors are used in electrical circuits as energy-storage devices.

Capacitors are also used in power factor correction. The power factor of an alternating current electric power system is defined as the ratio of the real power to the apparent power, a number between 0 and 1. Real power is the capacity of the circuit for performing work in a particular time. Apparent power is the available power; a product of the current and the voltage of the circuit. The apparent power can be greater than the real power, resulting in a low power factor which increases losses in a power distribution system and results in increased energy costs.

Power factor correction is a way of counteracting power system losses, particularly in circumstances of high wiring power losses. Power factor correction may be applied

either by an electrical power transmission utility to improve the stability and efficiency of the transmission network; or, correction may be installed by individual electrical customers to reduce the costs charged to them by their electricity supplier. Power Factor Correction is desirable because the source of electrical energy must be capable of supplying real power as well as any reactive power demanded by the load. This can require larger, more expensive power plant equipment, transmission lines, transformers, switches, etc. than would be necessary for only real power delivered. Also, resistive losses in the transmission lines mean that some of the generated power is wasted because the extra current needed to supply reactive power only serves to heat up the power lines.

The XPOWER device I tested is a power factor correction device. But to work, reduction in wiring power losses must be large enough to be significant. **The XPOWER device I tested is too small to provide any significant reduction in electrical losses to a residence.** The capacitor in the XPOWER device has about 0.5 Amperes of current. This current leads the voltage applied to the XPOWER device by 90 degrees and can provide a small amount of power factor correction to a load that has a lagging current, such as a small fan. By energizing the XPOWER, **the load is not made more efficient**, but the current in the wire supplying the load is reduced slightly so that there is a minor reduction in wiring power losses.

For example, a modest residential load consist of a constant 1kW (i.e., 744kWh per month), and assume that the 1kW has a power factor of 0.80. At 120V, the normal residential voltage in the United States, the total load current is 10.4 Amperes. Of the 10.4 Amperes, 8.32 Amperes are in-phase with the voltage, and 6.24 Amperes lag by 90 degrees. As tested the XPOWER device produced 0.5 leading Amperes. Subtracting the XPOWER's 0.5 leading Amperes from the 6.24 lagging Amperes, leaves 5.74 Amperes lagging the voltage.

The net effect is that the total 10.4 Amperes drops to 10.1 Amperes, and the wiring losses drop by the square of current, i.e., $10.1^2 / 10.4^2 = 0.94$. Therefore, the load energy does not change, but there is a 6% savings in wiring losses. However, wiring losses are no more than 5-10% of total load. **Using the XPOWER device would produce no more than 0.6% total energy savings for the consumer.**

Based on my 23 years of extensive research in the area of Electrical & Computer Engineering, it is my professional opinion that the overall energy savings from the XPOWER device tested would be approximately 6% of the 5-10% wiring loss for a residence, a 0.6% (or less) total energy savings. **The XPOWER device can not produce a 25% reduction in the total energy consumed by the residence.** Additionally, the savings from the XPOWER device will be even smaller when the residential load is greater than 1kW.

Additionally, I reviewed a report produced by Professional Testing (EMI) dated September 15, 2005, which is used to advertise the XPOWER device. The report is attached as "Attachment A." The conclusions made in the report are not based on Watts which is considered in the electrical field to be the real measure of power. All

conclusions in the report are made on the observations that the XPOWER device reduces amperes. In fact, only one of the six sets of measurements shown on pages 3 and 4 of that report show that the real power decreases when the XPOWER device is connected. The conclusions made in the Professional Testing (EMI), of September 15, 2005 do not support the claim that the XPOWER device saves up to 25% on energy consumption.

On December 20, 2007, I was provided a Mega Power Saver device by the Office of the Attorney General to evaluate the energy savings claims made for this device. I examined the device and performed various tests of the device in my laboratory at the University of Texas at Austin. I energized the Mega Power Saver device, and observed the voltage and current waveforms on an oscilloscope, and made the appropriate calculations.

Based on the measurements, and internal inspection of the Mega Power Saver, I have concluded that the Mega Power Saver is a simple electrolytic capacitor with an approximate value of 60 μ F. Retail price for capacitors of this type is in the \$10-\$20 range. The Mega Power Saver has a 2-3 second time-delay relay, which serves no obvious purpose, and it also has a much smaller capacitor that may provide some filtering for electromagnetic interference. However, from the power and energy perspective, the Mega Power Saver is simply a 60 μ F capacitor.

The Mega Power Saver device I tested is a power factor correction device. But to work, reduction in wiring losses must be large enough to be significant. The Mega Power Saver device I tested is too small to provide any significant reduction in electrical losses to a residence. The capacitor in the Mega Power Saver device has about 2.8 Amperes of current. This current leads the voltage applied to the Mega Power Saver device by 90 degrees and can provide a small amount of power factor correction to a load that has a lagging current, such as a fan. By energizing the Mega Power Saver, **the load is not made more efficient**, but the current in the wire supplying the load is reduced slightly so that there is a minor reduction in wiring power losses.

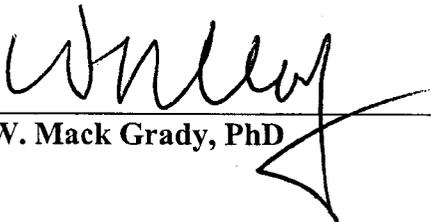
For example, assume that a modest residential load consists of a constant 1kW (i.e., 744kWh per month), and assume that the 1kW has a power factor of 0.80. At 120V, the normal residential voltage in the United States, the corresponding total load current is 10.4 Amperes. Note- this current in this example is lower than the trip point of even one standard 15A molded case circuit breaker, and most houses have many breakers.

Of the 10.4 Amperes, 8.3 Amperes are in-phase with the voltage, and 6.2 Amperes lag by 90 degrees. As tested, the Mega Power Saver's 2.8 leading Amperes from the 6.2 lagging Amperes, leaves 3.4 Amperes lagging the voltage.

The net effect is that the total 10.4 Amperes drops to 9.0 Amperes, and the wiring losses drop by the square of current, i.e., $9.0^2/10.4^2 = 0.75$. Therefore, the load energy does not change, but there is a 25% savings in wiring losses. However, wiring losses are no more than 4% of total load, so **the overall impact is a 1% reduction of the consumer's metered kWh**. If the consumer's load is greater than this example, the savings offered by the Mega Power Saver are even less than 1%.

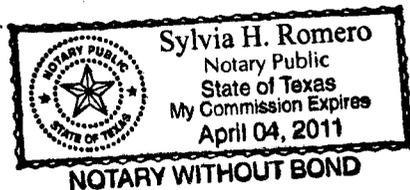
Based on my 24 years of extensive research in the area of Electrical & Computer Engineering, it is my professional opinion that even with the most optimistic assumptions, the Mega Power Saver device can produce no more than 1% total energy savings for a consumer. Likely, the savings would be much less than 1%. This is far less than the 10% claimed on documents found on the web site selling the Mega Power Saver. Other claims on the website selling the Mega Power Saver are also misleading. For example, the claim is made that the Mega Power Saver will extend the life span of appliance motors by making them run cooler. In fact, the Mega Power Saver will have no impact on motors.

Further, Affiant saith not."



W. Mack Grady, PhD

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority by
W. Mack Grady on this the 8th day of May, 2008.





NOTARY PUBLIC,
In and For the State of Texas



Project Number: 061 34-10

Prepared for:

**Xium Corporation
4720 N.E. 24th
Amarillo, TX 791 07**

BY

**Professional Testing (EMI), Inc.
1601 FM 1460, Suite B
Round Rock, Texas 78664**

September 15, 2005

Experiment

**Xuim Corporation
XPower Energy Saver Device**

Attachment 1

OAG_00033

Introduction

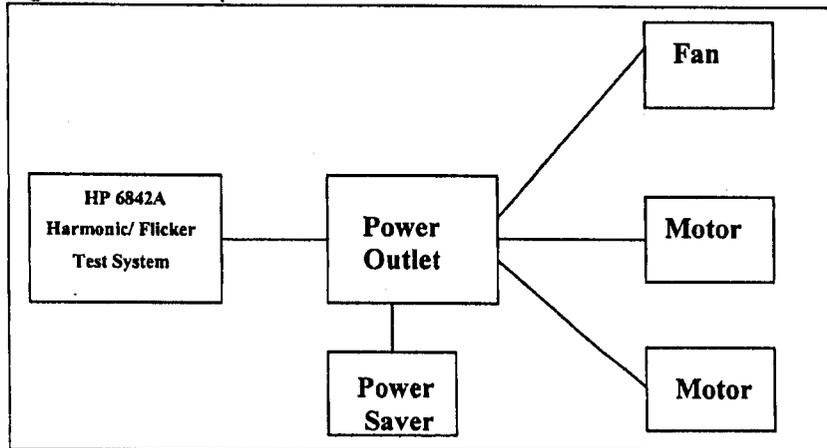
The Power Saver device is designed to conserve energy when plugged into a typical wall outlet next to a home appliance. This experiment was set up to test the effectiveness of the Power Saver device.

A number of pretests were performed to understand how the device works. It was apparent through pretesting that the device was not effective when powered with a resistive load such as lights. When the device was tested with inductive loads such as fans and other motors beneficial results were noted. As a result of the pretesting the device was tested in a configuration to show the maximum available benefit to power savings.

Test Setup

The test setup includes a HP 6842A which gives a clean supply so the test is not affected by disturbances on the power lines. The HP 6842A also measures Voltage, Current, Real Power, Apparent Power, and Power Factor. The HP 6842A is connected to a quad outlet power strip. Three devices are plugged in as test loads and the fourth device is the Power Saver. The test setup is shown below. Technical specifications for the loads can also be referenced below.

Figure 1. Test Setup



Note: Tests were performed using an simulated powerline system. Results do not include similar noise factors in a typical home.

Table 1. Technical Specifications

Units	Motor	Fan A	Fan B
Model	GE	LASKO CYCLONE	MAXXAIR
Voltage (V)	120	120	120
Current (A)	0.8	N/A	3.80%
Frequency (Hz)	60/50	60	60

Table 2. Test Matrix

Experiment	Configuration
1	Fan A
2	Fan A, 1 Motor (Unloaded)
3	Fan A, 2 Motors (Unloaded)
4	Fan A, 2 Motors (Full Load)
5	Fan B, 2 Motors (Full Load)

Table 3. Experiment 1

Measured Parameter	Without Power Saver	With XPower Saver	Savings per 1.05 amps
Voltage (V)	119.1	119.2	
Current (A)	1.05	0.97	7.62%
Real Power (W)	115	115	
Apparent Power (VA)	124	115	7.26%
Power Factor	0.92	0.99	

Table 4. Experiment 2

Measured Parameter	Without Power Saver	With XPower Saver	Savings per 1.31 amps
Voltage (V)	119.1	119.2	
Current (A)	1.31	1.22	6.87%
Real Power (W)	144	145	
Apparent Power (VA)	156	146	6.41%
Power Factor	0.92	0.99	

Table 5. Experiment 3

Measured Parameter	Without Power Saver	With XPower Saver	Savings per 1.59 amps
Voltage (V)	119.1	119.2	
Current (A)	1.59	1.46	8.18%
Real Power (W)	172.1	173	
Apparent Power (VA)	190.3	175.2	7.93%
Power Factor	0.91	0.99	

Table 6. Experiment 4

Measured Parameter	Without Power Saver	With XPower Saver	Savings per 4.16 amps
Voltage (V)	119.1	119.2	
Current (A)	4.16	3.88	6.73%
Real Power (W)	449	442	
Apparent Power (VA)	495	473.5	4.34%
Power Factor	0.9	0.95	

Table 7. Experiment 5

Measured Parameter	With XPower Saver	Without XPower Saver	Savings per 7.85 amps
Real Power (W)	119.1	119.2	
Power Factor	7.85	7.45	5.10%
Apparent Power (VA)	700	707	
Power Factor	935	890	4.81%
Power Factor	0.75	0.78	

Conclusion

The findings indicate that the Power Saver device does exhibit some power saving properties. Those conditions include inductive loading and the Power Saver device being plugged in as close as possible to the load. In most cases the real and apparent powers were reduced while the power factor was shifted closer to 1.0. In all the tested cases the instantaneous current was reduced by some degree. All tests performed did not take in account the noise factor ratio (NFR) of a typical home.

Results

It is recommended that XPower Saver be plugged into a power outlet being closest to a home's circuit panel. This would allow for the maximum savings. By maximizing a home's current load with the use of XPower Saver, an average home could experience a savings of as much as 8.18% per 1.59 amps being used. A normal outlet allows for a maximum of 13 amps of usage. The XPower savings would be less per 1.59 amps used, by a factor of approximately 50%.

Example:

Typical Single Phase with Noise Factor			
Amps Used	Power Factor	Noise Factor	Savings per Amps Used
1.59	Less (-50%)	1:1	8.18%
1.59	Less (-50%)	1:1	7.09%
1.59	Less (-50%)	1:1	2.04%
1.59	Less (-50%)	1:1	1.02%
1.59	Less (-50%)	1:1	0.61%
1.59	Less (-50%)	1:1	0.26%
1.59	Less (-50%)	1:1	0.13%
1.59	Less (-50%)	1:1	0.07%
Savings with NFR of 1:1>			16.30%

****Results are based on Table 5. Experiment 3, while factoring a typical noise factor ratio of a home.**

Example:

Typical Single Phase with Noise Factor			
Amps Used	Power Factor	Noise Factor	Savings per Amps Used
1.59	Less (-50%)	2:1	12.27%
1.59	Less (-50%)	2:1	6.14%
1.59	Less (-50%)	2:1	3.06%
1.59	Less (-50%)	2:1	1.53%
1.59	Less (-50%)	2:1	0.77%
1.59	Less (-50%)	2:1	0.39%
1.59	Less (-50%)	2:1	0.20%
1.59	Less (-50%)	2:1	0.11%
Savings with NFR of 2:1>			24.45%

****Results are based on Table 5. Experiment 3, while factoring a typical noise factor ratio of a home.**

Note: Results would be improved depending on a home's noise factor, which may vary from home to home.

AFFIDAVIT 2

AFFIDAVIT OF JOHN C. FLORES

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

BEFORE ME, the undersigned notary public on this day appeared John C. Flores, who proved himself to be the person whose name is subscribed heron through his Texas Driver's License which contained his photograph and signature and who after being duly sworn, upon his oath, deposed and said:

1. My name is John C. Flores. I am over the age of eighteen years and I reside in Travis County, Texas. I have never been convicted of a crime, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and the facts stated herein are true and correct. My business address is 300 W. 15th Street, Austin, TX 78701.

2. I am an investigator for the Office of the Attorney General of Texas, Consumer Protection & Public Health Division. As part of my regular duties, I review complaints, queries, and information sent to this office regarding businesses. I am the investigator assigned to this office's investigation of Forum Technologies, Inc. and the Xpower device.

3. The Consumer Protection Division began reviewing the business practices of Forum Technologies in 2006, based on complaints we had received and questionable advertising. Copies of complaints received by the Consumer Protection Division concerning the Defendants in this case are attached to this affidavit as **Exhibit A**. Copies of complaints received by the Better Business Bureau concerning the Defendants in this case are attached as **Exhibit B**.

4. I have viewed the Internet web site for Forum Technologies, Inc located at URL <http://www.myfti.biz>. I have also printed copies of the website on various dates. Excerpts of the website from October 12, 2006 are attached to this affidavit as **Exhibit C**. Excerpts of the website from September 4, 2007 are attached to this affidavit as **Exhibit D**. Excerpts of the website from December 3, 2007, are attached as **Exhibit E**.

5. I have viewed the Internet web site for Xedia, Inc. located at URL <http://www.myxedia.com>. I have also printed a copy of the website. Excerpts of the website from May 9, 2008, are attached to this affidavit as **Exhibit F**.

6. During my investigation, I learned that Forum Technologies sells various products with alleged benefits including an electromagnetic radiation filter, an air rejuvenator, and a vitamin

supplement. However my investigation focused on the Xpower Energy Saver.

7. The Xpower device was sold to consumers exclusively via the Internet for \$199.99 and could be purchased from Forum Technologies, Inc from its website. Forum Technologies claims that plugging the Xpower device into any wall outlet in your home or office can reduce your monthly electricity bill by up to 25%.

8. I reviewed complaints received by our office from consumers regarding the Xpower Energy Saver sold by Forum Technologies. The complaints alleged that consumers were not getting their products, that refunds were not forthcoming when requested, and that there were no significant savings in their electricity bill.

9. The Forum Technologies website represented that consumers were eligible to receive a \$200 energy tax credit from the federal government. I reviewed a summary of tax credits available to homeowners for the use of energy efficient products at the U.S. Department of Energy URL http://www.energystar.gov/index.cfm?c=Products.pr_tax_credits#s1. The website does not list the Xpower device as being approved for a tax credit. Consumers also complained that they were unable to receive the tax benefit as advertised by Forum Technologies, Inc., which consumers stated was a major factor in their decision to purchase.

10. I received an Xpower Energy Saver from a former distributor with Forum Technologies, on April 23, 2006. I then gave the Xpower device to Dr. Mack Grady, a faculty member at the University of Texas in the engineering department, for testing.

11. On December 7, 2007, using an alias, I purchased the Mega Power Saver from the Forum Technologies website, www.invite.myfti.biz. The Mega Power Saver was delivered on October 17, 2006. I then gave the Mega Power Saver device to Dr. Mack Grady for testing.

12. On or about April 2007 I called the telephone number 866-429-1342, which is listed on the Forum Technologies website. The person who answered my call to that number gave an overview of Forum Technology's products, including the XPower Energy Saver. This office subsequently sent a Civil Investigation Demand to Grande Communications requesting records of subscriber information for the number 866-429-1342, including the identity of the subscriber of the phone line. The records show that the phone line belongs to Forum Technologies and the billing address is 4616-2 W. Howard Lane, Suite 550, Austin, Texas, 78728. The same address was used by Forum Technologies in correspondence with consumers and on the [myfti.biz](http://www.myfti.biz) website.

13. On January 18, 2007, this office sent a Civil Investigation Demand to GoDaddy.Com to determine the domain owner(s) of the web site <http://www.myfti.biz>. On January 25, 2007, this

office received records from GoDaddy.Com in response to our request. The records indicated the domain for <http://www.myfti.biz> was registered to Greg A. Dockery. The GoDaddy.Com records reflect that a Visa credit card issued to Greg Dockery was used to pay for the domain name. On May 7, 2008, I searched the online database at the website www.whois.com and determined that the website <http://www.myfti.biz> is currently registered to Robert Carpus. According to landlord records relating to the property leased by Forum Technologies at 4616-2 W. Howard Lane, Suite 550, Austin, Texas, 78728, Robert Carpus is the CFO of Forum Trading.

14. I performed record search with the Texas Secretary of State and discovered that Forum Technologies, Inc is not registered. I then searched names of individuals I knew to be associated with Forum Technology and discovered a company called Forum Trading. The Articles of Incorporation for Forum Trading, Inc. shows that defendant Forrest E. Watson is the director of the corporation and the registered agent as well. Secretary of State records further show that Forum Technologies is listed as an assumed name for Forum Trading. The assumed named certificate was executed by Forrest E. Watson June 2, 2006.

15. I conducted a public records search in the assumed name records of the Travis County Clerk's Office and found an assumed name certificate executed by Defendant Forrest E. Watson on June 7, 2006.

16. On January 10, 2007, this office issued a Civil Investigation Demand to JP Morgan Chase Bank requesting bank statements and a signature card on commercial checking sub account standing in the name of Forum Technologies, Inc. These documents were reviewed upon receipt of same. A review of the records revealed that the primary account for Forum Technologies, Inc. is XXXX7771. Account number XXXX7771 includes a subsidiary account number XXXX8274. The signature card for account number XXXX8274 indicates that Forrest E. Watson and Gregory A. Dockery were the only signatories on this commercial checking account. This account was opened on June 6, 2006. Records of this account show that a substantial portion of the money deposited into this account came from consumers' bank accounts and credit cards. Bank statement records show that during a seven month period from June 7, 2006 through December 29, 2006, Forum Technologies, Inc. had sales income of \$2,984,165.18.

17. Records of JP Morgan Chase Bank account XXXXX8274 also showed money being diverted to JP Morgan Chase bank account XXXXXX8265. On April 4, 2007, this office sent a Civil Investigation Demand to JP Morgan Chase Bank requesting certain bank records on Chase Checking Account XXXX8265. These documents included bank statements, copies of deposits

and checks along with ATM & debit card withdrawals. The account is in the name of SRIG, LLC, and the signature card for account number XXXX8265 indicates that Robert J. Carpus and Charles S. Cook are the signatories on this checking account. Texas Secretary of State records show Forrest Watson is President and registered agent for SRIG, LLC .

18. Records of JP Morgan Chase Bank account XXXXX8274 also showed money being diverted to JP Morgan Chase bank account XXXXXX9630. On August 21, 2007, this office sent a Civil Investigation Demand to JP Morgan Chase Bank requesting certain bank records on Chase Business Checking Account XXXX9630. Account XXXX9630 is in the name of Xium, Inc. and the signature card for account number XXXX9630 indicates that Gregory A. Dockery is the only signatory on this commercial checking account.

19. After reviewing the commercial checking sub account XXXX8274 for Forum Technologies, Inc., records show that from June of 2006 to January of 2007, over \$700,000 dollars had been transferred from XXXX8274 to XXXX9630. Monies diverted to the Xium, Inc. account were used for Mr. Dockery's personal expenses such as vacations, restaurants, retail, and home mortgage payments.

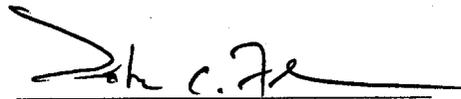
20. A review of Forum Technologies, Inc.'s bank records revealed that payments from consumers for Defendants' products came through a service called TransFirst Epay. On April 5, 2007, this office sent a Civil Investigation Demand to TransFirst ePayment Services requesting certain records relating to Defendants. These documents were reviewed upon receipt of same. These documents included copies of chargeback transactions which TransFirst had received from consumers. The following are definitions of re-occurring transactions given to us by TransFirst: **Visa #30**, The merchant was either unwilling or unable to provide services or shipped merchandise was not received.; **MC #41** , The merchant continued to charge the cardholder's account after the cardholder properly notified the merchant to cancel a recurring transaction authorization; the transaction amount processed was not within the preauthorized range.; **Visa 53**, The cardholder claims the goods or services received, did not match the merchants written or verbal characterization of such good/services. The cardholder has attempted to return the merchandise, cancel the services or resolve the dispute.; **Visa 82**, Similar transactions amounts were processed for the same cardholder two or more times and the cardholder's bank claims this was in error.; **Visa 83**, The merchant processed a transaction in a Card-Absent environment without the cardholder's permission. Although the records do not disclose which of the Defendants' products were purchased, the total charge back amount TransFirst received between

June '06 - Feb '07 was \$25,112.47.

21. I also performed a public records search of Williamson County Clerk's Office to determine if Forrest A Watson, Greg A Dockery, and/or Stephen Gotberg had any outstanding liens against them. I discovered an outstanding lien for \$500 executed by Lakeline Oaks Owners Association, Inc. to Greg Dockery on June 9, 2006.

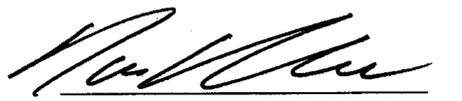
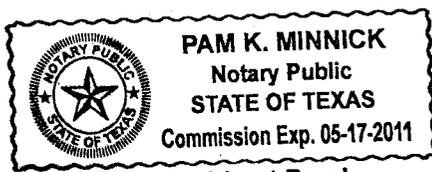
22. I conducted a search of OAG records and discovered that the OAG had filed an Agreed Final Judgement and Permanent Injunction against Greg Dockery on March 6, 2001. A copy of *The State of Texas vs. Gregg Dockery, d/b/a Tri-square Technologies*, Cause No. 88524-A in the 47th District of Potter County, Texas, is attached as **Exhibit G**. Dockery was sued for failing to disclose to consumers that such purchases are non-refundable when the advertising clearly states that a money back guarantee is in effect. Also, Dockery failed to refund monies to consumers who have purchased said items under the advertised premise that refunds are forthcoming if the consumer is dissatisfied in any way when no disclosure of the non-refundable nature of items sold has been made to consumers.

23. All documents attached to this affidavit and to Plaintiff's Original Petition are true and correct copies of documents obtained by this office pursuant to its investigations. Said documents were obtained pursuant to our investigative subpoena power, through public records searches, are affidavits of persons with personal knowledge or were obtained from defendant's website. The facts stated herein are within my personal knowledge and are true and correct. Further affiant sayeth not.



John C. Flores

SUBSCRIBED AND SWORN TO before me on the 12 day of May, 2008.



NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS