

NO. _____

STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT OF

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v.
MOMENTUM DIRECT, LLC,
ROBERT B. JONES and
CHRISTOPHER M. JONES

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HARRIS COUNTY, TEXAS

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Defendants

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_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION, APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, AND
TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS, acting by and through Attorney General of Texas Greg Abbott, complains of MOMENTUM DIRECT, LLC, ROBERT B. JONES and CHRISTOPHER M. JONES, Defendants, and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1.1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

AUTHORITY

2.1. 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 grounds 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 17.46(b) of the DTPA.

DEFENDANTS

3.1 **MOMENTUM DIRECT, LLC**¹ is a Texas Limited Liability Company whose principal place of business is 1010 S. Magnolia Blvd., Magnolia, Texas 77355 and which may be served by serving its registered agent David A. Fettner at 4635 Southwest Freeway, Suite 640, Houston, TX 77027.

3.2 **ROBERT B. JONES**² is an individual residing in Harris County, Texas who may be served with process at 31430 Stella Lane, Tomball, Texas 77375-4040.

3.3 **CHRISTOPHER M. JONES**³ is an individual residing in Montgomery County, Texas who may be served with process at 31520 Nichols Sawmill Road, Magnolia, Texas 77355-8566.

VENUE

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

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

B. Venue is also proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE ANN. 15.002(a)(2) because one of the individual Defendants reside in Harris County, Texas.

¹Momentum Direct, LLC does business under the following assumed names: “Momentum” and “Momentum Direct”.

² Robert Jones does business under the following assumed names: “Momentum Health & Nutrition”, “Momentum Worldwide”, “Nutrition Tech”, “Nutrition Express”, “Momentum Direct”, “20Minutefacelift.com”, “2DaySlimdown.com” and “Momentum Fax on Demand”.

³Christopher M. Jones does business under the following assumed names: “Momentum Health & Nutrition”, “Momentum Worldwide”, Momentum Fax on Demand”.

C. Venue is also proper under DTPA §17.56 because Defendants do business in Harris County, Texas, and the transactions that form the basis of this cause of action occurred in Harris County, Texas.

PUBLIC INTEREST

5.1 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 State of Texas has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas and its citizens, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this 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.

TRADE AND COMMERCE

6.1 Defendants have, at all times described below, engaged in conduct constituting “trade” and “commerce,” as those terms are defined in §17.45(6) of the DTPA.

ACTS OF AGENTS

7.1 Defendant Momentum Direct, LLC., is a Limited Liability Corporation with headquarters in Magnolia, Texas. (Exhibit 1) Defendant Robert B. Jones is an officer and principal of MOMENTUM DIRECT, LLC d/b/a MOMENTUM (Exhibit 2) and d/b/a MOMENTUM DIRECT (Exhibit 3).

7.2 Defendant, Christopher M. Jones and Robert B. Jones are individuals doing business as Momentum Health & Nutrition (Exhibit 4), Momentum Worldwide (Exhibit 5) and Momentum Fax on Demand (Exhibit 6).

7.3 Defendant, Robert B. Jones, also does business under the following assumed names:
Plaintiff's Original Petition

Momentum Direct (Exhibit 7), Nutrition Express (Exhibit 8), Nutrition Tech (Exhibit 9), 20Minutefacelift.com (Exhibit 10), and 2DaySlimdown.com (Exhibit 11).

7.4 Defendants Robert B. Jones and Christopher M. Jones, jointly and severally, participated directly in the false, misleading and deceptive acts or practices and had the authority to control them. Further, each Defendant had actual knowledge of material misrepresentations, was aware of the actual content of the false and misleading solicitations and authorized and/or failed to prohibit same.

7.5 Whenever in this petition it is alleged that a Defendant did any act, it is meant that:

- A. The Defendant performed or participated in the act, or
- B. The Defendant's officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendant.

NOTICE BEFORE SUIT NOT GIVEN

8.1 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 Plaintiff is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants would dissipate or secrete assets if prior notice of this suit were given.

SPECIFIC FACTUAL ALLEGATIONS

MOMENTUM DIRECT DECEPTIVE ADVERTISING

9.1 Momentum Direct is an online retailer of various weight loss and skin care products. Defendants advertise via the following websites: "momentumdirect.net" and, "momentumworldwide.com" (Exhibit 12), "2dayslimdown.net" (Exhibit 13), "permaslim.com" (Exhibit 14), "20minutefacelift.com" (Exhibit 15).

9.2 Defendants are engaged in misleading advertising designed to induce the consumer to purchase products from Momentum Direct. Their advertisement states: “**SPECIAL OFFER! Lose 6-12 Pounds in 2 Days Guaranteed! Click here to Try Your First Bottle for Free!**” (Exhibit 13, p.1). “**Try The 2-Day SlimDown For FREE with the Free Trial Program**”. (Exhibit 13, p.7). “**We Are So Sure You Will Love the 2-Day Slim Down We Will actually send you a full bottle of the 2-Day SlimDown now for Free!**” (Exhibit 13, p. 3). The Defendants offer a full bottle of their weight loss product for free. The customer only has to pay shipping and handling. The advertisement goes on to state that if the customer wants to cancel, “**simply send back the unused portions of the product within the 2 week trial period and your order will not be processed. You have nothing to lose and NO RISK!**” (Exhibit 13, p.7). Defendants claim to have a 100% return and full refund policy stated on their website. “**You may cancel anytime. We will not make you jump through hoops to do so. A simple phone call or email will do.**” (Exhibit 13, p.7). They also represent in their ads: “**SPECIAL OFFER Click here for your FREE SAMPLE of the 20-Minute Face Lift!**” (Exhibit 12, p.2). “**Just get the FREE Sample and try it out. If it doesn’t do everything I say and more, if you don’t look 10 years younger in just 20 minutes, if it isn’t life-changing, you have nothing to worry about because you can get every dime of your money back under our no-loopholes guarantee.**” (Exhibit 12, p.2). “**Try Perma Slim Hoodia For FREE with the PermaSlim Free Trial Program!**” (Exhibit 14, p.4). “**20 Minute Facelift - Regular price \$49.95 - Try it now for FREE - Click Here For Your Free Bottle!**” (Exhibit 15, p.1).

DEFENDANTS’ BUSINESS PRACTICES ARE FALSE AND DECEPTIVE

9.2 The Better Business Bureau has received *638 complaints* about this business in the last 36 months. (See Exhibit 16, Affidavit of Deana Turner, para. 4). The majority of the complaints Plaintiff’s Original Petition

received were based on consumer's inability to cancel orders, failure to receive refunds for orders canceled and unauthorized charges after consumers tried to cancel orders. Consumers complain that even after they cancel orders and return the product, Momentum Direct continues to debit their checking accounts on a monthly basis. (See Exhibit 16, Affidavit of Deana Turner, para. 5; Exhibit 17, Affidavit of Melba Walker, para. 4 and consumer Affidavits attached hereto as Exhibits 18 through Exhibit 26 and incorporated herein for all material purposes).⁴

9.3 Consumers report it is impossible to return products because it is impossible to get through to anyone at this number and emails for customer support are not answered. (Exhibit 17, Affidavit of Melba Walker, para 4 and consumer Affidavits attached hereto as Exhibits 18 through Exhibit 26 and incorporated herein for all material purposes).

9.4 In fact, some consumers, have received *unsolicited* products from Defendants and were still charged for the product. (Exhibit 18, Affidavit of Mary Frank, para. 5). Ms. Frank is one consumer over the age of 65 (Exhibit 18, Affidavit of Mary Frank, para. 3)⁵ who received the product completely unsolicited.

9.5 Many consumers report that either they never receive the product or that the product does not work. When they try to cancel, Momentum Direct refuse to cancel consumer accounts and continue to make unauthorized charges charge consumers for unsolicited material. (See consumer Affidavits attached hereto as Exhibits 17 through Exhibit 26 and incorporated herein for all material purposes). Some consumers have incurred additional bank charges for nonsufficient funds as a

⁴ Exhibits 17 through 26 are the Affidavits of consumers Walker, Frank, McCoy, Sollid, Mitchell, Housewright, Blacklock, Johnson, Graham and Winkelman.

⁵ The DTPA provides for enhanced civil penalties in this situation involving senior citizens. "If the act or practice that is the subject of the proceeding was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred, an additional amount of not more than \$250,000" DTPA Section 17.47 (c) (2).

result of the unauthorized charges by Defendants, (*See* consumer Affidavits attached hereto as Exhibits 17 through Exhibit 26 and incorporated herein for all material purposes) Others had to close their bank accounts to stop the Defendants' from continuing to make unauthorized charges. (*See* consumer Affidavits attached hereto as Exhibits 17 through Exhibit 26 and incorporated herein for all material purposes).

9.6 Furthermore, Momentum Direct promises quick shipping of products. However, many consumers claim to have never received any product from Momentum Direct at all but are still charged full price for the product. (*See* consumer Affidavits attached hereto as Exhibits 17 through Exhibit 26 and incorporated herein for all material purposes).

**NECESSITY OF IMMEDIATE RELIEF TO
PRESERVE DEFENDANTS' ASSETS**

10.1 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 many victims of Defendants' actions can receive the restitution to which they are entitled. Defendants take in great sums of money from consumers through their scheme and use fraudulently solicited funds for personal gain. Defendants' assets are subject to dissipation for the following reasons:

- Defendants fail and refuse to give refunds to consumers upon reasonable demand.
- Defendants continue to make unauthorized charges to consumers accounts.
- Defendants do not pay many of their bills and as a result owe substantial sums of money to their creditors. (*See* Exhibit 27 Plaintiff's Original Petition and Abstract of Judgment against Momentum Worldwide, LLC d/b/a Momentum Worldwide) and Exhibit 28 Plaintiff's Original Petition against Momentum Worldwide, LLC AKA and DBA Momentum Worldwide and Momentum and Robert Jones).

- Defendants take in and pay themselves exorbitant sums of money from consumers from their deceptive business practices⁶

SINGLE BUSINESS ENTERPRISE

11.1 Defendants Momentum Direct, L.L.C., Robert Jones and Christopher Jones, are jointly and severally liable for the false, misleading and deceptive conduct set out in Paragraph 9 of this Petition, on the basis that they are a single business enterprise, carrying out a common business objective.

FALSE, MISLEADING, AND DECEPTIVE ACTS AND PRACTICES

12.1 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 17.46(b)(5),(7),(9),(12) & (24) 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 herein, 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 herein, in violation of §17.46(b)(5) of the DTPA;
- C. Advertising goods or services with intent not to sell them as advertised as more specifically alleged herein in violation of §17.46(b)(9) of the DTPA.
- D. Representing that an agreement confers or involves rights, remedies, or obligations

⁶The bank records obtained from one bank alone, indicate that Defendants have three bank accounts. The first bank account under Robert Jones d/b/a Momentum Direct (Account #8482) had \$3,183,619.86 in total deposits for the year 2007. A second bank account under Momentum Direct LLC (Account #15586) had \$2,198,524.40 in deposits over a 3 month period from Oct. Through Dec. 2007 and another \$1,097,453.56 was deposited in same account (Account #15586) in one month alone (Jan.2008). The third bank account held in the name of Momentum Direct, LLC (Account #15602) had deposits of \$286,405.05 from Oct. 2007 through Jan. 2008.

which it does not have or involve or which are prohibited by law as set forth herein in violation of §17.46(b)(12) of the DTPA.

E. 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 DTPA §17.46(b)(24).

DISGORGEMENT

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

REPATRIATION OF ASSETS

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

15.1 Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions (containing requests for production) of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled temporary injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and

their attorneys, if known.

TRIAL BY JURY

16.1 Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

INJURY TO CONSUMERS

17.1 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 or who, in the alternative, are entitled to an award for damages.

REQUEST FOR DISCLOSURE

18.1 Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2(a)-(1).

**APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

19.1 Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. 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. Therefore, Plaintiff requests an Ex Parte Temporary Restraining Order, Temporary Injunction and Permanent Injunction as indicated below.

PRAYER

20.1 WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a

PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written or computer generated materials relating to the business of Defendants currently or 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 Defendants, insofar as such property relates to, arises out of, or was derived from the business operation of Defendants without further order of this Court;

C. Representing, expressly or by implication, that they are providing a "FREE" full bottle of 2 Day Slim Down, PermaSlim, 20 Minute Face Lift, or any other nutritional or personal care product.

D. Failing to disclose to consumers that they will automatically be shipped a bottle of 2 Day Slim Down, PermaSlim, 20 Minute Face Lift, or any other nutritional or personal care product each month thereafter.

E. Charging consumers for product which was not actually shipped to the consumer.

F. Sending unsolicited products to consumers.

G. Continuing to charge consumers for products after consumers canceled their orders.

H. Charging consumers for product which was returned by the consumer.

I. Continuing to make unauthorized withdrawals from consumer's bank accounts after an order has been canceled or the product has been returned.

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

A. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in an amount of not more than \$20,000 per violation of the DTPA;

B. Adjudge against Defendants civil penalties in favor of Plaintiff STATE OF TEXAS in an amount up to \$250,000 allowed by law under the DTPA, specifically, DTPA §17.47(c)(2), due to Defendants committing acts and practices which were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;

C. Order Defendants to restore all money or 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;

D. Order Defendants to pay Plaintiff State of Texas' attorneys fees and costs of court pursuant to TEX. GOV'T CODE §402.006(c);

E. Order Defendants to pay pre-judgment interest on all awards of restitution, damages, civil penalties and attorney fees as provided by law; and

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

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE

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VERIFICATION

STATE OF TEXAS

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COUNTY OF HARRIS

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Before me, the undersigned Notary Public, on this day personally appeared Cathryn Haynes, who, after being duly sworn, stated under oath that she is an investigator for the Plaintiff in this action; that she has read the above petition; and that every factual statement contained in the petition is true and correct and within her personal knowledge.

Cathryn Haynes

SUBSCRIBED AND SWORN TO BEFORE ME, on this _____ day of September, 2008 to certify which witness my hand and official seal.

NOTARY PUBLIC
State of Texas

EXHIBIT LIST TO PLAINTIFF'S ORIGINAL PETITION

1	Secretary of State Certificate of Formation for Momentum Direct, LLC
2	Momentum Direct, LLC d/b/a Momentum
3	Momentum Direct, LLC d/b/a Momentum Direct
4	Robert Jones and Christopher Jones d/b/a Momentum Health & Nutrition
5	Robert Jones and Christopher Jones d/b/a Momentum Worldwide
6	Robert Jones and Christopher Jones d/b/a Momentum Fax on Demand
7	Robert Jones d/b/a Momentum Direct
8	Robert Jones d/b/a Nutrition Express
9	Robert Jones d/b/a Nutrition Tech
10	Robert Jones d/b/a 20Minutefacelift.com
11	Robert Jones d/b/a 2DaySlimdown.com
12	Internet advertisements for 20MinuteFaceLift
13	Internet advertisements for 2DaySlimDown
14	Internet advertisements for Perma Slim
15	Internet advertisements for 20Minute Face Lift
16	Affidavit of Deana Turner from Better Business Bureau
17	Affidavit of Melba Walker
18	Affidavit of Mary Frank
19	Affidavit of Mike McCoy
20	Affidavit of Lisa Sollid
21	Affidavit of Bwana Mitchell
22	Affidavit of Lajuana Housewright
23	Affidavit of Stephen Blacklock
24	Affidavit of Anne Johnson
25	Affidavit of Lu Ann Graham
26	Affidavit of Beverly Winkelman

27	Plaintiff's Original Petition and Abstract of Judgment against Momentum Worldwide, L.L.C. d/b/a Momentum Worldwide
26	Plaintiff's Original Petition against Momentum Worlwide, LLC aka and d/b/a Momentum Worlwide and Momentum and Robert Jones