

CAUSE NO. _____

STATE OF TEXAS,

Plaintiff,

v.

**JAMES ONE GP, LLC,
STARTUP ESSENTIALS, LLC,
USA MERCHANT SYSTEMS, INC d/b/a
USA CARD SERVICES,
A-1 LEASING, LLC., and
ROBERT A. HARRIS, Individually**

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ **JUDICIAL DISTRICT**

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

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott's Consumer Protection and Public Health Division, complains of JAMES ONE GP, LLC, STARTUP ESSENTIALS, LLC, USA MERCHANT SYSTEMS d/b/a USA CARD SERVICES, A-1 LEASING, LLC., and ROBERT A. HARRIS, Individually ("Defendants"), and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Tex. R. Civ. Proc. 190.2(b)(3); 190.3(a).

JURISDICTION

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by Section 17.47 of the Texas Deceptive Trade Practices - Consumer

Protection Act, Tex. Bus. & Com. Code Ann. Section 17.41 *et seq.* (Vernon 2002 and Supp 2007) (“DTPA”) upon the ground that Defendants have engaged in false, deceptive or misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by Sections 17.46(a) and (b) of the DTPA.

DEFENDANTS

3. Defendant James One GP, LLC (“James One”) is a Texas corporation with its principal place of business located at 4455 LBJ Freeway, Suite 501, Dallas, Texas 75244. James One may be served with process by serving its registered agent Robert Harris at 4455 LBJ Freeway, Suite 501, Dallas, Texas 75244.

4. Defendant Startup Essentials, LLC (“Startup”) is a Texas corporation with its principal place of business located at 4455 LBJ Freeway, Suite 501, Dallas, Texas 75244. Startup Essentials may be served with process by serving its registered agent Robert Harris at 4455 LBJ Freeway, Suite 501, Dallas, Texas 75244.

5. Defendant USA Merchant Systems Inc. d/b/a USA Card Services (“USAMS”) is a Texas corporation with its principal place of business located at 4455 LBJ Freeway, Suite 501, Dallas, Texas 75244. USA Merchant Systems Inc. may be served with process by serving its registered agent Robert Harris at 4455 LBJ Freeway, Suite 501, Dallas, Texas 75244.

6. Defendant A-1 Leasing, LLC (“A-1”) is a Michigan corporation with its principal place of business located at 2007 Eastern Avenue SE, Grand Rapids, Michigan 49507. A-1 engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant designated an agent for service of process. This suit arises out of Defendant’s business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to

Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

7. Defendant Robert A. Harris is the founder and CEO of Defendants James One, Startup, and USAMS and may be served with process at his residence located at 5318 Boca Raton Drive, Dallas, TX 75229.

VENUE

8. Venue for this cause of action lies in Travis County, Texas, because, under § 17.47(b) of the DTPA, venue is proper because Defendants have done business in the county of suit.

PUBLIC INTEREST

9. 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 STATE OF TEXAS has reason to believe that Defendants have caused, and will continue to cause damage to residents of the State of Texas and cause adverse effects to legitimate business enterprises that conduct their trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

10. Defendants have at all times described below engaged in conduct which constitutes trade and commerce as those terms are defined in the DTPA Section 17.45(6).

ACTS OF AGENTS

11. Whenever in this Petition it is alleged that 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.

NOTICE BEFORE SUIT

12. The Consumer Protection Division informed Defendants of the alleged unlawful conduct described below at least 7 days before filing suit as required by DTPA Section 17.47(a).

NATURE OF DEFENDANTS' OPERATIONS

13. Robert Harris is the founder and CEO of James One and its two subsidiaries, Startup and USAMS (collectively, "Harris Defendants"¹). As CEO, Robert Harris directed and participated in the day-to-day operations of James One, Startup Essentials, and USAMS. The Harris Defendants, along with A-1, engaged in a scheme to mislead and defraud consumers who had previously expressed an interest in working from home or starting their own Internet-based business.

14. The Harris Defendants describe themselves as recognized leaders in the arena of starting and growing a business and claim to offer a comprehensive suite of solutions that includes goal setting, business training and education, personal and professional development, and an abundance of entrepreneurial resources. In fact, once consumers were pressured into agreeing to buy the Harris Defendants' services, generally at a cost of \$4,000 to \$7,000, the consumers realized that instead of the useful, personalized training and assistance they were promised, what they actually received was an inexpensive laptop computer, and useless notebooks and online training materials.

15. Since at least May 19th, 2006, A-1 has facilitated and participated in the Harris Defendants' fraudulent scheme by agreeing to finance the consumers' transactions, despite complaints from consumers regarding the deceptive nature of the Harris Defendants' sales pitch. Further, in an attempt to obtain the protections provided to finance leases under Article 2A of the Uniform Commercial Code, A-1 characterizes their agreements with consumers as non-cancelable

¹ Although they were separate corporate entities, the Harris Defendants were all operated as a single business entity.

commercial leases. But because the transaction involves primarily services, rather than goods, it cannot be considered a lease and is not subject to Article 2A of the UCC. Moreover, the vast majority of the “leases” between consumers and A-1 were never properly executed.

16. The Harris Defendants never provided the level of support and training they represented, but in June 2008 they completely ceased operations, thus entirely cutting off their consumers’ ability to obtain any level of training or support. At the same time that they ceased all operations, the Harris Defendants filed for Chapter 7 bankruptcy.² Despite the fact that consumers never received the support and services they were promised, and are now receiving absolutely no support, A-1 continues to collect on their “non-cancelable leases.”

STATEMENT OF FACTS

17. The Texas Attorney General’s Office has received well over 300 consumer complaints regarding the Defendants’ acts and practices. As detailed below, consumers complaining to the Office of the Attorney General describe a series of false and deceptive acts and practices throughout their transaction with the Defendants.

18. The Harris Defendants purchased from third party lead generation companies the names and contact information for consumers that had allegedly expressed an interest in starting an at-home business. The Harris Defendants would then call consumers, subjecting them to a two step, high-pressured sales pitch, which was full of deception.

19. In the first part of the two-part telemarketing call, Defendants’ telemarketers were trained to introduce themselves and claim that they were with “National Business Advisors” and that they were “getting back with” the consumer regarding their interest in starting a business from home. The

² Consumer Protection & Public Health Division actions are exempt from the automatic stay under the police power exception. See Commonwealth Oil Refining Co. v. United States Environmental Protection Agency, 805 F.2d 1175, 1182-83 (5th Cir. 1986), *cert. denied*, 483 U.S. 1005, 107 S.Ct. 3228 (1987); and State of Texas v. American

telemarketer would go on to explain that his or her purpose was to screen applicants to determine if Startup would be interested in “investing” in the consumer’s business. The telemarketer was trained to make it sound as if Startup’s program was available only to select business owners and that the business owner would have to convince Startup that it should invest in the business. In fact, all consumers who passed a credit check were eligible to purchase Defendants’ services. The only purpose of the first telemarketer was to conduct a credit check on the consumer and to mislead the consumer into believing Startup was investing in a limited number of home businesses.

20. Once the original telemarketer “qualified” the consumer, he or she would inform the consumer that he or she qualified for an interview with Startup. The telemarketer would then conference in the second telemarketer, who was introduced as a “Senior Business Analyst.” In fact, the second telemarketer had no special experience or business training, and was nothing more than a slightly more experienced telemarketer.

21. Once the consumer was passed off to the “Senior Business Analyst,” the new telemarketer, continuing the sham that Startup was investing in the consumer’s business, would embark on a deceptive, ten-step sales script, which they referred to as an interview, and which Robert Harris as CEO reviewed and approved.

22. Throughout the call, the telemarketer would promise the consumer that Startup would guide consumers through a step-by-step process for starting an Internet-based business, emphasizing that Startup would only make money if the consumer’s business was successful. Defendants would further promise consumers one-on-one coaching and an Internet marketing course. Defendants promised to be there, providing support, as long as the consumer operated his or her business. Defendants repeatedly assured consumers that the consumer did not need any business experience or

computer experience to be successful, as long as they were committed to following Defendants' training.

23. Defendants also represented that they would provide consumers the tools that they needed to be successful in business, including a laptop computer. Upon hearing that a laptop was part of the package, some consumers informed the telemarketer that they already possessed a laptop or desktop computer and did not need to buy another one. In response to these consumers, the telemarketer often insisted that the laptop contained specialized software that allowed the consumer to access a virtual terminal and was necessary to conduct their e-commerce business. In fact, the laptop that consumers received was typically a low-end laptop (with a typical retail price of approximately \$600) that contained no specialized software.

24. Defendants also often represented throughout the sales process that the company was backed by JPMorganChase Bank, leading consumers to believe Startup was owned by or had an affiliation with JPMorganChase Bank. In fact, the only connection Defendants had with JPMorganChase Bank was that Startup did credit card processing through iPayment, Inc., which was an Independent Sales Organization of JPMorganChase.

25. Further, in an attempt pressure consumers by creating a false sense of urgency, Defendants represented to consumers that all paperwork had to be completed and returned before the end of the "interview," or else the consumer could not be considered for the exclusive program.

26. Once Defendants convinced consumers to enter into their "Comprehensive Program," Defendants required consumers to execute a two page "Merchant Agreement." The Harris Defendants, on behalf of A-1 Leasing, also had the consumers execute a "Non Cancelable Equipment Lease Agreement" between the consumer and A-1 Leasing.

27. In most cases, the consumer was directed to a Web site for the purpose of executing the

Merchant Agreement and lease. But in fact, consumers were never presented with a copy of the Merchant Agreement or lease prior to execution. Instead, consumers received only a brief summary of the agreement, which summary failed to include even a description of material terms of the agreement, before they were required to sign and initial blank boxes on the computer screen using a computer mouse. (See **Exhibit 1, a printout of the computer screen**). Consumers were surprised to later learn that their signatures and initials were electronically replicated in numerous places on the Merchant Agreement and lease which the consumers had not yet read or agreed to. In fact, consumers' signatures were duplicated four (4) times, and their initials were duplicated nineteen (19) times throughout the Merchant Agreement, Non Cancelable Equipment Lease Agreement, and a third document, a "Lease Confirmation."

28. In many cases, consumers were not even aware that they were entering into a lease agreement with a third party, A-1 Leasing. The first time some consumers ever heard of A-1 Leasing was when they called the Harris Defendants to complain and cancel their agreement, at which point they were told they had entered into a non-cancelable lease with A-1 Leasing and would have to keep paying, even if they returned the computer and quit the Harris Defendants' program.

29. Once consumers were enrolled in the Harris Defendants' "Comprehensive Program," their experience was vastly different than what they had been promised. For example, consumers complain that the Harris Defendants failed to provide the step-by-step coaching and training the Harris Defendants' previously represented would be available. Consumers further complain that telephone and email messages to the Harris Defendants' merchant support were often ignored altogether. The personal coaches promised to consumers were often unavailable and also failed to return messages. Thus, all consumers really ever received was an inexpensive laptop computer, some generic motivational materials, and a link to some generic online training. None of the

“training” was substantially more than what the consumers could find online for free.

30. Once consumers discovered that they had been misled, they often complained to the Harris Defendants, to which the Harris Defendants typically responded by simply stating that the consumers had signed a non-cancelable lease, and there was nothing they could really do about it. As noted above, in some instances, this was the first time consumers learned that they had entered into a lease with a third-party entity and not with the Harris Defendants directly.

31. At least as early as May 2006, consumers also started complaining to A-1 Leasing, explaining that they were misled and that they never saw or signed the lease. A-1 Leasing responded much like the Harris Defendants, representing that it was a non-cancelable lease and there was nothing the consumer could do about it. Despite the high volume of complaints and seriousness of complaints that A-1 Leasing received from consumers about the Harris Defendants, A-1 Leasing continued to fund leases through May 2007. Even to this day, knowing that consumers complain that the leases were fraudulently obtained, and knowing that consumers complain that they never signed the leases, A-1 Leasing continues to represent to consumers that the leases are non-cancelable and that they, the consumers, have no choice but to continue paying them.

32. In approximately June 2008, the Harris Defendants completely shut down their business, and stopped providing any form of support to their clients.

33. Even to this day, knowing that consumers complain that they never signed the leases, knowing that consumers complain that the leases were fraudulently obtained, and knowing that the Harris Defendants have completely shut down their business, A-1 Leasing continues to represent to consumers that the leases are non-cancelable and that they have no choice but to continue paying them.

VIOLATIONS OF THE DTPA

34. The State adopts by reference the information contained in paragraphs 1-33 and alleges that Defendants, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading, and deceptive acts and practices declared to be unlawful by the DTPA Sections 17.46(a) and (b), to wit:

- A. Defendants, as alleged and detailed above, have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce. TEX. BUS. & COM. CODE ANN. §§ 17.46 (a);
- B. Defendants, as alleged and detailed above, have caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b)(2);
- C. Defendants, as alleged and detailed above, have caused confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b)(3);
- D. Defendants, as alleged and detailed above, have represented 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. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b)(5);
- E. Defendants, as alleged and detailed above, have represented that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, when they are of another. TEX. BUS. & COM. CODE ANN §§ 17.46 (b)(7);
- F. Defendants, as alleged and detailed above, advertised goods or services with the intent not to sell them as advertised. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b)(9);

G. Defendants, as alleged and detailed above, have represented that an agreement conferred or involved rights, remedies, or obligations which it did not have or involve, or which are prohibited by law. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b)(12);

H. Defendants, as alleged and detailed above, failed to disclose information concerning goods or services which was known at the time of the transaction, when 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. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b)(24).

INJURY TO CONSUMERS

35. 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 of damages.

APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

36. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the laws of the State of Texas as alleged in this Petition. Unless enjoined by this Honorable Court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause irreparable injury, loss, and damage to the people of this State. Therefore, Plaintiff requests a Temporary Injunction and Permanent Injunction be issued.

PRAYER FOR RELIEF

37. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before 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. Misrepresenting that an agreement is valid and enforceable if it is not, or has not been properly executed by all parties;
- B. Failing to obtain a separate signature or initial for each section of a lease or other agreement requiring a signature or initial. Such prohibition specifically includes duplicating an electronic signature in multiple sections of a lease or other agreement;
- C. Failing to provide a complete copy of the lease or other agreement to a customer prior to obtaining the customer's signature or initials;
- D. Collecting or attempting to collect, directly or indirectly, on any lease agreements between A-1 and Texas customers regarding James One goods or services that were entered into before the effective date of this injunction.
- E. Causing confusion or misunderstanding regarding the relationship between A-1 Leasing and any vendor, including the Harris Defendants, or regarding the relationship between the Harris Defendants and any leasing company, including A-1 Leasing.
- F. Failing to clearly and conspicuously disclose to consumers, prior to entering into any agreement with them, the following facts, if true:
 1. That their lease agreement is with a specific leasing company (e.g. A-1 Leasing) and not with the vendor (e.g. Startup);
 2. That the leasing company (e.g. A-1 Leasing) may intend to continue collection per the lease terms, even where a consumer complains of

misrepresentations of the vendor (e.g. Startup).

- G. Misrepresenting the nature, quality, grade, or characteristics of goods or services provided or leased by Defendants, including:
1. Causing confusion or misleading consumers regarding any support, coaching, training, or other assistance that Defendants will provide relating to such goods or services;
 2. Failing to clearly and conspicuously disclose material information regarding such goods or services including the make, model, and technical specifications of any laptops or credit card swipe machines;
 3. Making false or misleading statements regarding the customer's need to use such goods or services, including misrepresenting the existence of specialized software; or
 4. Failing to disclose a good faith fair market value estimate of the value of each good or service subject of the lease or other agreement.
- H. Failing to disclose, and obtain a consumer's express consent to the material terms and conditions of the lease or other agreement prior to obtaining a signature, including each of the following facts, if true:
1. That the lease is non-cancelable; and
 2. That the lease is a commercial lease and not a consumer lease, which carries significant difference and may affect the lessee's rights.
- I. Causing confusion or misunderstanding regarding Defendants' affiliation or other relationship with a third party, including but not limited to JP Morgan Chase Bank or any other financial institution;

- J. Misrepresenting that any employee of the Defendants has specialized business training or background, including but not limited to using the title “senior business analyst;”
 - K. Failing to immediately cancel a lease or other agreement and refund any moneys paid, where Defendants have failed to comply with any state or federal law, or the terms of this injunction;
 - L. Misrepresenting a customer’s need to immediately sign a lease or other agreement, including failing to provide the customer with the option and ability to take their time reading such lease or other agreement;
 - M. Failing to investigate consumer complaints and take appropriate remedial action, including responding to such complaints, providing refunds and canceling customer agreements where appropriate, and canceling agreements with any vendor or leasing company where appropriate;
 - N. Misrepresenting, or causing confusion regarding, the rights, remedies, or obligations of any agreement, including, but not limited to, representing an agreement to be a valid lease as defined in the Uniform Commercial Code when it is not; and
38. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:
- A. Adjudge civil penalties in favor of Plaintiff STATE OF TEXAS of not more than \$20,000 against each Defendant per violation of the DTPA pursuant to Tex. Bus. & Com. Code §17.47(c);
 - B. Award such relief as this Court finds necessary to redress injury to consumers resulting from Defendants’ violations of the DTPA, including but not limited to reformation or rescission of contracts, disgorgement of ill-gotten gains, and

cancellation of purported debts.

- C. Award the State of Texas attorney's fees and costs pursuant to TEX. GOVT. CODE §402.006(c) for bringing this action, as well as such other and additional equitable relief as this Court may determine to be just and proper.

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

COREY DAVID KINTZER
SBN 24046219
Assistant Attorney General
PAUL SINGER
SBN 24033197
C. BRAD SCHUELKE
SBN 24008000
Assistant Attorneys General
Consumer Protection & Public Health Division
Post Office Box 12548
Austin, Texas 78711-2548
Telephone 512-463-2185
Facsimile 512-473-8301
**ATTORNEYS FOR PLAINTIFF,
THE STATE OF TEXAS**