NO. 2009CI05556

STATE OF TEXAS, Plaintiff	§	IN THE DISTRICT COURT OF
vs.	§	
ESCAPES AUSTIN, LLC D/B/A GLOBAL ESCAPES, BLUE WATER, ESCAPES AUSTIN ONE, LLC, GLOBAL ESCAPES OF AUSTIN, LLC AND ESCAPES MIDWEST, LLC D/B/A GLOBAL ESCAPES, SUN TREE ESCAPES MIDWEST ONE, LLC AND JAMES EDWARD CAREY III, AND GWENDOLYN FAYE CAREY, INDIVIDUALLY,	§	37th TH JUDICIAL DISTRICT
Defendants	§	BEXAR COUNTY, TEXAS

FEE PAID

ENTERED / CASHIER

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, acting by and through the ATTORNEY GENERAL OF TEXAS, and files this Original Petition and Application for Ex Parte Temporary Restraining Order with Asset Freeze, Temporary Injunction, and Permanent Injunction, complaining of Defendants **ESCAPES AUSTIN, LLC** d/b/a Global Escapes, Blue Water, Escapes Austin One, LLC, and Global Escapes of Austin, LLC (hereafter "ESCAPES AUSTIN"); **ESCAPES MIDWEST, LLC** d/b/a Global Escapes, Sun Tree, and Escapes Midwest One, LLC (hereafter "ESCAPES MIDWEST"); **JAMES EDWARD CAREY III**, Individually, and **GWENDOLYN FAYE CAREY**, Individually, 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. P. 190.3.

AUTHORITY

2. This action is brought by the ATTORNEY GENERAL OF TEXAS, 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. & COMM. CODE §§ 17.41 *et seq.* (hereafter "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. The DTPA permits the ATTORNEY GENERAL'S OFFICE to bring an action to restrain, by Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, the use of any method, act or practice declared to be unlawful by § 17.46 of the DTPA, where such proceedings are in the public interest.

3. This action is also brought by the ATTORNEY GENERAL OF TEXAS, GREG ABBOTT, through his Consumer Protection Division, in the name of the STATE OF TEXAS, and in the public interest pursuant to the Texas Contest and Gift Giveaway Act, TEX. BUS. & COMM. CODE § 40.001 *et seq.* (hereafter the "Contest and Gift Giveaway Act" or "CGGA"), upon the grounds that Defendants have not provided appropriate disclosure to, and fair treatment of, persons who enter a contest or gift giveaway through which they are solicited to attend a sales presentation, pursuant to TEX. BUS. & COMM. CODE § 40.002, and which is declared a deceptive trade practice under TEX. BUS. & COMM. CODE § 40.122.

4. This action is also brought by the ATTORNEY GENERAL OF TEXAS, GREG ABBOTT, through his Consumer Protection Division, in the name of the STATE OF TEXAS, and in the public interest pursuant to the Texas Telemarketing Disclosure and Privacy Act, TEX. BUS. & COMM. CODE § 44.001 *et seq.* (hereafter the "Telemarketing Disclosure and Privacy Act" or "TDPA"), upon the

grounds that Defendants have engaged in false, misleading, abusive, or deceptive practices in the telemarketing business, pursuant to TEX. BUS. & COMM. CODE § 44.005.

DEFENDANTS

5. Defendant **ESCAPES AUSTIN, LLC** d/b/a Global Escapes, Blue Water, Escapes Austin One, LLC, and Global Escapes of Austin, LLC is a Nevada Limited Liability Company operating in the State of Texas at 8911 Capital of Texas Highway, Suite 4260, Austin, Texas 78759. Defendant's principal office is 1937 E. Edgewood Drive, Lakeland, Florida 33803. Defendant may be served with process by serving its registered agent in Texas, CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201.

6. Defendant **ESCAPES MIDWEST, LLC** d/b/a Global Escapes, Sun Tree, and Escapes Midwest One, LLC, is a Nevada Limited Liability Company operating in the State of Texas at 1102 East Sonterra Boulevard, Suite 103, San Antonio, Texas 78258. Defendant's principal office is 1937 E. Edgewood Drive, Lakeland, Florida 33803. Defendant may be served with process by serving its registered agent in Texas, CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201.

7. Defendant **JAMES EDWARD CAREY III** is an individual and is the Chief Executive Officer, Manager, or Governing Person of **ESCAPES AUSTIN, LLC** d/b/a Global Escapes, Blue Water, Escapes Austin One, LLC, and Global Escapes of Austin, LLC; and is the Chief Executive Officer, Manager, or Governing Person of **ESCAPES MIDWEST, LLC** d/b/a Global Escapes, Sun Tree, and Escapes Midwest One, LLC. Defendant's principal residence address is 7337 46th Avenue North #1, St. Petersburg, Florida 33709. Defendant may be served with process at 7337 46th Avenue North #1, St. Petersburg, Florida 33709, or at 1937 E. Edgewood Drive, Lakeland, Florida 33803.

8. Defendant **GWENDOLYN FAYE CAREY** is an individual and is the Director, Manager,

or Managing Member of **ESCAPES MIDWEST, LLC** d/b/a Global Escapes, Sun Tree, and Escapes Midwest One, LLC; and is Manager or Managing Member of **ESCAPES AUSTIN, LLC** d/b/a Global Escapes, Blue Water, Escapes Austin One, LLC, and Global Escapes of Austin, LLC. Defendant's principal residence address is 617 Powder Horn Row, Lakeland, Florida 33809. Defendant may be served with process at 617 Powder Horn Row, Lakeland, Florida 33809, or at 1937 E. Edgewood Drive, Lakeland, Florida 33803.

VENUE

9. Venue of this suit lies in BEXAR COUNTY, Texas for the following reasons:

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

B. Under TEX. CIV. PRAC. & REM. CODE § 15.005, venue is proper over all of the Defendants in this case because all claims or actions arise out of the same transaction, occurrence, or series of transactions or occurrences; and

C. Under DTPA § 17.47(b), venue is proper because Defendants have done business in BEXAR COUNTY, Texas by soliciting and entering into transactions with consumers in this County, which transactions are made the subject of this suit.

ACTS OF AGENTS

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

A. Defendants performed or participated in the act or practice; or

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

PUBLIC INTEREST

11. Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful acts and practices set forth below. Plaintiff STATE OF TEXAS has reason to believe that Defendants have, by means of these unlawful acts and practices, caused damage to and acquired money from persons of this State, and caused and will continue to cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in 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

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

NOTICE BEFORE SUIT

13. The Consumer Protection Division of the Office of the Attorney General of the STATE OF TEXAS did not inform the Defendants of this suit at least 7 days prior to instituting this action, pursuant to § 17.47(a) of the DTPA, because 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 with Asset Freeze, that the Defendants would secrete assets or destroy relevant records, or that the Defendants would evade service of process if prior notice of this suit was given.

NATURE OF DEFENDANTS' OPERATIONS

14. Defendants cause Texas consumers to be solicited by mail or telephone regarding a contest or gift giveaway, which secures their attendance at a sales presentation. Defendants do not provide appropriate disclosure to, and fair treatment of, consumers regarding this gift giveaway. Once the

consumers are in attendance at the sales presentation, Defendants engage in false, deceptive, and misleading acts and practices in the course of trade and commerce in order to get consumers to enter into a contract with them for a travel-related "Software License" and travel-related customer support services.

SPECIFIC FACTUAL ALLEGATIONS

15. Defendants conduct business across Texas and several states, and cause consumers to be solicited by mail or telephone regarding a contest or gift giveaway, which secures their attendance at a sales presentation. Defendants do not provide appropriate disclosure to, and fair treatment of, consumers regarding this gift giveaway. Consumers may receive unsolicited calls on their home or cellular telephone, even if their number has been placed on the current State of Texas No-Call List. (*See* Exhibit 12). Consumers may also receive unsolicited materials in the mail regarding a free cruise, flight, hotel stay, car, television, or watch that they have "won." (*See* Exhibits 1, 2, 3, and 4). These gifts purportedly will be received once consumers call a telephone number to set up an appointment and later attend one of Defendants' sales presentations at their offices in San Antonio or Austin, Texas. (*See* Exhibits 1, 2, 3, and 4).

16. Only consumers, or "tours," who meet Defendants' marketing qualifications are allowed to attend the sales presentation and to claim their free gift or prize. (*See* Exhibit 5). Consumers are not informed of the actual retail value, many fees, unavailable travel dates, or other restrictions that are associated with this gift. (*See* Exhibits 1, 2, 3, and 4). In fact, consumers are informed on the telephone that the only charge they will be responsible for in redeeming the gift is the tax. (*See* Exhibits 1, 2, 3, and 4). At the time they are being solicited to attend the sales presentation, however, consumers believe that such a gift may be worth 90 minutes of their time. (*See* Exhibits 1, 2, 3, and 4). Once received, many consumers have difficulty ever redeeming their gift, and often

do not even use it at all due to the fact that it costs too much money to do so, and because there are so many restrictions involved. (*See* Exhibits 1, 2, 3, and 4). When consumers later complain regarding their difficulties in redeeming the gifts and the lack of disclosure provided them at the outset of the solicitation, Defendants deny any responsibility for the gifts. (*See* Exhibit 1, 2, 3 and 4).

17. On the telephone prior to the sales presentation, consumers are told that they are speaking with Global Escapes or Sun Tree, and who are offering a "proprietary software search engine technology" or "Software License" to enable them to locate and book special or bargain travel deals. (*See* Exhibits 1, 2, 3, and 4). Consumers are told that the presentation will take 90 minutes. (*See* Exhibits 1, 2, 3, and 4). Defendants' 90-minute "podium presentation" regarding the benefits of their product consists of a PowerPoint presentation containing frozen screen captures of travel deals and bargains allegedly found on their websites: http://www.global-escapes.net/ and http://seesuntree.com/. (*See* Exhibits 1, 2, 3, and 4). No live internet or actual surfing of Defendants' websites are used to demonstrate their product to consumers. (*See* Exhibits 1, 2, 3, and 4). The travel deals purportedly found using this "Software License" range from 3 and 4-star hotel and condominium stays, to cruises, to golf packages, all at significantly reduced rates and with few limitations on availability. (*See* Exhibits 1, 2, 3, and 4). Consumers are told that these travel deals are not available to the general public or to persons with timeshare memberships, cannot be found anywhere else on the internet (including other travel websites), and may only be found using Defendants' "Software License." (*See* Exhibits 1, 2, 3, and 4).

18. At the conclusion of the podium presentation, consumers are taken into smaller rooms where sales representatives try to convince them on an individual basis using high-pressure sales tactics, falsehoods, and misrepresentations why they cannot pass up their "Software License." (*See* Exhibits

1, 2, 3, and 4). Consumers are told that if they do not like the product, that they "can always cancel." (*See* Exhibits 1, 2, 3, and 4). Consumers frequently must stay at Defendants' offices up to 2 hours longer than what was represented in order to claim their gift. (*See* Exhibits 1, 2, 3, and 4). As they negotiate with consumers from the original purchase price, which can be up to $12,000, sales representatives offer one "one-time price reduction" after another to make the sale. (*See* Exhibits 2, 3, and 4). Sales agents may offer to reduce the original purchase price down to around $7,000, may make a further "one-time price reduction" to around $4,000, and even a further "one-time price reduction" to around $2,200. (*See* Exhibits 1, 2, 3, and 4). Consumers are told that the price offered is only available at that time, on that day. (*See* Exhibits 1, 2, 3 and 4). This price does not include a $250 non-refundable "Processing Fee," however. (*See* Exhibits 1, 2, 3, and 4). If consumers are not able to pay the full cost for the "Software License," Defendants offer to finance the entirety or a portion of the purchase, at an interest rate of 17.90%, and then immediately sell the consumers' purchase agreements to a finance company or debt collection agency. (*See* Exhibits 1, 2, 3, and 4).

19. As the sales representatives continue to negotiate with consumers, they are told a verbal summary of the many terms and conditions of their contract, and are told not to take the time to read through all of the paperwork that is handed to them. (*See* Exhibits 1, 2, 3, and 4). Based on these misrepresentations and nondisclosures, consumers believe that they can actually and meaningfully try out the "Software License," and if they do not like it, they can cancel their agreement. (*See* Exhibits 1, 2, 3, and 4). However, consumers are not even able to log onto Defendants' website until approximately 2 weeks after signing the contract, when their User ID and Password are finally sent to them. (*See* Exhibits 1, 2, and 3). In many instances, technical problems with the website prevent consumers from being able to view it for additional days or weeks subsequent to receiving their User ID and Password. (*See* Exhibits 1, 2, and 3).

20. Once consumers are finally able to logon, they discover that they are not able to find the same types of vacation deals (e.g., locales, discounts, prices, availability, dates, and star-levels) that were represented to them. (*See* Exhibits 1, 2, 3, and 4). Realizing that they have ben deceived, many consumers attempt to cancel their contract at this time. (*See* Exhibits 1, 2, 3, and 4). Defendants respond by telling consumers that they signed a contract, and that they should have known better. (*See* Exhibits 1, 2, and 3). Out of fear that Defendants' debt collection agencies will ruin their credit rating, many consumers continue to make payments to avoid any further financial repercussions other than the money they already spent on the purchase of Defendants' "Software License." (*See* Exhibits 1, 2, and 3). Consumers must also pay annual support fees and "Software Upgrade" fees in the amount of $199, for a product which they were never able to utilize or will ever be able to utilize in the fashion that they were originally led to believe. (*See* Exhibits 1, 2, and 3).

21. Defendants claim to be affiliated with some of the biggest and most respectable names in the travel and travel agency industries, and use these purported ties to boost their credibility and reputation in the national and international travel and business communities in the eyes of consumers. (*See* Exhibit 6 & 7). In the materials provided to consumers at the sales presentations, or on Defendants' websites, Defendants state that they are affiliated with the International Air Transport Association (IATA), the International Airlines Travel Agent Network (IATAN), the American Society of Travel Agents (ASTA), the American Resort Development Association (ARDA), the Cruise Lines International Association (CLIA), the Airlines Reporting Corporation (ARC), and the Cooperative Association of Resort Exchangers, Inc. (CARE). (*See* Exhibit 6 & 7). However, Defendants do not have such affiliations, and are not members of these travel trade associations which they claim. (*See* Exhibits 8, 9, 10, and 11).

22. Defendants have received a large number of complaints from consumers. The Better Business Bureau for the State of Texas has received a total of 103 complaints against them covering the period from August 2005 to February 2008. (*See* Exhibit 12). The Office of the ATTORNEY GENERAL OF TEXAS has received 51 complaints against them from March 2006 to the present. (*See* Exhibit 12). However, Defendants have victimized scores of Texas consumers by misleading them into entering into contractual relationships for Defendants' "Software License" and travel-related support services.

23. On October 29, 2005, Bernard McKutchen of San Antonio attended Global Escapes' sales presentation, and based on their representations, entered into a contract with them. Mr. McKutchen received his User ID and Password to logon to Global Escapes' website 14 days after his sales presentation. However, Mr. McKutchen encountered so many technical difficulties on Defendants' website that he was unable to use it for an additional 30 to 60 days. Mr. McKutchen attempted many times to locate and book travel reservations using the "Software License," but could find nothing available in Texas, Colorado, or Mexico on any date that was amenable to him. Additionally, the prices that Mr. McKutchen encountered on Global Escapes' website were higher than what he found for similar packages on other publicly available internet travel websites, such as Orbitz, Expedia, or Priceline. Global Escapes represented to Mr. McKutchen that they had very low prices for thousands of locations, with little limitations on availability. However, once he attempted to use their "Software License" in the manner he was led to believe, Mr. McKutchen soon realized that what he actually received was quite the opposite of what Global Escapes had promised. (*See* Exhibit 1).

24. In April, 2008 Patricia McDonald Love of Georgetown received unsolicited mail at her home from Global Escapes. Pursuant to this solicitation, on April 26, 2008, Mrs. Love attended a sales presentation at their offices in Austin. Global Escapes represented to Mrs. Love that their product

would enable her to obtain discounted vacations to thousands of locations worldwide, in any major city, with little limitations on availability. Mrs. Love purchased the "Software License" for $6,995. She then attempted to locate and book several travel packages, but there was never anything available at the time, location, or purported discounted rates that she was led to believe. By the time Mrs. Love had repeatedly attempted to find the types of travel deals that she was led to believe she would find, and she had repeatedly attempted to work with and obtain assistance from Global Escapes' telephone support services, they informed her that it was too late to cancel her contract. If Mrs. Love would have been fully informed of the kind of product and service she was purchasing, and if Global Escapes would not have misrepresented the nature of their product and service to her, Mrs. Love would never have made this purchase. (*See* Exhibit 2).

25. In February, 2006, Sandra Vasile of San Antonio received unsolicited mail at her home from Global Escapes. Pursuant to this solicitation, on February 11, 2006, Ms. Vasile attended one of their sales presentations at their offices in San Antonio. She was enticed with their promises of significant rate reductions on 4-star condominiums and hotels, as well as on cruises and other vacation packages such as golf packages, at thousands of locations, with little or no limitations on availability. Ms. Vasile purchased Global Escapes' "Software License" for $4,495. At first, she attempted many times to use their website, but had no success because she encountered so many technical difficulties. Ms. Vasile even purchased a new computer system and upgraded to high-speed internet service to better use Global Escapes' website, only to find their website still was not working properly. Ms. Vasile has made many attempts to book condominium stays, cruises, and other vacation packages using the "Software," but has had to make every single arrangement using their customer support telephone service. She has never been able to book online from Defendants' website, as she was originally led to believe. Ms. Vasile has patiently attempted on numerous occasions to make the best

out of being stuck with this product, but she still has never been able to book any of the "Red Hot Escapes" or "Short Notice" vacations that she was led to believe she would be able to find in abundance. Ms. Vasile has booked stays for her parents on two occasions, but the condominiums she was able to book were not of a quality or price that was promised to her that she would be able to find, and Global Escapes' customer support left much to be desired. (*See* Exhibit 3).

26. In August, 2008, Mr. and Mrs. David and Ivy D'Spain of Boerne received unsolicited mail at their home stating that they won 2 free airline tickets to anywhere in the United States, along with a 3 night stay at any Marriott hotel in the United States. They were informed that they just needed to attend a sales presentation of Sun Tree in order to claim their free gifts, were assured that there was no catch, and that this was not going to be a high pressure sales presentation. The sales pitch consisted of PowerPoint slides displaying frozen screen captures of purported incredible travel deals that could be found using Sun Tree's "Software License." Sales agents of Sun Tree informed Mr. and Mrs. D'Spain that the travel deals to be found on their website were not available to the general public, on other internet travel websites, or with timeshare memberships. Sales agents of Sun Tree also offered Mr. and Mrs. D'Spain several "one-time" price reductions after another, until they agreed to buy the "Software License" for $2,245. Mr. and Mrs. D'Spain were given a verbal summary of all the paperwork that was being handed to them, and were told that they "could always cancel" if they did not like the product. Mr. and Mrs. D'Spain have attempted to cancel, but have been unsuccessful because Sun Tree has continually been unavailable. (*See* Exhibit 4).

LIABILITY OF JAMES EDWARD CAREY III AND GWENDOLYN FAYE CAREY, INDIVIDUALLY

27. Defendants **JAMES EDWARD CAREY III** and **GWENDOLYN FAYE CAREY**, as set out in Paragraphs 1 through 26, in the course and conduct of trade and commerce, have directly and

indirectly engaged in, and will continue to engage in, deceptive acts and practices by making false or misleading material misrepresentations to consumers when Defendants knew such representations were false or misleading. Defendants made such representations with the intent to induce consumers to act on their false or misleading representations, and consumers relied on these representations and entered into purchase agreements or contracts for Defendants' "Software License" and travel-related support services that they would not otherwise have purchased, given correct information. Under the DTPA, Defendants **JAMES EDWARD CAREY III** and **GWENDOLYN FAYE CAREY** are individually liable for fraudulent or tortious acts committed while in the service of their corporations. Defendants **JAMES EDWARD CAREY III** and **GWENDOLYN FAYE CAREY** knowingly participated in the wrongdoing and actions of Defendants **ESCAPES MIDWEST, LLC** and **ESCAPES AUSTIN, LLC**.

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

28. Defendants, as set out in Paragraphs 1 through 26, in the course and conduct of trade and commerce, have directly and indirectly engaged in, and will continue to engage in, false, misleading, deceptive or unconscionable acts and practices declared unlawful by §§ 17.46(a) and (b) of the DTPA, including but not limited to:

A. Causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification by, another, in violation of § 17.46(b)(3) of the DTPA, by claiming to be members of or affiliated with major, reputable, and respected travel and travel agency industry organizations, of which Defendants are not, in order to deceive consumers regarding Defendants' purported legitimacy and reputation in the national and international travel and business communities;

B. Representing that Defendants' goods or services have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have, in violation of § 17.46(b)(5) of the DTPA, by misrepresenting the nature of their "Software License" and travel reservation services, when consumers do not receive what was promised and represented to them;

C. Representing that Defendants' goods or services are of a particular standard, quality, or grade, if they are of another, in violation of § 17.46(b)(7) of the DTPA, by misrepresenting the nature of their "Software License" and travel reservation services, when consumers do not receive what was promised and represented to them;

D. Disparaging the goods, services, or business of another by false or misleading representation of facts, in violation of § 17.46(b)(8) of the DTPA, by misrepresenting that it is only with Defendants' "Software License" can such travel deals be found. Defendants specifically refer and contrast themselves with Timeshare Memberships and publicly available internet travel websites;

E. Advertising goods or services with the intent not to sell them as advertised, in violation of § 17.46(b)(9) of the DTPA, by misrepresenting the nature of Defendants' "Software License" and travel reservation services, when consumers do not receive what was promised and represented to them;

F. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions, in violation of § 17.46(b)(11) of the DTPA, by claiming that the price of Defendants' "Software License" is available only at the time of consumers' attendance at their sales presentation, reducing the price of the "Software License" if a

consumer appears reluctant to purchase it, and claiming to have differing levels of membership; and

G. Failing to disclose information concerning goods or services which was known at the time of the transaction, when 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) of the DTPA, by misrepresenting the nature of Defendants' "Software License" and travel reservation services, and verbally misrepresenting their cancellation policy.

VIOLATIONS OF THE TEXAS CONTEST AND GIFT GIVEAWAY ACT

29. Defendants, as set out in Paragraphs 1 through 26, have engaged in and will continue to engage in, practices that constitute false, misleading or deceptive trade practices declared unlawful by the Texas Contest and Gift Giveaway Act, TEX. BUS. & COMM. CODE §40.001 *et seq.*, and which practices are declared to be deceptive trade practices, pursuant to TEX. BUS. & COMM. CODE §40.122, including but not limited to:

A. Not notifying persons of the true approximate duration of the sales presentation that is required for them to attend in order to receive their free gift, in violation of TEX. BUS. & COMM. CODE §40.035(a)(3), by stating that it will only be a 90-minute sales presentation, and failing to disclose that the duration may be up to 2 hours longer than this;

B. Using the term "gift" or similar term in a false, misleading, or deceptive manner, in violation of TEX. BUS. & COMM. CODE §40.036(1), by representing that persons are receiving a "free" gift, and by failing to disclose the fees involved, unavailable dates of travel, use, or redemption, and other restrictions associated with this gift;

C. Representing, in a gift promotion, that persons are "finalists," "major award winners," "grand prize recipients," "winners," have "won," or "will be awarded," or using words or phrases of similar meaning that imply that persons are being solicited to enter or have won a contest, in violation of TEX. BUS. & COMM. CODE §40.036(3)(A), by telling persons through telephone and mail solicitation that they have "won" one of several prizes, such as a cruise, airline tickets, hotel stay, a car, or watches;

D. Failing to disclose the retail value of a gift, in violation of TEX. BUS. & COMM. CODE §40.036(4), by representing that persons are receiving a "free" gift, and by failing to disclose the fees involved, unavailable dates of travel, use, or redemption, and other restrictions associated with this gift;

E. Failing to disclose clearly and conspicuously in at least 10-point type that airfare, lodging, or both, are not included as part of a prize that is a trip or recreational activity to the extent that either or both are not included, in violation of TEX. BUS. & COMM. CODE §40.036(5), by representing that persons are receiving a "free" gift, and by failing to disclose the fees involved, unavailable dates of travel, use, or redemption, and other restrictions associated with this gift;

F. Representing that a gift has a sponsor, approval, characteristic, ingredient, use, benefit, quantity, status, affiliation, connection, or identity that the gift does not have, in violation of TEX. BUS. & COMM. CODE §40.036(6), by representing that persons are receiving a "free" gift, and by failing to disclose the fees involved, unavailable dates of travel, use, or redemption, and other restrictions associated with this gift; and

G. Notifying persons that they have won a prize, will receive a prize, or have a chance

to win or receive a prize, a condition of which requires persons to pay consideration of any kind or a charge or expense for the prize, in violation of TEX. BUS. & COMM. CODE §40.062, by failing to disclose the many redemption fees involved, including but not limited to booking, reservation, processing, and/or upgrade fees.

VIOLATIONS OF THE TEXAS TELEMARKETING DISCLOSURE & PRIVACY ACT

30. Defendants, as set out in Paragraphs 1 through 26, directly and indirectly by their own acts, have violated the Texas Telemarketing Disclosure and Privacy Act ("Texas No-Call Statute"), TEX. BUS. & COM. CODE ANN. §44.001 *et seq.*, including but not limited to:

A. Making telemarketing calls to telephone numbers that have been published on the Texas No-Call list more than 60 days after the telephone number appeared on the then-current list, in violation of TDPA §44.102(a); and

B. Wilfully or knowingly making a telemarketing call to telephone numbers that have been published on the Texas No-Call list more than 60 days after the telephone number appeared on the then-current list, in violation of TDPA §44.102(c).

INJURY TO CONSUMERS

31. By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money should be restored, or who in the alternative are entitled to an award of damages.

DISGORGEMENT

32. 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

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

NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS' ASSETS

34. 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' assets are subject to dissipation for the following reasons:

A. Defendants take in great sums of money from consumers through their schemes and use fraudulently solicited funds for personal gain. Defendants themselves estimate that between 2005 and 2008 alone, they have contacted about 1.25 million consumers in Texas, that 200,000 Texas consumers have committed to attend one of their sales presentations, that approximately 20,000 Texas consumers have actually attended one of their sales presentations, and that they have sold approximately 5,000 "Software Licenses" in Texas. Based on their approximately 5,000 licenses sold in Texas between 2005 and 2008 alone, and the average price of each license being about $4,000, restitution for Texas consumers could total up to $20,000,000;

B. Defendants refuse to refund monies to consumers after they seek to cancel and obtain

refunds due to Defendants' "Software License" and travel-related support services not meeting the standards represented;

C. Monies received from consumers are dissipated quickly by Defendants, who pay third parties to market Defendants' contest or gift giveaways in order to secure more consumers' attendance at Defendants' sales presentations, and who pay sales representatives to conduct such sales presentations regarding their "Software License"; and

D. Defendants named herein receive monies as salaries or other compensation, dissipate such monies quickly for personal use, and otherwise deplete their bank accounts monthly through other expenses. Defendants maintain and are signatories on the following known accounts: **Bank of America** account numbers **XXXXXXXX8831** and **XXXXXXXX8792**, standing in the name of **ESCAPES AUSTIN, LLC**; account numbers **XXXXXXXX3894** and **XXXXXX4588**,standing in the name of **ESCAPES MIDWEST, LLC**; account number **XXXXXXXX7774**, standing in the name of **JAMES E. CAREY III** and **GWENDOLYN FAYE CAREY**; account number **XXXXXXX6619**, standing in the name of **ESCAPES WORLDWIDE, LLC**; and **J.P. Morgan-Chase Bank** account number **XXXXX1997**, standing in the name of **ESCAPES AUSTIN, LLC**.

35. For these reasons, the assets of the individual Defendants and the corporate Defendants named herein are subject to dissipation and secretion, and therefore should be frozen pending final trial so that meaningful restitution can be made to Texas consumers, and that full and final relief can be awarded at trial.

REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

36. 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. Some of these witnesses may live outside the State of Texas, and thus cannot appear at any scheduled Temporary Injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys. Plaintiff also requests leave of this Court to file any corresponding Business Records Affidavits with reasonable, shortened notice.

TRIAL BY JURY

37. Plaintiff STATE OF TEXAS herein requests a jury trial and tenders the jury fee to the Bexar County District Clerk's office, pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

38. Because Defendants have engaged in the unlawful acts and practices described above, they have violated and will continue to violate the laws 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 immediate relief by way of a Temporary Restraining Order with Asset Freeze, Temporary Injunction, and Permanent Injunction to preserve and protect Defendants' assets from dissipation so that the victims of Defendants' actions can receive the meaningful restitution to which they are entitled, and as indicated below.

PRAYER

39. WHEREFORE, PREMISES CONSIDERED, Plaintiff STATE OF TEXAS prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER with ASSET FREEZE 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, to wit:

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

B. Transferring, spending, hypothecating, concealing, encumbering, depleting, modifying, dissipating, distributing, 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 is derived from the unlawful business operation of Defendants within the State of Texas;

C. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;

D. Entering into contracts, purchase agreements, or any legally binding document with consumers in the State of Texas;

E. Failing to provide and remit full and complete refunds to consumers; and

F. Making or causing to be made any form of solicitation of persons or consumers in the State of Texas for the purchase of Defendants' "Software License" or any of Defendants' travel or travel-related services.

40. In addition, Plaintiff STATE OF TEXAS respectfully prays that upon final hearing, this Court:

A. Order each and every Defendant to pay civil penalties of $20,000.00 per violation of the DTPA to the STATE OF TEXAS, pursuant to TEX. BUS. & COMM. CODE §17.47(c)(1);

B. Order each and every Defendant to pay civil penalties in the amount of $250,000.00 per violation of the DTPA to the STATE OF TEXAS for consumers 65 years of age or older, pursuant to TEX. BUS. & COMM. CODE §17.47(c)(2);

C. Order each and every Defendant, and any other persons or entities in active concert or participation with them, including but not limited to **ESCAPES WORLDWIDE, LLC** and **SCOTT CHRISTOPHER CAREY**, 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, pursuant to TEX. BUS. & COMM. CODE §17.47(d);

D. Order each and every Defendant to disgorge all monies taken from consumers through deceptive practices, including gains and benefits or profits resulting from violations of the DTPA;

E. Order each and every Defendant to pay civil penalties to the STATE OF TEXAS in the amount of $1,000 for every violation of the Telemarketing and Disclosure Act, Tex. Bus. & Comm. Code § 44.102(c), and $3,000 for every such violation found to be done willfully or knowingly;

F. Order each and every Defendant to pay civil penalties of $20,000.00 per violation of the Contest and Gift Giveaway Act to the STATE OF TEXAS, pursuant to TEX. BUS. & COMM. CODE § 40.122;

G. Order each and every Defendant to pay civil penalties in the amount of $250,000.00 to the STATE OF TEXAS per violation of the Contest and Gift Giveaway Act for persons 65 years of age or older, pursuant to TEX. BUS. & COMM. CODE § 40.122;

H. Order each and every Defendant to pay Plaintiff STATE OF TEXAS' reasonable attorney fees and costs of court, pursuant to TEX. GOV'T. CODE § 402.006(c); and

I. Grant all such other relief to which Plaintiff STATE OF TEXAS may show itself justly entitled.

Respectfully submitted,

GREG ABBOTT
ATTORNEY GENERAL OF TEXAS

C. ANDREW WEBER
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
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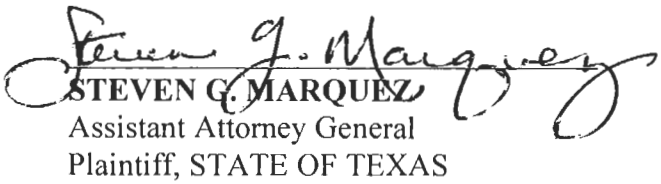
Facsimile: 210-225-1075

BEXAR COUNTY LOCAL RULE 6(c)(4) NOTICE

Plaintiff STATE OF TEXAS requests that this Temporary Restraining Order with Asset Freeze be issued without Notice to Defendants/Respondents, because if notice was given, such notice would cause irreparable harm to the Plaintiff/Movant and to the citizens of the State of Texas, and to prevent the dissipation of assets by Defendants/Respondents, and to restore monies unlawfully taken by Defendants.



STEVEN G. MARQUEZ
Assistant Attorney General
Plaintiff, STATE OF TEXAS

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF BEXAR §

Before me, the undersigned Notary Public, on this day personally appeared STEVEN G. MARQUEZ, who, after being duly sworn, stated under oath that he is counsel for Plaintiff in this action, that he has read the above petition, and that every statement contained in the petition is true and correct and within his personal knowledge or within the personal knowledge of the affiants as indicated in the affidavits attached to Plaintiff's Original Petition and Application for Ex Parte Temporary Restraining Order with Asset Freeze, Temporary Injunction, and Permanent Injunction.

Steven G. Marquez
STEVEN G. MARQUEZ
Assistant Attorney General
Plaintiff, STATE OF TEXAS

SUBSCRIBED AND SWORN TO before me, on the 1st day of April, 2009 to certify which witness my hand and official seal.

MIRNA M. BELTRAN
Notary Public
STATE OF TEXAS
Commission Exp. 04-03-2012
Notary without Bond

Mirna Beltran
Notary Public, State of Texas

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF BEXAR §

Before me, the undersigned Notary Public, on this day personally appeared GERARD GALVAN, who, after being duly sworn, stated under oath that he is an investigator for Plaintiff in this action, that he has read the above petition, and that every statement contained in the petition is true and correct and within his personal knowledge or within the personal knowledge of the affiants as indicated in the affidavits attached to Plaintiff's Original Petition and Application for Ex Parte Temporary Restraining Order with Asset Freeze, Temporary Injunction, and Permanent Injunction.

GERARD GALVAN
Investigator
Plaintiff, STATE OF TEXAS

SUBSCRIBED AND SWORN TO before me, on the 1st day of April, 2009 to certify which witness my hand and official seal.

Notary Public, State of Texas

MIRNA M. BELTRAN
Notary Public
STATE OF TEXAS
Commission Exp. 04-03-2012
Notary without Bond