

**FILED**

AT 8:32 O'CLOCK A M

NO. C-1287-09 F

MAY 07 2009

THE STATE OF TEXAS,  
Plaintiff,

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IN THE DISTRICT COURT

LAURA HINOJOSA, CLERK  
District Courts, Hidalgo County  
By \_\_\_\_\_ Deputy

v.

HIDALGO COUNTY, TEXAS

RYDER OXFORD and  
KAREN OXFORD d/b/a  
AM-PM TOWING,  
Defendants.

332 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION  
FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as plaintiff, acting by and through Attorney General of Texas GREG ABBOTT, complaining of RYDER OXFORD and KAREN OXFORD d/b/a AM-PM TOWING, hereinafter collectively referred to as defendants, and for cause of action would respectfully show:

**DISCOVERY CONTROL PLAN**

1. Discovery in this case should be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

**NATURE OF THIS SUIT**

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against defendants for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (hereinafter "DTPA"), the Vehicle Storage Facility Act, TEX. OCC. CODE ANN. § 2303.001 *et seq.* (hereinafter "VSFA"), and the Texas Towing Act, TEX. OCC. CODE ANN. § 2308.001 *et seq.* (hereinafter "TTA"). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. BUS. &

COM. CODE ANN. § 17.47. The VSFA also grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. OCC. CODE ANN. § 2303.305. The TTA also grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. OCC. CODE ANN. § 2308.502.

3. The Texas Department of Licensing and Regulation (“TDLR”) is an agency of the State of Texas charged with the responsibility of enforcing the occupational licensing laws of the State, including those concerning vehicle storage facilities and towing companies. As authorized by section 2303.003 of the VSFA, TDLR promulgated Vehicle Storage Facilities Rules, which are codified at 16 TEX. ADMIN. CODE §§ 85.1 - .1003 (hereinafter “Vehicle Storage Facilities Rules”), and as authorized by section 2308.057 of the TTA, TDLR promulgated Vehicle Towing Rules, which are codified at 16 TEX. ADMIN. CODE §§ 86.1 - .1002 (hereinafter “Vehicle Towing Rules”).

#### **DEFENDANTS**

4. Defendant RYDER OXFORD is an individual doing business as AM-PM TOWING, regularly conducts business in Hidalgo County, Texas, and may be served with process by serving him at 529 E. Shasta, McAllen, Texas 78504.

5. Defendant KAREN OXFORD is an individual doing business as AM-PM TOWING, regularly conducts business in Hidalgo County, Texas, and may be served with process by serving her at 529 E. Shasta, McAllen, Texas 78504.

#### **JURISDICTION**

6. This Court has jurisdiction over this action pursuant to § 17.47(b) of the DTPA.

## **VENUE**

7. Venue of this suit lies in Hidalgo County, Texas, for the following reasons:
- a. Under DTPA § 17.47(b), venue is proper because defendants have done business in the county of suit; and
  - b. Under TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), venue is proper in Hidalgo County because it is the county in which a substantial part of the events or omissions occurred giving rise to the claim.

## **PUBLIC INTEREST**

8. Plaintiff, THE STATE OF TEXAS, has reason to believe that defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that defendants have, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons, and that defendants adversely affected the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection and Public Health 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**

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

## **ACTS OF AGENTS**

10. Whenever in this petition it is alleged that defendants did any act, it is meant that defendants performed or participated in the act, or that the officers, agents or employees of defendants

performed or participated in the act on behalf of and under the authority of defendants.

### **FACTUAL ALLEGATIONS**

11. Defendants RYDER OXFORD and KAREN OXFORD carried on a business known as AM-PM TOWING for profit. The business is a towing company and a vehicle storage facility, located at 4609 S. Old 10<sup>th</sup> Street, McAllen, Texas.
12. Defendant RYDER OXFORD exercised managerial supervision over the operation of the business and carried on the business for profit. Defendant KAREN OXFORD provided capital for the operation of the business and contracted for supplies and equipment used in AM-PM TOWING's business operations.
13. On or about October 2, 2007, defendants filed a nonconsent tow fee schedule with the TDLR, which set the fees for light duty, medium duty, and heavy duty vehicles. Defendants failed to file a current nonconsent tow fee schedule by January 31, 2009. A copy of a Certification of Records from the TDLR is attached hereto as State's Exhibit 1 and incorporated herein for all purposes.
14. During the course of business, defendants charged and received compensation in excess of the fees stated in its nonconsent tow fee schedule.
15. During the course of business, defendants had employees engaged as tow operators and/or vehicle storage facility employees, however, the employees did not have a tow operator and/or vehicle storage facility employee license from the TDLR. A copy of a Certification of Records from the TDLR is attached hereto as State's Exhibit 2 and incorporated herein for all purposes.
16. As a result of a vehicle being towed, defendants would tow the vehicle to its vehicle storage facility. Defendants would require the vehicle owner to pay in cash only in order to repossess the

vehicle. Although defendants advertised that they accepted many forms of payment, including payment from a credit card or debit card, defendants would only accept cash from vehicle owners attempting to reclaim their vehicle.

17. During the course of business, while defendants were engaging in its towing services, they used four tow trucks to conduct the tow of vehicles. Between September 1, 2008 through September 22, 2008, defendants towed vehicles upon the public roadways of the State of Texas and accepted compensation for the tows, however, defendants did not register the tow trucks with the TDLR in order to perform towing services.

#### **VSFA VIOLATIONS**

18. Defendants, as alleged above, have in the course of trade and commerce violated the VSFA, as follows:

- a. By employing a person as a vehicle storage facility employee without a license from the TDLR, in violation of § 2303.1015 of the VSFA; and
- b. By failing to accept payment by an electronic check, debit card, or credit card, in violation of § 2303.159 of the VSFA.

#### **TTA VIOLATIONS**

19. Defendants, as alleged above, have in the course of trade and commerce violated the TTA, as follows:

- a. By operating and using tow trucks for consent towing or nonconsent towing on a public roadway without a permit from the TDLR, in violation of § 2308.101 of the TTA;
- b. By failing to file before January 31 of each year, the nonconsent fee schedule with

the TDLR, in violation of § 2308.206 of the TTA;

c. By employing a person as a tow operator without a license from the TDLR, in violation of § 86.207 of the Vehicle Towing Rules; and

d. By overcharging the fees on the nonconsent fee schedule, in violation of § 2308.206 of the TTA and § 86.500 of the Vehicle Towing Rules.

#### **DTPA VIOLATIONS**

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

a. By charging fees in excess of the nonconsent fee schedule, defendants are engaging in or have engaged in an act or practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA; and

b. By failing to accept payment by an electronic check, debit card, or credit card, defendants are engaging in or have engaged in an act or practice that is false, misleading, or deceptive, in violation of §17.46(a) of the DTPA.

#### **APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ASSET FREEZE**

21. There is good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary injunction to enjoin defendants from continued violations of the DTPA, VSFA, and TTA. If defendants are not restrained, they will continue to cause immediate and irreparable injury, loss, or damage to persons whose vehicles are unlawfully towed. Namely, said persons will be deprived of the use of their vehicles for personal or work

purposes and will suffer injury, loss, or damage as a result, including, but not limited to, the following: loss of livelihood if unable to travel to and from place of employment, loss of schooling if unable to transport children to and from school, injury to health if unable to travel to medical facilities for emergency attention or scheduled appointments.

22. Plaintiff, THE STATE OF TEXAS, also asks that any sale and/or transfer of title of the tow trucks of defendants be frozen during the pendency of these legal proceedings to preserve monies for consumer restitution upon final judgment. Defendants received large sums of money from their victims based on their towing services. Unless an asset freeze is granted, the tow trucks may be dissipated, lost, altered, removed or materially injured. The interests of the State of Texas and the public require an Asset Freeze to preserve property and/or monies for consumer restitution.

#### **PRAYER**

23. WHEREFORE, plaintiff THE STATE OF TEXAS prays that defendants be cited according to law to appear and answer herein; that with 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, their officers, agents, servants, employees, spouses, and attorneys and any other person in active concert or participation with defendants from engaging, directly or indirectly, in the following acts or practices, unless defendants come into compliance with the VSFA and TTA:

- a. Owning, operating, managing, being employed by, or performing consulting or other service in any capacity with, a towing company or a vehicle storage facility;
- b. Performing consulting or other service as an independent contractor in any capacity

with a towing company or a vehicle storage facility;

- c. Owning, engaging, or operating a towing company in the State of Texas;
- d. Owning, engaging, or operating tow trucks upon the public roadways and highways of the State of Texas;
- e. Towing vehicles upon the public roadways and highways of the State of Texas;
- f. Advertising, offering for sale, selling, or providing a towing company service upon the public roadways and highways of the State of Texas;
- g. Accepting money or consideration for performing a towing company service upon the public roadways and highways of the State of Texas;
- h. Owning, engaging, or operating a vehicle storage facility, or storing vehicles, 4609 S. Old 10<sup>th</sup> Street, McAllen, Texas, or any other location in the State of Texas;
- i. Advertising, offering for sale, selling, or providing a vehicle storage service, 4609 S. Old 10<sup>th</sup> Street, McAllen, Texas, or any other location in the State of Texas;
- j. Accepting money or consideration for performing a vehicle storage service, at 4609 S. Old 10<sup>th</sup> Street, McAllen, Texas, or any other location in the State of Texas;
- k. Holding themselves out, by any means, to the public as a towing company, a vehicle storage facility, or an employee thereof;
- l. Charging in excess of the nonconsent tow fee schedule on file with the TDI.R; and
- m. Representing, directly or by implication, that this Court, the Texas Department of Licensing and Regulation, or the Office of the Attorney General has approved any good or service sold or offered for sale by defendants, or has approved any of defendants' business

practices.

24. Plaintiff, THE STATE OF TEXAS, further prays that this Court order defendants, their officers, agents, servants, employees, spouses, attorneys, and any other person in active concert or participation with defendants, to relinquish possession of all vehicles in their possession, custody, or control to their rightful owners without penalty or charge.

25. WHEREFORE, THE STATE OF TEXAS, respectfully prays that this Court will:

- a. Adjudge against defendants civil penalties in favor of plaintiff, THE STATE OF TEXAS, in the amount not to exceed more than \$20,000.00 per violation of the DTPA;
- b. Adjudge against defendants civil penalties in favor of plaintiff, THE STATE OF TEXAS and TDLR for violations of the VSFA, pursuant to VSFA § 2303.305;
- c. Adjudge against defendants civil penalties in favor of plaintiff, THE STATE OF TEXAS and TDLR for violations of the TTA, pursuant to TTA § 2308.502;
- d. Order defendants to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;
- e. Adjudge against defendants reasonable attorney's fees and court costs pursuant to TEX. GOV'T. CODE ANN. § 402.006;
- f. Adjudge against defendants pre-judgment and post-judgment interest at the highest lawful rate;
- g. Rescind all agreements entered into by and between defendants and consumers;
- h. Appoint a receiver or sequester defendants' assets if defendants have been ordered

by this Court to make restitution and defendants have failed to do so within three months after the order to make restitution has become final and nonappealable;

i. Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).

26. Further, plaintiff, THE STATE OF TEXAS, respectfully prays for all other relief to which plaintiff, THE STATE OF TEXAS, may be 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  
Chief, Consumer Protection and  
Public Health Division

*Michael Aguirre*

MICHAEL AGUIRRE

Assistant Attorney General

State Bar No. 24038593

Office of the Attorney General

Consumer Protection and

Public Health Division

3201 N. McColl, Suite B

McAllen, Texas 78501

(956) 682-4547; Fax (956) 682-1957

Attorney for Plaintiff

VERIFICATION

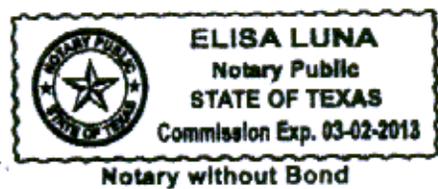
STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the Factual Allegations in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION, and has reason to believe, based on information and belief, that each and all said factual allegations are true and correct; that the attached exhibits are true and correct copies of the originals; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

*Rozanne N. Lopez*  
ROZANNE N. LOPEZ  
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on the 6<sup>th</sup> day of May, 2009.



*Elisa Luna*  
NOTARY PUBLIC IN AND  
FOR THE STATE OF TEXAS



# TEXAS DEPARTMENT OF LICENSING AND REGULATION

General Counsel's Office

P.O. Box 12157 • Austin, Texas 78711 • (512) 463-3306 • (800) 803-9202 • fax (512) 475-3032

Web site: [www.license.state.tx.us](http://www.license.state.tx.us)

## CERTIFICATION OF RECORDS

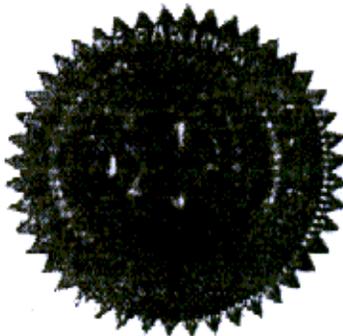
I, Debbie Meyer, am of sound mind, over the age of 18, capable of making this certification, and am personally acquainted with the facts herein stated. I am Records Custodian for the Texas Department of Licensing and Regulation (TDLR) and a lawful possessor and custodian of the official records of the Texas Department of Licensing and Regulation. After causing a search to be made of such records, I do hereby certify the following:

"Ryder Oxford did not file a nonconsent tow fee schedule by 1/31/09 as required by Occupations Code 2308.206"

IN TESTIMONY THEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of the Texas Department of Licensing and Regulation, at my office in the City of Austin, Travis County, Texas, on this the 19<sup>th</sup> day of March, 2009.

A handwritten signature in cursive script that reads "Debbie Meyer".

Debbie Meyer  
Records Custodian  
Texas Department of Licensing and Regulation



**STATE'S  
EXHIBIT**

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# TEXAS DEPARTMENT OF LICENSING AND REGULATION

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## CERTIFICATION OF RECORDS

I, Debbie Meyer, am of sound mind, over the age of 18, capable of making this certification, and am personally acquainted with the facts herein stated. I am Records Custodian for the Texas Department of Licensing and Regulation and a lawful possessor and custodian of the official records of the Texas Department of Licensing and Regulation. After causing a search to be made of such records, I do hereby certify the following:

1. "Ryder Oxford has never been licensed as a tow truck operator."
2. "Ryder Oxford has never been licensed as a vehicle storage facility employee."

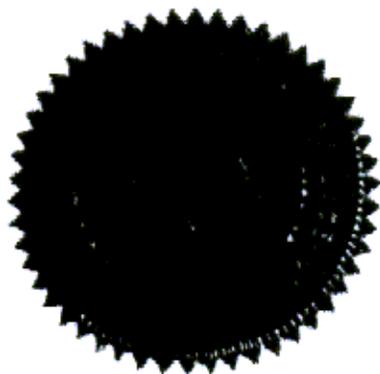
IN TESTIMONY THEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of the Texas Department of Licensing and Regulation, at my office in the City of Austin, Travis County, Texas, on this the 22<sup>nd</sup> day of January, 2009.



Debbie Meyer

Records Custodian

Texas Department of Licensing and Regulation



STATE'S  
EXHIBIT

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