



A) without the express written consent of the Receiver requested herein or by order of the court. The State has reason to believe that the Relief Defendant holds money or other assets derived from investor funds, or records related to the Defendants' scheme. The money and assets sought to be thus protected include all money and assets on deposit with, held by, or under the control of the Relief Defendant to the extent such money or assets are subject to any claim whatsoever, whether direct or contingent. *No wrongdoing is alleged herein against the Relief Defendant.*

In support of these requests, the State would show the Court the following:

### **DISCOVERY CONTROL PLAN**

1. Pursuant to Texas Rule of Civil Procedure 190, discovery in this cause is intended to be conducted under Level 2.

### **NATURE OF THIS ACTION**

2. This action is brought in the name of the State of Texas by the Attorney General of Texas, acting within the scope of his official duties under the authority granted him under the Constitution and laws of Texas. It is brought for injunctive relief, restitution, disgorgement of economic benefits, receivership and other equitable relief at the request of the Deputy Securities Commissioner, who, in making such a request, is acting within the scope of his official duties and authority under The Securities Act, TEX. REV. CIV. STAT. ANN. Art 581-1 et seq. (Vernon 1964 & Supp. 2009) (hereinafter referred to as the "**Texas Securities Act**" or the "Securities Act"). It is also brought pursuant to the Attorney General's authority under the **Texas Deceptive Trade Practices Act**, Tex. Bus. & Com. Code § 17.41, et seq. (the "DTPA").

### **THE DEFENDANTS**

3. **RETIREMENT VALUE, LLC** (hereinafter referred to as "Defendant Retirement Value") is a Texas Limited Liability Company that maintains a business address at 707 N. Walnut, New Braunfels, Texas 78130, and a mailing address at PO Box 310635, New Braunfels, Texas 78131. It may be **served** with process **through its Registered Agent, Richard H. "Dick" Gray, at its Registered Office at 707 N. Walnut, New Braunfels, Texas 78130.**
4. **RICHARD H. "DICK" GRAY** (hereinafter referred to as "Defendant Gray") is a natural person who is licensed as a General Lines Agent with the Texas Department of Insurance, and he holds qualifications in life, accident, health and HMO. He is also the Owner, the Chief Executive Officer and a Member of Defendant Retirement Value. He may be **served** with process at his residential address **at 1945 Round Table, New Braunfels, Texas 78130, or at** his business address and the Registered Office address for Defendant Retirement Value **at 707 N. Walnut, New Braunfels, Texas 78130.**

5. **BRUCE COLLINS** (hereinafter referred to as "Defendant Collins") is a natural person who is the Chief Operations Officer of Defendant Retirement Value. He may be **served** with process at his residential address **at 1510 Legendary Court, Grand Prairie, Texas 75050, or at** his business address and the Registered Office address for Defendant Retirement Value **at 707 N. Walnut, New Braunfels, Texas 78130.**

### THE RELIEF DEFENDANT

6. **Kiesling, Porter, Kiesling, & Free, P.C.** (hereinafter referred to as "Relief Defendant Kiesling Porter") may be **served** with process **through its Registered Agent, Bob Kiesling, at 348 E. San Antonio Street, New Braunfels, Texas 78130** or through its attorney, Spencer C. Barasch, Esq., at Andrews Kurth, L.L.P., 1717 Main Street, Suite 3700, Dallas, Texas 75201.

### JURISDICTION

7. The Court has jurisdiction over this action under Sections 25-1 and 32 of the Texas Securities Act and Sections 17.41 et seq. of the DTPA.

### VENUE

8. Venue is proper in Travis County, Texas under Sections 25-1.B and 32.A of the Texas Securities Act. Venue is also proper in Travis County, Texas under Section 17.47(b) of the DTPA because one or more of the subject transactions occurred in Austin, Travis County, Texas.

### NOTICE BEFORE SUIT

9. Pursuant to §17.47(a) of the DTPA, the Consumer Protection Division of the Office of the Attorney General has not made contact with the Defendants herein to inform them of the unlawful conduct alleged herein, for the reason that the undersigned is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants might evade service of process, destroy relevant records and secrete assets if prior notice of this suit were given.

### SUMMARY

10. Defendant Gray is a recidivist who has repeatedly engaged in illegal sales of securities through fraudulent investment schemes. He has established a definite

*modus operandi*: reap lucrative profits from fraudulent schemes involving the sale of securities until regulators either intervene or shut down the underlying brokerage. Once the underlying brokerage is unable to continue its operations, Defendant Gray returns to selling illegal securities on behalf of a new or different firm.

11. Defendant Gray most recently organized Defendant Retirement Value to fraudulently sell securities to the investing public. From in or about April 2009, through February 28, 2010, Defendants have already collectively raised approximately \$65 million from over 800 investors through the sale of fraudulent investments in the death benefits of life insurance policies.
12. Investors were told that their funds would be used to purchase life insurance policies and that investors would receive a return on the investment payable from the proceeds of the insurance policies upon the death of the insured.
13. Defendants, either directly or through a network of numerous unregistered salespersons, told investors that a third party or third parties had performed analyses of the medical histories of the insureds. These analyses reportedly determined the estimated longevity of the insureds and thereby allowed the Defendants to estimate the date that the insureds would die.
14. The analyses determined the anticipated maturity of the investment because investors are not entitled to receive a return on their investment until or unless the insureds die. Defendant Retirement Value, moreover, purportedly only reserved funds to pay for premiums for the life insurance policies through a term equal to the estimated life expectancy of the insureds plus twenty-four (24) months. If the insureds live past this term, investors will need to pay for the ongoing premium payments for the life insurance policies until the insured dies or they will lose their entire investment.
15. Defendants made a number of representations to investors regarding the accuracy in the determination of the life expectancy of the insureds. They represented, for example, that in excess of 90% of insureds die within their estimated life expectancy and that 98.5% of insureds die within their estimated life expectancy plus a term of twelve (12) months. These representations are important, because as discussed elsewhere within, the estimated life expectancies of the insureds are the critical factors used to determine the anticipated maturity of the investments and assess whether investors will need to pay additional funds to satisfy ongoing premium obligations.
16. Defendants made these statements in connection with a scheme to misrepresent the reliability of the life expectancies to investors in the Re-Sale Life Insurance Policy Program. They also did not tell investors that the life expectancies are obtained through a company controlled by a convicted felon who has provided similar life expectancies in other schemes that were eventually subject to regulatory action.

17. Defendants also misrepresented or failed to disclose material facts about their business reputes and qualifications and the safety and security of the investments. Investors tendered nearly \$70 million to Defendants based upon these fraudulent representations and nondisclosures.
18. Information related to Defendants' fraudulent investment scheme and the use of investor funds is described further in this verified original petition and in the sworn affidavits of Rani Sabban and Letha Sparks attached hereto, respectively, as **Exhibit B** and **Exhibit C**.

**DEFENDANT GRAY'S SALES OF ILLEGAL SECURITIES  
ISSUED BY SECURE INVESTMENT SERVICES, INC.**

19. Beginning as early as 2005 and continuing through as late as August 2007, Defendant Gray sold investments in bonded life settlement contracts issued by Secure Investment Services, Inc. (hereinafter referred to as "SIS"). Investors were allegedly told that their funds would be used to purchase interests in insurance policies that insured the lives of others and that they would receive a return on their investments payable from the proceeds of the insurance policies upon the deaths of the insured.
20. Investors were also allegedly told that a third party had provided an estimate of the life expectancy of the insured. Bonding companies, such as International Fidelity & Surety Ltd., Provident Capital and Indemnity Ltd., BALGI, and Sino Reinsurance, had also purportedly issued a bond that secured the investment.
21. Defendant Gray sold approximately ninety-two of these investments in bonded life settlements as an agent of SIS. Investors tendered approximately \$3 million of funds for the purchase of the investment and Defendant Gray received in excess of \$400,000.00 in commissions for these sales.
22. On or about August 23, 2007, the United States Securities and Exchange Commission filed a complaint against SIS and others in Cause No. 2:07-cv-01724-LEW-CMK, in the United States District Court for the Eastern District of California, Sacramento Division. The complaint alleged, among other things, that SIS orchestrated a Ponzi scheme and misled investors by providing them life expectancy estimates certified by a physician from Amscot Medical Labs, Inc. (hereinafter referred to as "Amscot Medical") and Midwest Medical Review, LLC (hereinafter referred to as "Midwest Medical").
23. On or about August 24, 2007, the United States District Court, the Honorable Judge Ronald S.W. Lew presiding, entered an Order Appointing Receiver, Temporary Restraining Order, and Order to Show Cause and appointed Michael J. Quilling as Temporary Receiver for SIS and other named defendants. On or about October 31, 2007, the United States District Court, the Honorable Judge

Ronald S.W. Lew presiding, entered an Order Appointing Receiver that converted the Temporary Receiver to a Permanent Receiver.

24. On or about June 25, 2009, the Texas Department of Insurance filed a Notice of Hearing with the State Office of Administrative Hearings in Docket No. 454-09-4867C. The Notice of Hearing named Defendant Gray and sought the revocation of his insurance license based in part upon his conduct as an agent of SIS. It specifically alleged that Defendant Gray committed fraudulent or dishonest acts or practices and issued bonds without holding the required General Property and Casualty License.

**DEFENDANT GRAY'S SALES OF SECURITIES  
ISSUED BY AMERICAN SETTLEMENT ASSOCIATES, LLC**

25. During and about 2008, Defendant Gray served as the Managing Member of Hill Country Funding, LLC (hereinafter referred to as "Hill Country Funding"). Defendant Gray, acting in this capacity, offered for sale and sold investments in bonded life settlement contracts purportedly issued by American Settlement Associates, LLC (hereinafter referred to as "ASA"). These bonded life settlement contracts were also purportedly secured by a bond issued by Provident Capital Indemnity, Ltd.
26. At the time that Defendant Gray, Hill Country Funding, and ASA offered for sale and sold the bonded life settlement contracts, the Texas Department of Insurance and the Texas State Securities Board had already taken actions against the bonding company, to wit:
  - A. On or around November 6, 2006, the Insurance Commissioner of Texas entered Emergency Cease and Desist Order No. 06-1154. The Insurance Commissioner found therein that Provident Capital Indemnity, Ltd., was engaging in the unauthorized business of insurance in Texas, the conduct was fraudulent, illegal, hazardous, and created an immediate danger to public safety, and that such conduct was designed to evade the insurance laws of the State of Texas.
  - B. On or about January 17, 2008, the Securities Commissioner entered Emergency Cease and Desist Order No. ENF-08-CDO-1647, styled In the Matter of Provident Capital Indemnity, LTD, et al. The Securities Commissioner found, inter alia, that:
    - i. The bonded life settlement contract and bonds were "securities" as that term is defined in Section 4 of the Securities Act,
    - ii. Provident Capital Indemnity, Ltd., made offers containing statements that were materially misleading or otherwise likely to deceive the public and engaged in securities fraud, and

- iii. Harold Maridon, a control person of Provident Capital Indemnity, Ltd., was previously convicted of conspiracy to commit mail and wire fraud in United States of America v. Harold Maridon, Cause No. 8:97CR-149-1, in the United States District Court, District of Nebraska.
27. The Enforcement Division of the Texas State Securities Board conducted an investigation of Defendant Gray and Hill Country Funding. On or about September 8, 2008, Defendant Gray, both individually and in his capacity as Managing Member of Hill Country Funding, LLC, filed an Undertaking with the Securities Commissioner wherein he:
- A. Agreed to notify all persons who made loans or any forms of investment with Hill Country Funding, LLC, that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd., and advise them of the existence of the Emergency Cease and Desist Orders entered by the Texas Department of Insurance and the Texas State Securities Board.
  - B. Agreed to offer to rescind any transactions with persons who made loans or any form of investment with Hill Country Funding, LLC, that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd., and
  - C. Agreed to comply with all provisions of the Texas Securities Act and to cooperate with any future inquiries by the Texas State Securities Board.
28. On or about March 19, 2010, the United States District Court for the Southern District of Texas, Houston Division, granted the United States Securities and Exchange Commission's request in Case No. 4:10-cv-00912 to freeze the assets of ASA and to appoint a Receiver for ASA and others. The SEC complaint alleged, inter alia, that principals of ASA failed to use investor funds to pay future premium payments for the policies causing them to lapse, and instead, used said funds to support other business and personal expenses.

**DEFENDANTS' SALES OF ILLEGAL SECURITIES**  
**ISSUED BY DEFENDANT RETIREMENT VALUE, LLC**

29. Beginning in or about April 2009, and continuing through March 30, 2010, Defendants offered for sale and sold investments in the death benefits of life insurance policies. Defendants marketed and referred to the investments as Defendant Retirement Value's Re-Sale Life Insurance Policy Program
30. Defendants told investors that their purchase of an investment in the Re-Sale Life Insurance Policy Program will entitle them to "base-line expected income" at an annual rate of 16.5% that will be payable upon maturity of the investment.

Individuals who invest \$100,000 in the Re-Sale Life Insurance Policy Program will therefore expect to receive "base-line expected interest" in the amount of approximately \$74,800 upon maturity. Investors should therefore expect to receive \$174,800, representing the "base line expected interest" and the original principal contribution, upon the maturity of the investment.

31. Defendants told investors that they could realize the "base-line expected interest" by using investor funds to purchase interests in re-sale life insurance policies. They described the structure of the transactions as follows:
  - A. Investors were provided with a "portfolio" of re-sale life insurance policies selected by Retirement Value.
  - B. The "portfolio" of re-sale life insurance policies identified certain aspects of each individual policy, including the anticipated life expectancy of the person insured by each policy.
  - C. Investors chose to participate in one or more of the re-sale life insurance policies identified within this portfolio.
  - D. Principal tendered by investors was deposited into escrow accounts maintained by Wells Fargo.
  - E. These funds were managed by Relief Defendant Kiesling Porter in its capacity as the Escrow Agent. Defendants told investors that the use of Kiesling Porter "assure[d] the total safeguarding and preserving of [the] basis and targeted income." These were described as "essential components" of the Re-Sale Life Insurance Policy Program.
  - F. These funds were used to purchase the re-sale life insurance policies identified on the aforesaid portfolio from a "policy aggregator."
  - G. Defendant Retirement Value became the owner of the re-sale life insurance policies.
  - H. Relief Defendant Kiesling Porter became the beneficiary of the re-sale life insurance policies. As the beneficiary, Relief Defendant Kiesling Porter will receive the death benefits of the re-sale life insurance policies upon the death of the insured.
  - I. Investors became "irrevocable co-beneficiaries." Even though they are identified as "irrevocable co-beneficiaries," investors are not entitled to receive the death benefits of the re-sale life insurance policies from the issuing insurance carrier when the insured dies. Instead, Relief Defendant Kiesling Porter is required to pay investors, as "irrevocable co-beneficiaries," a pro-rata distribution of the death benefit of selected policies upon the maturity of the policy due to the death of the insured

- J. Funds are maintained in escrow to cover all premium payments for the life insurance policies that will come due and owing on the life insurance policies for a term equal to the life expectancy of the insured plus twenty-four (24) months. Investors are entitled to a pro-rata return of all unused premiums that remain in escrow upon the death of the insured. Relief Defendant Kiesling Porter, in its capacity as escrow agent, is responsible for processing all premium payments.
- K. Investors will be required to advance additional funds to cover a pro-rata portion of future premiums if the insured lives past his or her projected date of death plus a term of twenty-four (24) months. Investors who are unable to advance these funds under these circumstances will forfeit their interests and lose their expected returns.
32. Defendants touted the business repute and qualifications of Defendant Gray and Relief Defendant Kiesling Porter. For example:
- A. Defendants promoted Defendant Gray as being credible and qualified by representing that:
- [Defendant Gray] has helped clients make wise money decisions in hard financial times for the past 35 years and has been a licensed insurance agent for over 18 years. Personal participation in the re-sale life insurance policies for his own retirement planning reinforces his credibility when assisting numerous clients in doing the same. After earning an A.B. [sic] degree in political science and a Master of Divinity degree - and prior to the start of his business career - [Defendant Gray] proudly completed four years of U.S. Army active duty as a Chaplain, which included 13 months of decorated field duty in Viet Nam [sic].
- B. Defendants represented Relief Defendant Kiesling Porter serves as an independent Escrow Agent and “assure[d] total safeguarding and preserving of [the] basis and targeted income.” Defendants further represented that investor funds were not handled by Defendant Retirement Value and that, instead, Relief Defendant Kiesling Porter acted as an independent Escrow Agent. In its capacity as Escrow Agent, Relief Defendant Kiesling Porter received investor funds and ensured that the necessary premiums were paid, thereby reducing the risk of insurance policies lapsing.
33. Defendants also touted the business repute, qualifications and reliability of the third party or third parties that provide the medical reviews and estimate the life expectancies of the insureds. For example:

- A. Defendants represented that Defendant Retirement Value procured estimates provided by a third party or third parties to predict the date that the insured will die. Respondents told investors that the “fundamental data” for these estimates is “thoroughly underwritten by and provided... by as many as three (3) independent and totally objective... sources.” Defendants purported to only use the longest available life expectancy from these sources to determine the life expectancy of the individuals insured by the insurance policies that are part of the Re-Sale Life Insurance Policy Program.
- B. Defendants represented that all policies are accompanied with a life expectancy certificate. However, Defendants failed to disclose that these life expectancy certificates are received by Defendants from James Insurance and not directly from Midwest Medical. Midwest Medical issues a disclaimer for any certificates not received directly from Midwest Medical and will not guarantee certificates received otherwise as authentic.
- C. Defendants touted the accuracy of the life expectancy estimates. For example, Defendants told investors that 95% of insureds die at or before their estimated date of death. Defendants also told investors that 98.5% of insured die within twelve months of their estimated date of death.

**THE LIFE EXPECTANCY REPORTS USED BY DEFENDANT  
RETIREMENT VALUE TO ESTIMATE THE DATE THAT THE INSURED WILL DIE**

34. Although Defendants represented to investors that Defendant Retirement Value receives three life expectancy evaluations and always selects the longest, in truth and in fact Defendants relied upon life expectancy reports that were provided solely by Midwest Medical.
35. Midwest Medical is controlled by George Kindness. In or around November 2003, George Kindness was indicted for twenty-one counts involving conspiracy and fraud in the introduction of misbranded and adulterated drugs into commerce in United States of America v. George Kindness et al., CR. No. 03-20433BV, in the United States District Court for the Western District of Tennessee, Western Division. The indictment also alleged that George Kindness falsely represented himself to be a medical doctor. He later pleaded to one count of the indictment and is a convicted felon.
36. Midwest Medical and George Kindness have been previously accused of providing inaccurate life expectancies that incorrectly and falsely predict the dates that insureds will die. These accusations were made in cases that resulted in the appointment of a receivership, such as SEC v. Mutual Benefits Corp., 408 F.3d 737 (11th Cir. 2005), SEC v. Secure Investment Inc. et al., Case No. 2:07-cv-O1724-LEW-CMK, in the Eastern District of California, Sacramento Division,

and more recently, SEC v. American Settlement Associates et al., Case No. 4:10-cv-00912, in the Southern District of Texas, Houston Division.

37. Midwest Medical retained HMH Consulting to perform a detailed audit of its life expectancy estimate process and analysis of its result. On or about February 22, 2010, HMH Consulting issued a preliminary report, which concluded that, on the surface:

...there seems to be clear evidence that [Midwest Medical]'s Life Expectancy Estimates have not been accurate and there is a strong tendency for [Midwest Medical]'s Median Life Expectancy Estimates to be too short.

HMH Consulting qualified its finding by noting that it uncovered a large number of data issues during the audit and analysis and that these data issues precluded a fully reliable statistical analysis.

38. AVS Underwriting, LLC, and 21<sup>st</sup> Services, LLC conducted life expectancy evaluations for at least 43 of the same insureds covered under the life insurance policies offered in the Re-Sale Life Insurance Policy Program. The reports show life expectancies averaging anywhere from 55 months up to 75 months longer than the life expectancies provided by Midwest Medical for policies offered in the Re-Sale Life Insurance Program.

#### **OTHER REGULATORY ACTIONS AGAINST DEFENDANTS**

39. On March 29, 2010, the Securities Commissioner entered Emergency Cease and Desist Order ENF-10-CDO-1686 (hereinafter referred to as the "Securities Emergency Order"), styled In the Matter of Retirement Value et al. The Securities Commissioner found therein the Defendants engaged in fraud in connection with the offer and sale of securities, offered for sale unregistered securities and offered for sale securities without being registered as a dealer or agent.
40. On April 9, 2010, the Insurance Commissioner entered Emergency Cease and Desist Order No. 10-0289 (hereinafter referred to as the "Insurance Emergency Order") against Defendants Retirement Value and Gray and Midwest Medical. The Insurance Commissioner found therein that the named parties committed fraudulent and dishonest acts and/or engaged in an unfair or deceptive act or practice in the business of insurance.
41. As of the entry of the Securities Emergency Order and the Insurance Emergency Order, Defendants received approximately \$65 million from over 800 investors who collectively made approximately 1100 investments in the Re-Sale Life Insurance Policy Program. Defendants used these funds in part as follows:

- A. Defendants paid approximately \$9.3 million as commissions to unregistered sales agents,
  - B. Defendants retained approximately \$8.4 million,
  - C. Defendants used \$20.2 million to acquire the life insurance policies, approximately \$1.2 million to pay life insurance premiums, \$670,000 for escrow fees, and set aside approximately \$22 million to finish acquiring certain life insurance policies and to establish funds for future premium payments during the life expectancy of the insured plus twenty-four (24) months.
42. Defendants have since represented to the Enforcement Division of the Texas State Securities Board that they may transfer ownership of the life insurance policies of the Re-Sale Life Insurance Program to an unidentified third party.

#### **DEFENDANTS OFFERED FOR SALE AND SOLD SECURITIES**

43. The purpose of the Texas Securities Act is to protect investors. e.g., Texas Securities Act Section 10-1.B; Shields v. State, 27 S.W. 3d 267 (Tex. App. 2000).
44. Section 4.A of the Texas Securities Act defines the term “securities” to include investment contracts.
45. The investments in the Re-Sale Life Insurance Policy Program are securities in the form of “investment contracts.” The Texas Securities Act provides that instruments that constitute “investment contracts” are securities. The Texas Supreme Court has defined the term “investment contracts” to be (1) investments of money or property into (2) a common enterprise with (3) the expectation of profit (4) to be derived from the essential managerial efforts of others. See Searsy v. Commercial Trading Corp., 560 S.W.2d 637, 640 (Tex. 1978).
46. An application of this definition to the investments in the Re-Sale Life Insurance Policy Program demonstrates that these investments are “investment contracts,” and these instruments are therefore securities.

#### **CAUSE OF ACTION NO. 1**

#### **DEFENDANTS OFFERED AND SOLD UNREGISTERED SECURITIES**

47. The Texas Securities Act prohibits the sale or offer for sale of unregistered securities. Section 7.A(1) of the Texas Securities Act provides:

No dealer, agent or salesman, shall sell or offer for sale any securities issued after September 6, 1955, except those which shall have been registered by Notification under subsection B or by Coordination under

subsection C of this Section 7 and except those which come within the classes enumerated in Section 5 or Section 6 of the Act, until the issuer of such securities or a dealer registered under the provisions of this Act shall have been granted a permit by the Commissioner. . . .

48. The Re-Sale Life Insurance Policy Program has not been registered with the Securities Commissioner and a permit has not been granted for the sale of such securities required by Section 7 of the Texas Securities Act.

**CAUSE OF ACTION NO. 2**  
**DEFENDANTS WERE NOT REGISTERED TO OFFER OR SELL SECURITIES**

49. Section 12.A of the Texas Securities Act requires that all persons selling or offering to sell securities in Texas must be registered under the Act as follows:

Except as provided in Section 5 of this Act, no person, firm, corporation or dealer shall, directly or through agents or salesmen, offer for sale, sell or make a sale of any securities in this state without first being registered as in this Act provided. No salesman or agent shall, in behalf of any dealer, sell, offer for sale, or make sale of any securities within the state unless registered as a salesman or agent of a registered dealer under the provisions of this Act.

50. Defendants and various sales agents were not registered as dealers, agents or salesmen required by Section 12.A of the Texas Securities Act.

**CAUSE OF ACTION NO. 3**  
**FRAUD AND FRAUDULENT PRACTICES**  
**IN CONNECTION WITH THE SALE OF SECURITIES**

51. The use of fraud and fraudulent practices in connection with the offer for sale and sale of securities is prohibited by Sections 25-1 and 32.A of the Texas Securities Act. Section 4.F of the Texas Securities Act defines fraud and fraudulent practice as follows:

The term "fraud" or "fraudulent practice" shall include any misrepresentations, in any manner, of a relevant fact; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; . . . provided, that nothing herein shall limit or diminish the full meaning of the terms "fraud," "fraudulent," and "fraudulent practice" as applied or accepted in courts of law or equity.

52. In connection with the offer for sale and sale of the Re-Sale Life Insurance Policy Program, Defendants engaged in fraud by intentionally failing to disclose one or more of the following material facts relating to the estimated life expectancies of the insureds:
- A. That the Defendants relied solely on life expectancy analyses procured from Midwest Medical, and therefore did not calculate the life expectancy of the insureds that were offered in the Re-Sale Life Insurance Policy Program by using the longest life expectancy analysis provided by up to three firms.
  - B. True and accurate information about Midwest Medical, its officers and directors and their business repute and qualifications, including that:
    - i. George Kindness, the owner of Midwest Medical, was indicted for twenty-one crimes involving conspiracy and fraud in the introduction of misbranded and adulterated drugs into commerce, and
    - ii. That George Kindness pleaded guilty to one count of the aforesaid indictment and is a convicted felon, and
  - C. The extent and nature of any due diligence conducted in reviewing the accuracy of the life expectancies provided by Midwest Medical and George Kindness.
  - D. That the Defendants received certificates that certified the life expectancies from a third party and not directly from Midwest Medical, and that Midwest Medical issued a disclaimer for certificates not received directly from Midwest Medical.
  - E. Information relating to the consequences of the insured living past his or her estimated date of death and the utilization of a “premium call” to pay pro-rata obligations necessary to keep life insurance policies in force and effect, including without limitation, the consequences of other investors refusing or being unable to satisfy their obligations under a “premium call.”
53. In connection with the offer for sale and sale of the Re-Sale Life Insurance Policy Program, Defendants engaged in fraud by misrepresenting relevant facts relating to the true accuracy, reliability or historical performance of Midwest Medical in the analysis of medical records of insureds and/or the estimation of the life expectancy of insureds.
54. In connection with the offer for sale and sale of the Re-Sale Life Insurance Policy Program, Defendants Retirement Value and Gray engaged in fraud by intentionally failing to disclose one or more of the following material facts relating to the business repute, qualifications and experience of Respondent Gray:

- A. True and accurate information about Respondent Gray's sale of bonded life settlements through Secure Investment Services, as well as true and accurate information related to SEC v. Secure Investment Inc. et al., Case No. 2:07-cv-O1724-LEW-CMK, in the Eastern District of California, Sacramento Division, which was based upon a complaint that
- i. The named defendants fraudulently sold bonded life settlement contracts in a ponzi scheme using bonds issued by Provident Capital Indemnity, Ltd., and
  - ii. The bonded life settlement contracts were predicated on life expectancy estimates provided in part by Midwest Medical and George Kindness, and the life expectancy estimates were falsely certified and unreliable.
- B. That the Texas Department of Insurance filed a Notice of Hearing against Respondent Gray based in part upon his conduct as an agent of Secure Investment Services. The Texas Department of Insurance alleged therein that:
- i. Beginning as early as 2005 and continuing through at least 2007, Respondent Gray sold approximately ninety-two investment in bonded life settlement contracts as an agent of Secure Investment Services,
  - ii. Investors tendered approximately \$3 million to Secure Investment Services for the purchase of these investments in bonded life settlements,
  - iii. Respondent Gray received in excess of \$400,000.00 in commissions for his sale of these bonded life settlement contracts, and
  - iv. Respondent Gray committed fraudulent or dishonest acts or practices as contemplated by TEX. INS. CODE ANN. § 4005.101 (b)(5) and issuing bonds without holding a General Property and Casualty License as required by TEX. INS. CODE ANN. Chapter 4051.
- C. That Respondent Gray, both individually and in his capacity as Managing Member of Hill Country Funding, thereafter sold investments in bonded life settlement contracts purportedly secured by Provident Capital Indemnity, Ltd, and subsequently filed an Undertaking with the Securities Commissioner wherein he represented the following:

- i. Agreed to notify all persons who made loans or any form of investment with Hill County Funding, that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd. and advised them of the existence of Emergency Cease and Desist Orders entered by the Texas Department of Insurance and the Texas State Securities Board,
    - ii. Agreed to offer to rescind any transactions with persons who made loans or any form of investment with Hill County Funding, that related to any form of bond or reinsurance to be procured from Provident Capital Indemnity, Ltd., and
    - iii. Promised to comply with all provisions of the Texas Securities Act and to cooperate with any future inquiries by the Texas State Securities Board.
  - D. The underlying facts and circumstances described in SEC v. Secure Investment Services, Inc., et al., Case No. 2:07-cv-O1724-LEW-CMK, the aforementioned Notice of Hearing filed by the Texas Department of Insurance, and the facts and circumstances relating to the sale and subsequent rescission of investments through Hill Country Funding.
- 55. In connection with the offer for sale and sale of the Re-Sale Life Insurance Policy Program, Defendants engaged in fraud by intentionally failing to disclose one or more of the following material facts relating to the safety, security or other risks associated with the Re-Sale Life Insurance Policy Program:
  - A. Information regarding the nature of the life insurance policies and the manner in which the life insurance policies are selected, including but not limited to, any controls or due diligence that are used to screen out said life insurance policies for “jet-issued policies,” “wet-ink policies,” “second-to-die policies,” contestable policies or other types of life insurance policies that could impact the Re-Sale Life Insurance Policy Program.
  - B. Information related to the legal effect and consequence of Defendant Retirement Value being named as the owner of the life insurance policies offered in the Re-Sale Life Insurance Policy program, such as:
    - i. The existence and nature of any legal obligations, contracts or controls that prevent Defendant Retirement Value from selling, transferring or assigning its ownership of the life insurance policies to a third party,
    - ii. The existence and nature of any legal obligations, contracts or controls that prevent Defendant Retirement Value from changing the beneficiary of the life insurance policies to a party other than Relief Defendant Kiesling Porter, and

- iii. The effect of the sale, transfer or assignment of the ownership of the life insurance policies and the effect of the change of beneficiary of the life insurance policies.
- C. Information related to the legal effect and consequence of Relief Defendant Kiesling Porter being named as the beneficiary of the life insurance policies offered in the Re-Sale Life Insurance Policy Program, such as:
  - i. The legal obligation, ability and wherewithal of Relief Defendant Kiesling Porter to litigate any contestable matters that relate to said life insurance policies or the payment of claims thereon,
  - ii. The fact that Relief Defendant Kiesling Porter does not perform any independent, objective or fiduciary duties, does not independently verify the purchase price, premiums or terms of the life insurance policies and acts only upon the direction of Defendant Retirement Value,, and
  - iii. The fact that Relief Defendant Kiesling Porter is not required to continue to serve as the Escrow Agent and that it can relinquish its duties by canceling the Escrow Agreement.
- D. The assets, liabilities or capitalization of Defendant Retirement Value and Relief Defendant Kiesling Porter, or any information that will allow a prospective investor to assess or verify that Defendant Retirement Value and Relief Defendant Kiesling Porter will continue to operate through the maturity of investments in the Re-Sale Life Insurance Policy Program.
- E. The identity of and information about the "Policy Financing Entity," the "Policy Aggregator" and other persons and entities who perform managerial efforts in regard to the Re-Sale Life Insurance Policy Program.
- F. Information relating to the methodology used to track the insured and determine when he or she dies.
- G. A true and accurate accounting of the actual or anticipated use of investor funds, including but not limited to the amount of investor funds that will be used to pay commissions to sales agents, fees or profits to Defendant Retirement Value and its agents, the salaries of management including Defendants Gray and Collins, the acquisition of the life insurance policies, the effectuation of medical reviews to predict a date of death, the use of Relief Defendant Kiesling Porter as Escrow Agent and any other fees or charges associated with the Re-Sale Life Insurance Policy Program.

**CAUSE OF ACTION NO. 4**  
**VIOLATION OF DECEPTIVE TRADE PRACTICES ACT**

56. Paragraphs 19 through 46 above are incorporated by reference to support this cause of action as if fully set forth herein.
57. Plaintiff has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth herein. Plaintiff therefore has reason to believe Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Accordingly, the Consumer Protection Division of the Office of the Attorney General believes and is of the opinion that these proceedings are in the public interest.
58. Section 17.45(6) of the DTPA defines "trade" and "commerce" to include "the advertising, offering for sale... or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state." Defendants have, at all times described herein, engaged in conduct that constitutes "trade" and "commerce."
59. Section 17.46(a) of the DTPA declares unlawful all "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce."
60. Section 17.46(b) of the DTPA defines "false, misleading or deceptive acts or practices" to include:
- A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services pursuant to Section 17.46(b)(2),
  - B. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another pursuant to Section 17.46(b)(3),
  - C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has sponsorship, approval, status, affiliation, or connection which he does not pursuant to Section 17.46(b)(5),
  - D. Representing that goods or services are of a particular standard, quality of grade... if they are of another pursuant to Section 17.46(b)(7),
  - E. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions pursuant to Section 17.46(b)(11),

- F. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law pursuant to Section 17.46(b)(12),
  - G. 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 pursuant to Section 17.46(b)(24).
61. As alleged herein, Defendants have engaged in false, deceptive and misleading practices in violation of Section 17.46(a) of the DTPA through their offer for sale and sale of investments in the death benefits of life insurance policies.
62. As alleged herein, Defendants have engaged in false, deceptive and misleading practices in violation of Section 17.46(b)(2), (3), (5), (7), (11), (12) and (24) when they engaged in the conduct alleged in paragraphs 28 through 45.

#### **THE NEED FOR INJUNCTIVE RELIEF**

63. Paragraphs 19 through 46 above are incorporated by reference as if fully set forth herein.
64. Immediate injunctive relief in the form of a temporary restraining order against Defendants is necessary to restrain Defendants from wasting, secreting, and otherwise dissipating the investor's funds, derived funds, revenues, and other assets required and held in connection with the sale of the above-described securities to the public.
65. The Plaintiff believes that if Defendants had notice of this action, they would dispose of, transfer, alter, pledge, or conceal money, property, assets, books and records obtained from investors, and transfer money to accounts beyond the reach of Texas courts, and that an *ex parte* order is thus necessary to prevent the irreparable harm to investors that would result from such conduct.
66. Defendant Gray's history and continued involvement in entities accused of fraudulent practices and Defendant Retirement Value's ability to sell, assign, change beneficiaries, or otherwise dispose of the life insurance policies and other misrepresentations and non-disclosures set forth above, are of such a serious character that there is substantial likelihood funds may be secreted or disposed of if Defendants are provided with notice of a proceeding, thus causing irreparable harm to investors.

67. Section 32.A of the Texas Securities Act authorizes the Attorney General, upon the request of the Commissioner, to bring an action against certain persons to enjoin the continuation of certain practices. This section provides:

Whenever it shall appear to the Commissioner either upon complaint or otherwise, that any person has engaged or is about to engage in fraud or a fraudulent practice in connection with the sale of a security, has engaged or is about to engage in fraud or a fraudulent practice in the rendering of services as an investment adviser or investment adviser representative, has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public, or is engaging or is about to engage in an act or practice that violates this Act or a Board rule or order, the Attorney General may, on request by the Commissioner, and in addition to any other remedies, bring action in the name and on behalf of the State of Texas against such person or company and any person who, with intent to deceive or defraud or with reckless disregard for the truth or the law, has materially aided, is materially aiding, or is about to materially aid such person and any other person or persons heretofore concerned in or in any way participating in or about to participate in such acts or practices, to enjoin such person or company and such other person or persons from continuing such acts or practices or doing any act or acts in furtherance thereof. The Commissioner shall verify, on information and belief, the facts contained in an application for injunction under this section. In any such court proceedings, the Attorney General may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and the defendant's employees or agents and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. The District Court of any county, wherein it is shown that the acts complained of have been or are about to be committed, or a district court in Travis County shall have jurisdiction of any action brought under this section, and this provision shall be superior to any provision fixing the jurisdiction or venue with regard to suits for injunction. No bond for injunction shall be required of the Commissioner or Attorney General in any such proceeding.

68. Based upon the conduct alleged herein, and pursuant to Section 32.A of the Texas Securities Act, the State of Texas is praying for the issuance of a permanent injunction enjoining Defendants from acting as dealers, agents or salesmen in securities without complying with all dealer and salesman registration requirements of the Texas Securities Act; from selling securities that have not been registered with the Securities Commissioner and enjoining

Defendants from engaging in fraud and fraudulent practices in connection with the sale of securities.

69. Under Section 17.47(a) of the DTPA, whenever the Consumer Protection Division of the Office of the Attorney General has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful in Subchapter E of the DTPA, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.
70. The State seeks immediate injunctive relief pursuant to Section 32.A of the Texas Securities Act and Section 17.47(b) of the DTPA in the form of a temporary restraining order against Defendants, and Defendant Retirement Value's officers, directors, principals, partners, joint venturers, stockholders, employees, salesmen, agents, representatives, attorneys, and family members, against the other Relief Defendant Kiesling, Porter who is thought to be holding investor-derived property or records, to prevent disposing of, transferring, pledging, concealing, or altering in any manner, any such property, assets, books and records; and to protect any funds obtained from persons who have purchased securities described below from Defendants or their salesmen, employees, or agents, and any funds and other assets derived therefrom.
71. All injunctive relief sought in this case is available to the State of Texas as Plaintiff without bond pursuant to Section 32.A of the Texas Securities Act, Section 17.47(b) of the DTPA and Section 6.001 of the Civil Practice and Remedies Code.

### **NEED FOR A RECEIVER**

72. Paragraphs 19 through 46 above are incorporated by reference as if fully set forth herein.
73. The State also seeks the immediate appointment of a temporary receiver and upon hearing, the continuation of that appointment and upon further hearing, the appointment of a permanent receiver. Section 25-1 provides in part:

Whenever it shall appear to the Commissioner, either upon complaint or otherwise, that:

any person or company acting as a dealer, agent, investment adviser, investment adviser representative, or issuer (as defined in Section 4 of this Act), or an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer, whether or not required to be registered by the commissioner as in this Act

provided, shall have engaged in any act, transaction, practice, or course of business declared by Section 32 of this Act to be a fraudulent practice;

such person or company shall have acted as a dealer, agent, investment adviser, investment adviser representative, or issuer or an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer in connection with such fraudulent practice; and

the appointment of a receiver for such person or company, or the assets of such a person or company is necessary in order to conserve and protect the assets of such person or company for the benefit of customers, security holders, and other actual and potential claimants of such person or company the commissioner may request the attorney general to bring an action for the appointment of a receiver for such person or company or the assets of such person or company.

As alleged above, all of these requirements have been met. Defendants have engaged in fraud in connection with the sale securities and a receiver is necessary to insure that investor funds are accounted for, conserved and returned to investors. Pursuant to Texas Securities Act Section 25-1.C, such appointment may be made without notice.

74. Defendants have acted as dealers, salesmen, or issuers in the sale of securities and engaged in acts, transactions, practices, and courses of business declared by Section 32.A to be fraudulent practices in the offer for sale and sale of securities as described above.
75. The appointment of a receiver for Defendants and the business operations is necessary in order to conserve and protect whatever investor-derived assets remain for the benefit of Defendants' customers, security holders, and other actual or potential claimants of Defendants.
76. A receiver is needed for the funds and assets of Defendants, including any investment product they obtained through proceeds of investor-derived money, in order to conserve and protect said funds and assets for the benefit of the investors should restitution be granted in this case under Section 32.B of the Texas Securities Act.
77. Unless the receivership relief is granted and a temporary receiver appointed for the assets and affairs of Defendants, the funds and other property held by Defendants will be dissipated and lost, to the immediate and irreparable harm of the persons who purchased the securities from Defendants and to the harm of the general public. There is no adequate remedy at law.

78. For the aforementioned reasons, an order, before notice and hearing, appointing a temporary receiver for the assets affairs of Defendants should be issued. After notice and hearing, it is necessary to extend the order for temporary receivership for the affairs of Defendants, and after final hearing it is necessary to appoint a permanent receiver for the affairs of Defendants. No adequate remedy is available at law.
79. In addition, pursuant to Section 17.47(d) of the DTPA, the court may make any orders necessary to restore money or property which may have been acquired by means of any unlawful act or practice, which would include the appointment of a receiver under Section 64.001(a)(6) of the Texas Civil Practice & Remedies Code. As set forth in detail above, the appointment of a receiver is necessary to restore money or property which Defendants and their agents acquired by their unlawful acts or practices.
80. All receivership relief sought in this case is available to the State of Texas as Plaintiff without bond under Section 25-1 of the Texas Securities Act and Section 6.001 of the Texas Civil Practice and Remedies Code.
81. **Eduardo S. Espinosa of K&L Gates, LLP**, is an attorney practicing in Dallas, Texas, and **has agreed to serve as Receiver** in this case if appointed by the Court. Mr. Espinosa has substantial experience, expertise and knowledge of the securities laws.
82. Pursuant to Section 25-1 of the Texas Securities Act and Section 17.47 of the DTPA, the State of Texas seeks to have a receiver appointed for Defendants, and seeks to have the receiver appointed by the Court to post a bond in the amount of \$100.00.

**EQUITABLE RELIEF AND RESTITUTION  
FOR VICTIMS OF FRAUDULENT PRACTICES**

83. Paragraphs 19 through 46 above are incorporated by reference as if fully set forth herein.
84. Section 32.B of the Texas Securities Act authorizes the Attorney General to seek equitable relief, including restitution, for defrauded investors. Section 32.B provides as follows:

The Attorney General may, in an action under Subsection A of this section or in a separate action in District Court, seek equitable relief, including restitution for a victim of fraudulent practices. The court may grant any equitable relief that the court considers appropriate and may order the defendant to deliver to the person defrauded the amount of money or the property that the defendant obtained from the person by the fraudulent practices.

85. Section 17.47(d) of the DTPA authorizes the court to make orders or judgment as necessary to compensate identifiable persons for actual damages.
86. Based upon the conduct alleged herein, and pursuant to Section 32.B of the Texas Securities Act and Section 17.47(d) of the DTPA, the State of Texas is seeking restitution and damages for the victims of fraudulent practices and any other equitable relief that the State of Texas may be justly entitled.

**DISGORGEMENT OF ECONOMIC BENEFITS  
GAINED THROUGH VIOLATIONS OF THE TEXAS SECURITIES ACT**

87. Paragraphs 19 through 46 above are incorporated by reference as if fully set forth herein.
88. Section 32.C of the Texas Securities Act authorizes the Attorney General to seek disgorgement of economic benefits gained by Defendants. Section 32.C provides as follows:

In an action brought under this section for fraud or a fraudulent practice in connection with the sale of a security, the Attorney General may seek, for an aggrieved person, the disgorgement of any economic benefit gained by the defendant through the violation, including a bonus, fee, commission, option, proceeds, profit from or loss avoided through the sale of the security, or any other tangible benefit. The Attorney General may recover from an order of disgorgement obtained under this subsection reasonable costs and expenses incurred by the Attorney General in bringing the action.

89. Section 17.47(d) authorizes the court to make orders or judgments as necessary to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice.
90. Based upon the conduct alleged herein, and pursuant to Section 32.C of the Texas Securities Act and Section 17.47 of the DTPA, the State of Texas is seeking an order that the Defendants and Defendant's agents disgorge economic benefits.

**OTHER RELIEF**

91. Paragraphs 19 through 46 above are incorporated by reference as if fully set forth herein.

92. Further, the State seeks the imposition of a constructive trust and equitable lien with respect to assets of any kind obtained through the fraudulent scheme, including, but not limited to, all debts owing to Defendants in connection with any loans made to third parties pursuant to the scheme and assets fraudulently transferred to third parties, and any proceeds therefrom.
93. Further, pursuant to Section 17.47(c) of the DTPA, the State of Texas seeks the payment of civil penalties from Defendants in the amount of (a) not more than \$20,000 per violation; and (b) an additional amount of not more than \$250,000 because the Defendants' acts and practices made the subject of this proceeding were 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.
94. Pursuant to Section 402.006 of the Texas Government Code, the State of Texas seeks payment of reasonable and necessary attorney's fees and costs incurred in the prosecution of this case.
95. Pursuant to Section 32.C of the Texas Securities Act, the State of Texas seeks recovery of reasonable costs and expenses incurred by the Attorney General in bringing the action for disgorgement.
96. Pursuant to Section 32.A of the Texas Securities Act, the Attorney General may ask the Court to issue a subpoena requiring the appearance of any defendant and his employees or agents, or the production of documents, books and records.

### **CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, the State prays that:

97. The Court grant a temporary restraining order, rendered before notice and hearing and without bond by the Attorney General and Deputy Securities Commissioner, until determination of The State of Texas' Motion for Temporary Injunction, or other order of the Court, **enjoining Defendants Retirement Value, LLC, Richard H. "Dick" Gray and Bruce Collins**, and their officers, directors, principals, partners, joint venturers, successors, shareholders, employees, salesmen, agents, representatives, attorneys, family members, **and others acting in concert with Defendants** who receive actual notice of the Court's Order by personal service, facsimile transmission, or otherwise, from engaging in the following acts:
  - A. **Dissipation of Assets.** Disposing of, transferring, selling, assigning, negotiating, expending, encumbering, partitioning, canceling, concealing, secreting, disguising, pledging, or removing from the jurisdiction of this Court, any money, assets, notes, equipment, fixtures, receivables, expectancies, funds or other property or objects of value, whether real,

personal, or mixed and whether tangible or intangible, wherever situated, belonging to, owned by, in the possession of, acquired by, or claimed in any respect, directly or contingently, by Defendants, affiliated companies, and their officers, directors, principals, partners, joint venturers, successors, shareholders, employees, salesmen, agents, representatives, attorneys, family members, and others acting in concert with or in behalf of Defendants, or insofar as such property relates to, arises out of, or is derived from the sale of securities in connection with the business or operation of Defendants;

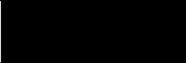
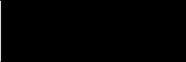
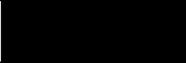
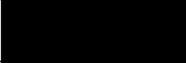
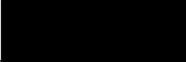
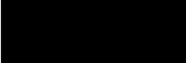
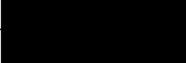
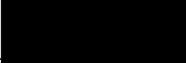
- B. **Destruction or removal of books and records.** Disposing of, transferring, selling, assigning, canceling, concealing, altering, destroying, secreting, disguising, or pledging of the books, records, ledgers, journals, invoices, contracts, notes, leases, investors lists, investor files, investor subscription agreements, tax forms or advice, receipts, computer files, electronic information of any kind, materials, or any other documents or tangible items relating in any way to Defendants or their affiliated companies and businesses, or relating in any manner whatsoever to the services or contracts relating to securities offered and sold by Defendants which are now or which may come within or under the possession, custody, or control of Defendants, their affiliated companies, agents, servants, officers, directors, principals, partners, joint venturers, successors, shareholders, employees, salesmen, agents, representatives, attorneys, family members, or any other person or entity acting in concert with or on behalf of Defendants;
- C. **Selling securities.** Promoting, issuing, selling, offering for sale, negotiating for sale, advertising, soliciting, dealing in or distributing any securities, including investment contracts, in any way and by any manner or means, either directly or indirectly through agents, servants, officers, directors, shareholders, employees, representatives, or any other entity acting for them or on their behalf without complying with the securities registration requirements found in the Texas Securities Act;
- D. **Acting as an agent, dealer or salesman.** Promoting, issuing, selling, offering for sale, negotiating for sale, advertising, soliciting, holding seminars, dealing in or distributing any securities, including investment contracts, to investors in any way and by any manner or means, either directly or indirectly through agents, servants, officers, directors, shareholders, employees, representatives, or any other entity acting for them or in their behalf, without complying with all dealer and salesman registration requirements of the Texas Securities Act;
- E. **Engaging in fraud.** Engaging in any fraud or fraudulent practice in violation of the Texas Securities Act, the DTPA or other laws of Texas, including any misrepresentation of fact or omission of material facts;

- F. **Interfering with investigation.** Obstructing, hampering, seeking to delay, or interfering in any manner with any investigation of Defendants' fraudulent operations conducted pursuant to the lawful authority of the Texas State Securities Board, the Office of the Attorney General, the Receiver, or any other law enforcement or governmental authority;
- G. **Communicating with Investors and Customers.** Contacting, via telephone, electronic mail or other written correspondence, or otherwise communicating, in any way, directly or indirectly, themselves or through their agents or representatives, with investors or customers of Retirement Value, LLC without prior written approval from the Receiver requested herein;
- H. **Interfering with operation of trusts.** Interfering in any manner with or taking any action as trustee over any trust related in any way to Retirement Value, LLC or related in any way to any securities issued, offered or sold by Defendants, without the express written consent of the Receiver; and
- I. **Interfering with the Receiver or the Receivership Estate.** Interfering with, obstructing, or hampering the Receiver appointed under this Order, including accessing or using any web site, telephone, voice mail, or electronic mail account owned or used by Defendant Retirement Value, LLC.
98. **Order Relief Defendant Kiesling Porter, and any other entity or financial institution** holding money, property, assets or records of Defendants' investment scheme, to receive, by fax or personal service, notice of the signing of the temporary restraining order and receivership, and immediately take all necessary steps to prevent Defendants from exercising any control over any money, to the extent such banks, entities and institutions are in possession or control of funds deposited or claimed by Defendants, any certificates of deposit showing Defendants as owner, claimant, or trustee, or any other asset or thing of value, including insurance policies owned, purchased or otherwise acquired by Defendant Retirement Value.
99. Grant a temporary injunction before notice and hearing, **enjoining Relief Defendant Kiesling Porter** from canceling the Master Escrow Agreement by and between it and Defendant Retirement Value dated March 10, 2009, without the express written consent of the Receiver of an order of the court.
100. Issue an order, before notice and hearing, **appointing Eduardo S. Espinosa of K&L Gates, LLP, as Temporary Receiver of Defendant Retirement Value** to take charge of the assets, monies, securities, claims in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated (within or without the State of Texas) of Retirement Value, LLC, a Texas Limited Liability Company, and for assets, monies, securities,

claims in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated, of Richard H. "Dick" Gray, or Bruce Collins as appears to the Receiver to contain or be derived from proceeds of Defendants' sale of securities or used in furtherance thereof (collectively, the "Receivership Assets"), and to conduct the business affairs of Defendants with the following powers:

A. To take possession of and control, to the extent another law enforcement entity has not done so by court order, over all property, records, and assets of whatever nature and wherever located (within and without the State of Texas) as appears to the Receiver, in his sole discretion, to be derived from Defendants' fraudulent operations or used in furtherance thereof, whether directly or indirectly; belonging to, claimed by, or controlled by Defendants, including, but not limited to monies deposited by or on behalf of Defendants, in any capacity, including "trustee," with any bank, savings and loan, credit union, securities dealer, clearing agent, or other depository; and interest in real estate owned or controlled by Defendants in any capacity; any stock owned by Defendants and the voting and other rights attaching thereto; any accounts receivable owed to Defendants, and any interest or other return earned upon any of the foregoing, specifically including BUT NOT LIMITED TO the following accounts and assets:

i. Accounts maintained at Wells Fargo Bank, N.A., identified as the following:

<u>Wells Fargo Acct No.</u>	<u>Name on Account</u>	<u>Signatories</u>
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor, Betty A. Kiesling
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Kristen Q. Porter
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Kristen Q. Porter
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Kristen Q. Porter
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Kristen Q. Porter
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Kristen Q. Porter
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q.







	Free, P.C.	Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor
	Kiesling, Porter, Kiesling & Free, P.C.	Brently W. Free, Rick Kiesling, Andrea L. Carnes, Kristen Q. Porter, Bobby R. Kiesling, Terry R. Taylor
	Retirement Value, LLC	Wendy L. Rogers
	Retirement Value, LLC	Richard H. Gray
	Richard H. Gray or Catherine H. Gray	Unknown - no signature documents
	Richard H. Gray or Catherine H. Gray	Unknown - no signature documents
	Andrew E. Gray or Richard H. Gray	Unknown - no signature documents
	Douglas D. Gray or Richard H. Gray	Unknown - no signature documents

ii. Brokerage Accounts maintained at Wells Fargo Bank, N.A. identified as the following:

<u>Wells Fargo Brokerage Acct No.</u>	<u>Name on Account</u>	<u>Signatories</u>
	Kiesling, Porter, Kiesling & Free, P.C.	Signatories Unknown
	Kiesling, Porter, Kiesling & Free, P.C.	Signatories Unknown
	Kiesling, Porter, Kiesling & Free, P.C.	Signatories Unknown



- B. To take possession and control of all income payable to Defendants from sources generated by or consisting in any regard of an account or asset purchased with derived funds;
- C. To take possession and control of all income payable to Defendants from sources other than those generated by or consisting in any regard of an account or asset purchased with derived funds, until Defendants demonstrate to the satisfaction of the receiver and the Texas State Securities Board that such income is in no way derived from or connected with investor funds;
- D. To take possession of all financial records and other business records of Defendants, including all computers and data storage devices to the extent these are not in the control of another law enforcement entity and, to the extent such records are in the control of another law enforcement agency, to work cooperatively with such agency;
- E. To enter, occupy and control the business premises of Defendant Retirement Value at the above business addresses to the extent necessary to accomplish the purposes of this order;
- F. To take charge of, conduct, and manage all business and financial affairs of and on behalf of Defendant Retirement Value, including, specifically, the power to act as Trustee of any trust over which Defendants have control;
- G. To receive, collect, and open all mail directed to or delivered to any address or post office box used by Defendants and to direct the post office and commercial delivery services to forward all such mail and deliveries to the Receiver=s office;
- H. To sign checks, or other instruments withdrawing, depositing or transferring funds, or exercising any right over any account with respect to any depository account of Defendants;
- I. To close and open accounts and transfer money from one bank, brokerage firm, or other financial institution to another, or one account to another, as necessary in the Receiver=s sole discretion, and under terms the Receiver considers appropriate
- J. To negotiate, transfer, or redeem any deed, certificate, contract, lease, mortgage, instrument or security held by or in the name of Defendants in any capacity, including "trustee";
- K. To hire, dismiss, direct, and control employees, agents, landlords, tenants, and independent contractors of Defendants in any of Defendants' capacities;

- L. To identify, recover, and take control over all assets and property acquired or believed to be acquired with funds derived from or obtained through Defendants, including the power to transfer or acquire any rights in real property to the extent necessary to protect and recover investor funds, and the power to sign, negotiate, transfer, sell, pledge, or otherwise dispose of any deed or evidence of an interest of Defendants in real property;
- M. To dispose of any interest in real and personal property in which Defendants have any record or beneficial interest, for the benefit of the investor-victims;
- N. To file any lawsuits the Receiver deems necessary to carry out his duties herein;
- O. To file, prosecute or defend any suit heretofore or hereinafter filed by or against Defendants which may be deemed to be necessary by the Receiver and by the Texas State Securities Board in order to properly protect all interested parties or any property affected thereby, subject to further order by this Court;
- P. To retain professional service providers as deemed reasonable and necessary by the receiver for the execution of the receiver's duties;
- Q. To enter into contracts as necessary for the orderly administration of the receivership estate and to pay reasonable and necessary expenses incurred in connection with the foregoing duties out of the funds of the Receivership Estate
- R. To advance his own funds, if necessary in his sole discretion, to pay any expense incurred in carrying out his responsibilities under the Court's orders and to reimburse himself immediately for any funds advanced;
- S. To delegate to agents the authority to exercise any of the powers conferred on the Receiver by the Court's orders;
- T. To file an accounting and a final report when he has concluded his duties under the Court's orders; and
- U. To exercise all equitable powers under the statutes and common law of this State authorizing the appointment of a receiver.

101. Issue an order, after notice and hearing, extending the appointment of the temporary receiver to take charge of all property and assets held and claimed by Defendants with the powers outlined above;
102. Issue an order that all property and assets held and claimed by Defendants in any capacity be placed in custodia legis as of the date of the appointment of the temporary receiver and the issuance of the temporary injunction herein;
103. Upon final hearing hereof, make permanent the order directing the receiver to take possession of the affairs of Defendants and direct the Receiver to liquidate the affairs of Defendants as the facts and circumstances may require;
104. Issue an order that all persons be enjoined and restrained by the temporary injunction from interfering with these proceedings, and from commencing or prosecuting any action or appeal or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against the Receiver, or against any receivership assets or any part thereof, and from asserting any claims against them, except in these proceedings.
105. Issue an order that no party other than the Receiver appointed herein shall take any action as "Trustee" over any Defendant Retirement Value related Trust without the Receiver's written express consent.
106. Issue an order that neither Defendants nor any parties acting under their direction or control shall use any electronic or telephonic tools or devices to alter, inquire about, or transfer any money in any account over which they have any power, authority, interest or control.
107. Issue an order that the Relief Defendant shall immediately take all necessary steps to ensure that Defendants directly or indirectly shall not be able use any electronic or telephonic tools or devices to alter, inquire about, or transfer any money in any account over which he has any power, authority, interest or control.
108. Issue an order that no bond be required by the State of Texas.
109. Upon final hearing hereof, issue a permanent injunction, enjoining Defendants from acting as a dealer, agent, or salesman in securities without complying with all dealer and salesman registration requirements of the Texas Securities Act; from selling securities that have not been registered with the Securities Commissioner and enjoining Defendants from engaging in fraud and fraudulent practices in connection with the sale of securities in violation of the Texas Securities Act or from engaging in any fraud or fraudulent practice in violation of the DTPA or other laws of Texas, including any misrepresentation of fact or omission of material facts.
110. Upon final hearing hereof, pursuant to Section 32.B of the Texas Securities Act and Section 17.47 of the DTPA, order that restitution be made to defrauded

investors, identifiable at the final hearing, or, alternatively, to the bankruptcy trustee for the benefit of investors defrauded by the parties to the bankruptcy proceedings.

111. Upon final hearing hereof, order that the defendants disgorge any economic benefit gained through the fraud and fraudulent practices alleged herein pursuant to Section 32.C of the Texas Securities Act and Section 17.47 of the DTPA.
112. Upon final hearing hereof, adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of not more than \$20,000 per violation of the DTPA plus an additional fine of not more than \$250,000 because the Defendants' acts and practice made the subject of this suit 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.
113. Upon final hearing hereof, order that the Attorney General recover all reasonable costs and expenses incurred in bringing this action pursuant to Section 32.C of the Texas Securities Act.
114. Upon final hearing hereof, order that the State of Texas recover all investigative costs and all costs of this litigation and be awarded attorney's fees under Section 402.006, TEX. GOVT. CODE.
115. Order Defendants to pay both pre-judgment and post-judgment interest on all awards of restitution, damages and civil penalties, as provided by law.
116. Grant such other and further relief, equitable and legal, to which the State of Texas may be justly entitled.

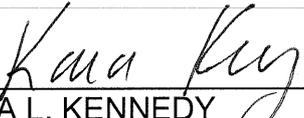
Respectfully submitted,

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*Attorneys for Plaintiff State of Texas*

**CERTIFICATE REGARDING NOTICE TO DEFENDANTS**

Pursuant to Local Rule 7.3(b), I, Kara L. Kennedy, do hereby certify that to best of my knowledge, the parties against whom relief is sought are represented by counsel in an administrative action relating to their business operations made the subject of this suit in which *ex parte* relief is sought.

However, the State believes that if Defendants or their counsel had notice of this action, Defendants would dispose of, transfer, alter, pledge, or conceal money, property, assets, books and records obtained from investors and transfer money to accounts beyond the reach of Texas courts, and that an *ex parte* order is thus necessary to prevent the irreparable harm to investors that would result from such conduct.

  
KARA L. KENNEDY

**VERIFICATION**

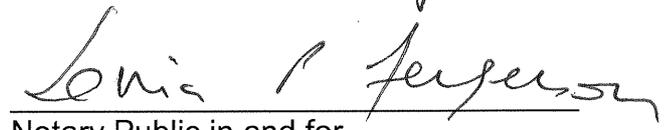
STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared John Morgan, Deputy Securities Commissioner of the State of Texas, who, being by me first duly sworn, deposed and said that he has read the allegations in the foregoing petition, and upon information and belief, each and every fact and matter stated in paragraphs 10 through 55 therein is believed to be true and correct.

  
Deputy Securities Commissioner  
State of Texas

SUBSCRIBED AND SWORN to before me, this the 4<sup>th</sup> day of May, 2010.

  
Notary Public in and for  
The State of TEXAS

