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STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT OF

vs.

BRAZOS COUNTY, T E X A S

LANCE A. DOWD D/B/A COUNTY TAX
REDUCTION, JOAN DOWD D/B/A
COUNTY TAX REDUCTION AND D/B/A
LAD GROUP D/B/A COUNTY TAX
REDUCTION, AND SUPERIOR
MARKETING CORP. D/B/A COUNTY
TAX REDUCTION,
Defendants.

_____ JUDICIAL DISTRICT

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

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, acting by and through Attorney General GREG ABBOTT, filing Plaintiff’s Original Petition and Application for Temporary Restraining Order complaining of and against LANCE A. DOWD D/B/A COUNTY TAX REDUCTION, JOAN DOWD D/B/A COUNTY TAX REDUCTION AND D/B/A LAD GROUP D/B/A COUNTY TAX REDUCTION, AND SUPERIOR MARKETING CORP. D/B/A COUNTY TAX REDUCTION (“Defendants” or “County Tax Reduction”).

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

II. NATURE OF DEFENDANTS’ OPERATIONS

2. During the last several weeks, Defendants, collectively using the name “County Tax Reduction,” have sent homestead exemption solicitation letters to homeowners in Brazos County.

These letters are titled “Notice: Property Tax Overpayment.” The Defendants’ solicitation letters inform Brazos County homeowners that they may be eligible for a homestead exemption and that Defendants will submit the homestead exemption application on behalf of the homeowner for a fee of \$55.00. This service is available for free from the Brazos County Tax Assessor’s Office.

3. The Brazos County Tax Assessor Collector’s Office and the Brazos County Tax Appraisal District have received over 200 inquiries regarding these homestead exemption solicitations sent by County Tax Reduction from homeowners who have either telephoned or walked-in to their offices. See Exhibit 1, affidavit of Christi Roe, Brazos County Tax Assessor Collector’s Office, and Exhibit 2, affidavit of Gail Palasota, Brazos County Appraisal District. Attached to Exhibits 1 and 2 are solicitations forwarded to the Brazos County Tax Assessor Collector’s Office and the Brazos County Appraisal District by consumers who received them from County Tax Reduction.

III. JURISDICTION

4. This suit is brought by the ATTORNEY GENERAL through the Consumer Protection Division in the name of the STATE OF TEXAS and in the public interest under the authority granted to him by § 17.47 of the Deceptive Trade Practices-Consumer Protection Act (“DTPA”), TEX. BUS. & COM. CODE ANN. 17.41 *et seq.* (Vernon 2002 and Supp. 2003).

IV. DEFENDANTS

5. Defendant LANCE A. DOWD is an individual doing business in Texas as COUNTY TAX REDUCTION. See Exhibit 3. Defendant Lance A. Dowd can be served with process at his home, 640 Forest Oaks, Fairview, Texas 75069.

6. Defendant JOAN DOWD is an individual doing business in Texas as COUNTY TAX

REDUCTION and doing business in Texas as LAD GROUP, which does business in Texas as COUNTY TAX REDUCTION. See Exhibit 3. Defendant Joan Dowd can be served with process at her home, 640 Forest Oaks, Fairview, Texas 75069.

7. Defendant Superior Marketing Corp. is a Texas corporation which does business in Texas as COUNTY TAX REDUCTION. See Exhibit 3. Defendant Superior Marketing Corp. can be served with process by serving its President and Registered Agent, Lance A. Dowd, at 640 Forest Oaks, Fairview, Texas 75069.

V. VENUE

8. Venue of this action lies in Brazos County pursuant to § 17.47(b) of the DTPA because the transactions and events giving rise to this action occurred in Brazos County.

VI. PUBLIC INTEREST

9. Because Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendant has caused, and will cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

VII. TRADE AND COMMERCE

10. Defendants are engaged in “trade” and “commerce” as defined by §17.45(6) of the DTPA, in that Defendants are offering a service for sale to consumers in Brazos County.

VIII. NOTICE BEFORE SUIT

11. The Plaintiff has provided notice to Defendants of its intent to file Plaintiff’s Original

Petition and Application for a Temporary Restraining Order prohibiting the continued violation of the DTPA and Texas Property Code, via facsimile on January 12, 2004. See Exhibit 4.

IX. ACTS OF AGENTS

12. Whenever in this Petition it is alleged that Defendants did any act or thing, it is meant that Defendants performed or participated in such act or thing or that such act was performed by the officers, agents or employees of said Defendants, and in each instance, the officers, agents or employees of said Defendants were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

X. STATEMENT OF FACTS

13. Since December 2003, Defendants have sent or caused to be sent the solicitations attached to Exhibits 1 and 2 to property owners in Brazos County, Texas, which, for a \$55.00 fee, offer to complete the application for a homestead exemption for those property owners. Defendants solicitations claim to be from "County Tax Reduction," and provide a mailing address of P.O. Box 516242, Dallas, TX 75251-6242. Defendant Lance A. Dowd applied for and obtained that P.O. Box under the business name, "County Tax Reduction." See Exhibit 3. The name "County Tax Reduction" is an assumed name registered with the Collin County Clerk for use by Lance A. Dowd, Joan Dowd, Superior Marketing Corp., and LAD Group. LAD Group is an assumed name registered with the Collin County Clerk for use by Joan Dowd. See Exhibit 3.

14. Defendants' solicitations fail to contain the disclosure required by Texas Property Code § 41.0051(a), which requires a person delivering a written advertisement offering, for a fee, to designate a property as a homestead to include the following disclosure or a substantially similar statement:

**“THIS DOCUMENT IS AN ADVERTISEMENT OF SERVICES.
IT IS NOT AN OFFICIAL DOCUMENT OF THE STATE OF TEXAS.”**

15. Texas Property Code §41.0051(a) requires that this statement or a substantially similar statement be conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters.

16. Also, Texas Property Code §41.0051(b) requires that a person who issues the type of homestead solicitations letters that have been sent out by Defendants to disclose to the homeowner the name of the tax appraisal district or other governmental body that owes the homeowner a refund. Defendants have not done this.

17. The services offered by Defendants are available to property owners of Brazos County free of charge from the Brazos County Tax Assessor Collector’s Office.

XI. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

18. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

19. Defendants, as alleged and detailed above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in Section 17.46(a) of the DTPA; and

20. Defendants, as alleged and detailed above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in the following subsections of Section 17.46(b);

- A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of §17.46(b)(2);
- B. Causing confusion or misunderstanding as to the affiliation, connection, or association with or certification by another in violation of §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 a sponsorship, approval, status, affiliation, or connection which they do not have in violation of §17.46(b)(5); and
- D. Failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of §17.46(b)(24).

XII. VIOLATIONS OF TEXAS PROPERTY CODE

21. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

22. Defendants have violated Section 41.0051(a) of the Texas Property Code by failing to include the following statement in 14-point type as required by Texas Property Code Section 41.0051 in its solicitations regarding homestead exemption applications:

“THIS DOCUMENT IS AN ADVERTISEMENT OF SERVICES. IT IS NOT AN
OFFICIAL DOCUMENT OF THE STATE OF TEXAS.”

23. Defendants have also violated Section 41.0051(b) of the Texas Property Code by failing to disclose to Brazos County homeowners the exact name of the tax appraisal district or other governmental body that owes the homeowner a refund.

24. Pursuant to Section 41.0051(c), violations of Sections 41.0051(a) and (b) of the Texas Property Code are considered violations of the DTPA.

XIII. APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

25. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

26. The State alleges that by reason of the foregoing, Defendants should not continue to

mail their homestead exemption solicitation letters to persons in Brazos or any other county in the State of Texas in violation of the laws of the State and that unless injunctive relief is immediately granted, Defendants will continue to use false, misleading, or deceptive trade practices to entice consumers to pay fees for services provided for free by the Brazos County Tax Assessor Collector's Office without the disclosures required by law. Further, Defendants will continue to cause confusion and misunderstanding as to their connection, affiliation, and sponsorship by the Brazos County Tax Assessor Collector's Office. If Defendants are not immediately restrained, many consumers may lose their money through Defendants' false, misleading, or deceptive practices.

27. For the reasons set forth above, the STATE OF TEXAS requests an Ex Parte Temporary Restraining Order; and after notice and hearing, a Temporary and Permanent Injunction as set out below, as authorized pursuant to § 17.47(a) of the DTPA.

XIV. INJURY TO CONSUMERS

28. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

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

XV. PRAYER

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

restraining and enjoining Defendants individually and by their agents, servants, employees, and representatives from making the representations, doing the acts, and engaging in the practices set out in the proceeding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas as follows:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to Defendants' business currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;
- B. Sending, or causing to be sent, any solicitations regarding homestead exemption applications without including the following statement or substantially similar statement in 14-point type as required by Texas Property Code §41.0051(a):

"THIS DOCUMENT IS AN ADVERTISEMENT OF SERVICES. IT IS NOT AN OFFICIAL DOCUMENT OF THE STATE OF TEXAS."
- C. Sending, or causing to be sent, any solicitations regarding homestead exemption applications which fail to disclose the exact name of the tax appraisal district or other governmental body that owes the homeowner a refund as is required by Texas Property Code §41.0051(b).
- D. Misrepresenting, directly or indirectly, that Defendants' services are affiliated with or sponsored by the Brazos County Tax Assessor Collector's Office;
- E. Failing to provide to any of Defendants' agents, servants, employees or representatives, written notice of the existence and terms of any injunction entered in this case, and of their duty to comply with its terms; and
- F. Accepting any payment from consumers who were solicited using any solicitations that did not include the language required by Texas Property Code §41.0051(a) or (b), as described herein.

31. Plaintiff further prays that upon final hearing this Court order Defendants to restore all money or other property taken from identifiable persons by means of Defendants' unlawful acts or practices, or, in the alternative, award judgment for damages to compensate identifiable persons

for such losses as provided in §17.47(d) of the DTPA.

32. Plaintiff further prays that upon final hearing this Court order Defendants to pay civil penalties of \$20,000.00 per violation of the DTPA to the State of Texas, as authorized by §17.47(c)(1) of the DTPA.

33. Plaintiff further prays for costs of Court, reasonable attorney fees as provided in TEX. GOV'T. CODE ANN. § 402.006(c), and such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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