

No. \_\_\_\_\_

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	
	§	
Federal Cash Advance of Oklahoma,	§	DALLAS COUNTY, TEXAS
LLC, d/b/a CashMax, and d/b/a	§	
Fed Cash, and d/b/a TopCash, and d/b/a	§	
Cash Service Center, and Patrick	§	
“Dylan” D. White, Individually	§	
Defendants	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION**  
**FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF**  
**AND FOR TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the STATE OF TEXAS (“STATE”), Plaintiff, acting by and through its Attorney General GREG ABBOTT and his Consumer Protection and Public Health Division and files this Original Petition against, FEDERAL CASH ADVANCE OF OKLAHOMA, LLC, d/b/a CASHMAX, and d/b/a FED CASH and d/b/a/ TOPCASH, and d/b/a CASH SERVICE CENTER, (“Federal Cash”) and PATRICK “DYLAN” D. WHITE, Individually (“DEFENDANTS”), and for cause of action, would respectfully show the Court as follows:

**I. SUMMARY OF THE CASE**

1.1 Defendants, Federal Cash Advance of Oklahoma, LLC and Patrick “Dylan” D. White, Individually, are accused of violating the Texas Deceptive Trade Practices and Consumer Protection Act. Federal Cash is an Oklahoma company operating a pay day loan business in the Dallas, Texas area and also conducts business under the names of CashMax, Fed Cash, TopCash, and Cash Service Center. Federal Cash illegally attempts to collect debts by fraudulently using a collection notice

letter delivered to customers purporting to come from and bearing the forged signature of the Dallas County Clerk and a false and unauthorized use of the State of Texas and Dallas County seal. Federal Cash's fraudulent collection letter urges a call back to a telephone number used by Federal Cash. Federal Cash's fraudulent collection letter also improperly threatens criminal prosecution to collect a civil obligation, recites a fictitious "case number", references a non-existent "Texas Districts Attorney", and ominously states "the penalties in your case include up to 5 years in State Prison, and a fine of up to 10,000". The Dallas County Clerk has denied anything to do with Federal Cash's fraudulent collection letter saying in a statement, "I did not produce or authorize the production of the letter ... and the signature affixed to the letter is not mine". The Texas Secretary of State has confirmed that Federal Cash was not granted a license for the commercial use of the government Seal and that the seal used by Federal Cash is deceptively similar to the state seal. The Dallas County Criminal District Attorney also confirmed that the alleged pending criminal charges were not filed. Defendant Patrick "Dylan" D. White has also been sued individually along with Federal Cash. White is a principal and owner, the Managing Member, Operations Manager, and Governing Person of Federal Cash. As a controlling person, White is in charge of, oversees and supervises the wrongful collection activities of Federal Cash. Because Federal Cash and White have preyed upon the public with the deceptive conduct described, the State seeks by this suit to enjoin Federal Cash and White from any further such activity. The State also seeks a judgment for civil penalties to be paid to the State along with attorney fees and costs of court.

## **II. PARTY PLAINTIFF**

2.1 The Plaintiff in this suit is the STATE OF TEXAS appearing by and through its Attorney General, Greg Abbott, and under the authority of the Constitution, statutes, and laws of the

State of Texas.

### III. PARTY DEFENDANTS

3.1 Defendant FEDERAL CASH ADVANCE OF OKLAHOMA, LLC., is foreign limited liability company registered to business in Texas with a principal office in Oklahoma of P.O. Box 5156, Norman, Oklahoma, 73070, principal office in Texas of 8204 Elmbrook, Ste 230, Dallas, Dallas County, Texas 75247 and an additional business office address of 615 East Camp Wisdom Road, Duncanville, Dallas County, Texas 75116. **Defendant FEDERAL CASH ADVANCE OF OKLAHOMA, LLC. may be served with process by serving its Registered Agent for Service, CT Corporation System, at the registered office address of 350 N. St. Paul St., Ste 2900, Dallas, Dallas County, Texas 75201-4234, or wherever it may be found.**

3.2 Defendant FEDERAL CASH ADVANCE OF OKLAHOMA, LLC also does business in Texas under the assumed names of CASHMAX, TOPCASH, and CASH SERVICE CENTER all with a business address of 8204 Elmbrook, Ste 230, Dallas, Dallas County, Texas 75247. Defendant FEDERAL CASH ADVANCE OF OKLAHOMA, LLC also does business in Texas under the assumed name of FED CASH with a business address of 580 S. Beltline Rd., Irving, Dallas County Texas 75060.

3.3 Defendant PATRICK “DYLAN” D. WHITE, Individually, is a principal and owner, the Managing Member, Operations Manager, and Governing Person of Defendant FEDERAL CASH ADVANCE OF OKLAHOMA, LLC<sup>1</sup>. **Defendant PATRICK “DYLAN” D. WHITE, Individually, may be served with process at his business address of 8204 Elmbrook, Ste 230,**

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<sup>1</sup> In addition to Defendant PATRICK “DYLAN” D. WHITE, Individually, other Members of Defendant FEDERAL CASH ADVANCE OF OKLAHOMA, LLC are; Equichase LTD, a Texas LP; Hunter Miller Enterprises, Inc.; Barry Switzer Family LLC; Greg Switzer; Harold N. Hopkins, III Trust; and Harold N. Hopkins, III.

**Dallas, Dallas County, Texas 75247 or his business address of 4051 Travis, Suite E., Dallas, Dallas County, Texas 75204, or wherever he may be found.**

#### **IV. DISCOVERY CONTROL PLAN**

4.1 Discovery in this suit is intended to be conducted under Discovery Level 2 pursuant to TEX. R. CIV. P. 190.1 and 190.3.

#### **V. AUTHORITY AND JURISDICTION**

5.1 This action is brought by Attorney General GREG ABBOTT, through his Consumer Protection & Public Health Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE §17.41 *et seq.* (“DTPA”), upon the grounds that Defendants have engaged in false, misleading or deceptive acts or practices in the course of trade and commerce as defined in, and declared unlawful by §§17.46(a) and (b) of the DTPA.

5.2 This action is also brought by the State in the public interest pursuant to TEX. BUS. & COM. CODE CODE §17.08 *et seq.*, upon the grounds that no person may use a representation of the state seal for a commercial purpose without obtaining a license for that purpose from the Secretary of State for that purpose.

5.3 This action is also brought by the State in the public interest pursuant to TEX. FIN. CODE Chapter 392, upon the grounds that Defendants engaged in prohibited and fraudulent, deceptive and misleading debt collection practices.

5.4 This action is brought seeking a temporary restraining order without prior notice to the Defendants pursuant to §17.47(a) of the DTPA, for reason that in the opinion of the consumer protection division 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 a delay in obtaining a temporary restraining order. A temporary restraining order is necessary because immediate harm and injury are presumed if a law is being violated.<sup>2</sup>

## VI. VENUE

6.1 Venue is proper in Dallas County pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) and (3) because the defendants' principal place of business is located in Dallas County and because all or a substantial part of events or omissions giving rise to this claim occurred in Dallas County.

6.2 Venue is proper in Dallas county pursuant to Section 17.56 of the DTPA because the transactions in question took place in Dallas County.

## VII. PURPOSE OF SUIT

7.1 The purpose of this suit is to obtain a temporary restraining order, temporary and permanent injunctions, and to collect civil penalties from Defendants because Defendants have attempted to collect debts by using a false and fraudulent collection notice letter sent to customers in violation of the DTPA.

7.2 The State is seeking a temporary restraining order along with a temporary injunction

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<sup>2</sup> When the State seeks injunctive relief pursuant to an authorized statute [e.g. DTPA §17.47(a)], the Texas Supreme Court has held that the State does not have to prove immediate and irreparable injury. Nor does the Court have to balance equities when the State litigates in the public's interest. When a statute is being violated, it is within the province and duty of the trial court to restrain it. *State v. Texas Pet Foods*, 591 SW2d 800 (Tex. 1979). The State has a relaxed burden because it acts in the public interest. When the State brings an action in the public interest and on behalf of consumers, harm is presumed. *United States v. Odessa Union Warehouse*, 833 F2d 172 (9<sup>th</sup> Cir. 1987), *Shafer v. United States*, 229 F2d 124 (4<sup>th</sup> Cir) Cert. Den. 351 US 931 (1956). The statute's express language supercedes the common law injunctive relief elements such as imminent harm or irreparable injury and lack of an adequate remedy at law ... [The State] need only demonstrate to the court its reason to believe that (1) any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by the DTPA, and (2) that the proceedings would be in the public interest. *West v. State*, 212 SW3d 513 (Tex.App.- Austin, 2006, no pet.). The state is likewise not required to prove the likelihood of future violations nor is required to show probable injury. *Ibid at 515*. Injunctive relief may be granted to the State upon a showing of only a violation of a statute. *Gulf Holding Corp. v. Brazoria County*, 497 S.W.2d 614 at 619 (Tex. Civ. App.- Houston [14<sup>th</sup>] 1973, writ ref'd n.r.e.).

and a permanent injunction to enjoin Defendants from engaging in further collection activities utilizing any false or fraudulent letters, threats or representations to consumers and collecting any monies from consumers by or through such means. The State is also seeking to enjoin the Defendants from the future use of a representation of the state seal or any nonexact representation that is deceptively similar to the state seal, for any commercial purpose, without first obtaining a license from the secretary of state for that purpose.

7.3 A Temporary Restraining Order is necessary in this case to immediately restrain the violation of law as described.

7.4 By reason of the institution and operation of the unlawful practices set forth herein, Defendants have and will cause irreparable injury, loss and damage to the State of Texas and its citizens, and will also cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

## **VIII. ACTS OF AGENTS**

8.1 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 Defendants, and in each instance, the officers, agents, or employees of Defendants that were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

7.2 Defendant PATRICK “DYLAN” D. WHITE, Individually, is a principal and owner, the Managing Member, Operations Manager, and Governing Person of Defendant FEDERAL CASH ADVANCE OF OKLAHOMA, LLC. As such Defendant PATRICK “DYLAN” D. WHITE is a

controlling person and has the responsibility for the overall management and oversight of the company, including compliance with all state statutes regulating collection activities and trade and commerce practices, including but not limited to compliance with the DTPA . Defendant PATRICK “DYLAN” D. WHITE also has the responsibility of supervising the employees of the corporation. As a result, Defendant PATRICK “DYLAN” D. WHITE directs and has personal knowledge of the day-to-day activities of the company.<sup>3</sup>

### VIII. TRADE AND COMMERCE

8.1 Defendants are engaged in “trade” and “commerce” as defined by Section 17.45(6) of the DTPA as they operate a pay day loan and collection business in the State of Texas. “Trade” and “Commerce” means the advertising, offering for sale, sale, lease, 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 includes any trade or commerce directly affecting the people of this State. TEX. BUS. & COM. CODE §17.45(6).<sup>4</sup>

### IX. PARTICULAR APPLICABLE LAW

10.1 The Deceptive Trade Practices Act provides that false, misleading, or deceptive acts

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<sup>3</sup> Texas law is well settled that corporate agents may be held personally responsible and individually liable for wrongful acts. It is not necessary to pierce the corporate veil in order to impose personal liability. *Leyendecker v. Wechter*, 683 S.W.2d 369 (Tex. 1984). Liability of such a corporate officer is based on his own actions not his status as an agent. It is not necessary for such an employee to act knowingly or intentionally in order to be personally liable. *Miller v. Keyser*, 90 S.W.3d 712 (Tex. 2002). DTPA § 17.46(c)(1) authorizes Texas courts to be guided, to the extent possible, by the interpretations given by the Federal Trade Commission and federal courts to the Federal Trade Commission Act. [15 U.S.C.A. § 45(a)(1)]. Federal courts have often held principals or controlling persons of corporations individually liable for the wrongful and deceptive actions of the businesses they control . See *FTC v. Amy Travel*, 875 F.2d 564 (7<sup>th</sup> Cir. 1988) and *FTC v. Publishing Clearing House*, 104 F.3d 1168 (9<sup>th</sup> Cir. 1997).

<sup>4</sup> The Texas Supreme Court has held that a suit in the public interest may be maintained by the Consumer Protection Division of the Attorney General’s Office against any person engaging in deceptive acts, that is, presenting any misleading information concerning any item of value, notwithstanding that a private suit for damages against someone who engages in deceptive acts may only be maintained by an aggrieved party who qualifies as a consumer who seeks or acquires “goods or services” by purchase or lease, and that an attempt to acquire money, or the use of money, (as in a loan transaction) is generally not an attempt to acquire services because money is neither a good nor a service. *Riverside Nat. Bank v. Lewis*, 603 SW2d 169 (Tex. 1980).

or practices in the conduct of any trade or commerce are unlawful and subject to action by the Consumer Protection Division. TEX. BUS. & COM. CODE ANN. §17.46(a). False, misleading, or deceptive acts or practices are further defined, in part, to include:

- (1) passing off goods and services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;

TEX. BUS. & COM. CODE ANN. §17.46(b).

10.2 The Deceptive Trade Practices Act also provides that no person may use a representation of the state seal for a commercial purpose without obtaining a license for that purpose from the Secretary of State for that purpose. TEX. BUS. & COM. CODE CODE §17.08 . The DTPA provides in relevant part:

(b) Except as otherwise provided by this section, a person may not use a representation of the state seal:

- (1) to advertise or publicize tangible personal property or a commercial undertaking; or
- (2) for another commercial purpose.

(a) In this section:



(1) “Commercial purpose” means a purpose that is intended to result in a profit or other tangible benefit but does not include:

(A) official use of the state seal or a representation of the state seal in a state function;

(B) Use of the state seal or a representation of the state seal for a political purpose by an elected official of this state;

(2) “Representation of the state seal” includes a nonexact representation that the secretary of state determines is deceptively similar to the state seal.<sup>5</sup>

(c) A person may use a representation of the state seal for a commercial purpose if the person obtains a license from the secretary of state for that use.

TEX. BUS. & COM. CODE CODE §17.08

10.3 The Texas Finance Code, Chapter 392, prohibits certain unfair debt collection practices, providing in relevant part that:

(a) In debt collection, a debt collector may not use threats, coercion, or attempts to coerce that employs any of the following practices:

(2) accusing falsely or threatening to accuse falsely a person of fraud or other crime;

(5) threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings;

(6) threatening to file a charge, complaint, or criminal action against a debtor

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<sup>5</sup> It is noted that a person who violates a provision of subsection (b) of this section commits a Class C misdemeanor offense, and it is a separate offense each day that a person violates subsection (b). TEX. BUS. & COM. CODE CODE §17.08. The Texas Attorney General is not seeking by this action to prosecute criminal sanctions against the Defendants.

when the debtor has not violated a criminal law.

TEX. FIN. CODE §392.301, and

(a) ... a debt collector may not use a fraudulent, deceptive, or misleading representation that employs the following practices:

(1) using a name other than the:

(A) true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection;

(6) using a written communication that fails to indicate clearly the name of the debt collector and the debt collector's street address or post office box and telephone number if the written notice refers to a delinquent consumer debt;

(7) using a written communication that demands a response to a place other than the debt collector's or creditor's street address or post office box;

(9) representing falsely that a debt collector is vouched for, bonded by, or affiliated with, or is an instrumentality, agent, or official of, this state or an agency of federal, state or local government;

(10) using, distributing, or selling a written communication that simulates or is represented falsely to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other governmental authority or that creates a false impression about the communication's source, authorization, or approval;

(11) using a seal, insignia, or design that simulates that of a governmental

agency.

TEX. FIN. CODE §392.304.

10.4 A “debt collector” is defined by the Texas Finance Code, Chapter 392 as “a person who directly or indirectly engages in debt collection and includes a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended to be used to collect consumer debts”. TEX. FIN. CODE §392.001(6). “Debt collection” is defined by the Texas Finance Code, Chapter 392 as “an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor”. TEX. FIN. CODE §392.001(5).

10.5 The Texas Finance Code, Chapter 392, also provides that if the attorney general reasonably believes that a person is violating or is about to violate this chapter, an action may be brought to restrain or enjoin the violation. TEX. FIN. CODE §392.403. Additionally, a violation of this Chapter of the Finance Code is also declared to be a deceptive trade practice and actionable under the DTPA. TEX. FIN. CODE §392.404.<sup>6</sup>

10.6 The DTPA provides that it “shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading and deceptive practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection. TEX. BUS. & COM. CODE CODE §17.44 (a).

10.7 The DTPA establishes civil penalties of up to \$20,000 a day for deceptive practices. TEX. BUS. & COM. CODE §17.44 (c)(1).

10.8 The State is exempt from filing a bond. TEX. CIV. PRAC. & REM. CODE § 6.001 and

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<sup>6</sup> It is also noted that a person commits a misdemeanor offense if the person violates this chapter and is punishable by a fine of not less than \$100 or more than \$500 for each violation. TEX. FIN. CODE §392.402. The Texas Attorney General is not seeking by this action to prosecute criminal sanctions against the Defendants.

TEX. BUS. & COM. CODE § 17.47(b).

## **XI. FACTUAL ALLEGATIONS AND VIOLATIONS**

11.1 Defendants operate a pay day loan and collection business in the State of Texas doing business in Texas under the assumed names of CASHMAX, TOPCASH, and CASH SERVICE CENTER all with a business address of 8204 Elmbrook, Ste 230, Dallas, Dallas County, Texas 75247 and with an additional business office address of 615 East Camp Wisdom Road, Duncanville, Dallas County, Texas 75116 and also under the assumed name of FED CASH with a business address of 580 S. Beltline Rd., Irving, Dallas County Texas 75060.

11.2 On or about July and August 2010 Defendants attempted to collect debts by using a false and fraudulent collection notice letter delivered to customers purporting to come from and bearing the forged signature of the Dallas County Clerk and a false and unauthorized use of the State of Texas and Dallas County seal. The fraudulent collection letter urges a call back to a telephone number used by Federal Cash, but with no other address or identification of the sender.

11.3 Defendant's fraudulent collection letter also improperly threatened criminal prosecution to collect a civil obligation, recites a fictitious "case number", references a non-existent "Texas Districts Attorney", and threatens the consumer saying, "the penalties in your case include up to 5 years in State Prison, and a fine of up to 10,000".

11.4 The Dallas County Clerk denies anything to do with Defendant's fraudulent collection letter saying in a statement, "I did not produce or authorize the production of the letter ... and the signature affixed to the letter is not mine".

11.5 The Texas Secretary of State has confirmed that Defendants were not granted a license for the commercial use of the seal. The Texas Secretary of State further has determined that

the representation of the state seal on Defendants fraudulent collection letter was deceptively similar to the state seal.

11.6 The Dallas County Criminal District Attorney also confirmed that no such pending criminal charges were filed against the consumer as alleged in the fraudulent collection letter.

11.7 In support of this petition, the State relies upon and adopts by reference for all purposes the attached exhibits as follows:

A. Exhibit A is a true copy of the false and fraudulent collection letter sent by Defendants to consumer.

B. Exhibit B is an affidavit (pursuant to Tex. Rules of Civil Procedure 680 and 682) of Investigator Keller Slaughter verifying and setting forth specific facts that are known to be credibly and reliably true and correct, within her personal knowledge or other employees of the Attorney General, are matters observed pursuant to a legal duty to report, are factual findings resulting from an investigation made pursuant to authority granted by law, or are matters of records, reports, statements, or data compilations of public offices or agencies setting forth the activities of the office or agency; that Defendants operate a pay day loan and collection business in Dallas County; caused the fraudulent collection letter attached as Exhibit A to be delivered to consumers in connection with an apparent attempt to threaten criminal prosecution to collect a civil obligation, in violation of the DTPA; that neither the Dallas County Clerk nor the Secretary of State authorized such a letter; nor did the Secretary of State license Defendants to use a representation of the state seal for commercial purposes and further that the representation of the seal on the fraudulent collection letter was deceptively similar to the state seal; and further neither was the Dallas County Criminal District Attorney prosecuting any such criminal case as was represented in such letter.

## **XII. VIOLATIONS OF THE DTPA**

12.1 Based on the conduct alleged above, Defendants have directly and indirectly engaged in false, misleading, and deceptive acts and practices declared unlawful by §17.46(a), (b) and §17.08 of the DTPA, including, but not limited to:

- A. Representing that the false and fraudulent consumer collection letter was the product of the Dallas County Clerk when in truth it was the product of Defendants, in violation of § 17.46(b)(1) of the DTPA;
- B. Causing confusion or misunderstanding by the false and fraudulent consumer collection letter as to the source, sponsorship, approval or certification by the Dallas County Clerk and District Attorney in violation of § 17.46(b)(2) of the DTPA;
- C. Causing confusion or misunderstanding by the false and fraudulent consumer collection letter as to affiliation, connection, or association with, or certification by the Dallas County Clerk and District Attorney in violation of § 17.46(b)(3) of the DTPA;
- D. Representing, by the false and fraudulent consumer collection letter, sponsorship, approval, status, characteristics, affiliation, connection or uses by the Dallas County Clerk and District Attorney which it did not have in violation of § 17.46(b)(5) of the DTPA;
- E. Utilizing, by the false and fraudulent consumer collection letter, accusations and threats of non-existent criminal prosecution in violation of §17.46(a) of the DTPA and TEX. FIN. CODE §392.301;

- F. Using, by the false and fraudulent consumer collection letter, a name other than the true business name of Defendants in violation of §17.46(a) of the DTPA and TEX. FIN. CODE §392.304(a)(1);
- G. Failing, by the false and fraudulent consumer collection letter, to clearly indicate the name of the debt collector and street address or post office box in violation of §17.46(a) of the DTPA and TEX. FIN. CODE §392.304(a)(6);
- H. Demanding, by use of the false and fraudulent consumer collection letter, a response to a place other than the debt collector's or creditor's street address or post office box in violation of §17.46(a) of the DTPA and TEX. FIN. CODE §392.304(a)(7);
- I. Representing, by the false and fraudulent consumer collection letter, that the debt collector is affiliated with or is an instrumentality, agent, or official of, this state or agency of state or local government in violation of §17.46(a) of the DTPA and TEX. FIN. CODE §392.304(a)(9);
- J. Using the false and fraudulent consumer collection letter falsely representing or simulating a document authorized or issued by a court, official, a government agency, or creating a false impression about the communication's source, authorization, or approval in violation of §17.46(a) of the DTPA and TEX. FIN. CODE §392.304(a)(10);
- K. Using on the false and fraudulent consumer collection letter, a seal, insignia, or design that simulates that of a governmental agency in violation of §17.46(a) of the DTPA and TEX. FIN. CODE §392.304(a)(11);

L. Utilizing, on the false and fraudulent consumer collection letter, a deceptively similar representation of the state seal for commercial purposes without obtaining a license from the secretary of state for that use, in violation of § 17.46(b)(1) and §17.08 of the DTPA and TEX. BUS. & COM. CODE §17.01 *et seq.*

### **XIII. EX PARTE TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF NECESSARY**

13.1 The State's application for a temporary restraining order is authorized by Section 17.47 of the DTPA. TEX. BUS. & COM. CODE CODE §17.47(a) and by Section 392.403 of the Texas Finance Code. TEX. FIN. CODE §392.403.

13.2 Pursuant to § 17.47 of the DTPA, the State requests that the Court grant a temporary restraining order, temporary injunction, and permanent injunction enjoining Defendants, their officers, agents, servants, and employees from violating Texas law by attempting to collect debts by sending the fraudulent collection letter attached hereto as Exhibit A to any more consumers, as well

as enjoining the Defendants from future operation of their pay day loan and collection business by utilizing any similar false or fraudulent collection letters in the State of Texas, or making any similar representations, including but not limited to, the forged signature of a public official, the unauthorized use of a deceptively similar government seal, false representations regarding prosecution by the District Attorney, false representations of an existing criminal case, and false representations of applicable fines and jail terms . A temporary restraining order is necessary



because immediate harm and injury are presumed if a law is being violated.<sup>7</sup> Exhibit B, attached hereto and incorporated herein, is an affidavit in support of this request for injunctive relief.

13.3 Pursuant to § 17.47 of the DTPA Dallas County Civil Courts Local Rule 2.02(a) and(b), no notice of this suit and application for temporary restraining order along with the proposed order has or will be presented to the opposing parties before the application and proposed order are to be presented to the Court for decision for reason that irreparable harm is imminent and or that relevant records may be removed, secreted or destroyed. A temporary restraining order is necessary because immediate harm and injury are presumed if a law is being violated.<sup>8</sup> Exhibit B, attached hereto and incorporated herein, is an affidavit in support of this request for injunctive relief.

13.4 Pursuant to Dallas County Civil Courts Local Rule 2.02(c), the undersigned counsel hereby certifies that to the best of counsel's knowledge, this case in which the application for temporary restraining order is presented, is not subject to transfer under Dallas County Civil Courts Local Rule 1.06.

13.5 The State asserts good cause exists for the modification of the rules of discovery pursuant to TEX. RULE CIV. PROC. 191.1. The State requests leave of Court to engage in discovery, issue subpoena's, take telephonic, video, written, and other depositions, and require production of documents in connection therewith, prior to any scheduled temporary injunction hearing upon reasonable shortened notice to the Defendants.

13.6 The State requests that the Clerk of the Court issue such Writs of Injunction and/or Writs of Restraint pursuant to any Injunction or Ex Parte Temporary Restraining Order issued by

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<sup>7</sup> See Footnote 2 above.

<sup>8</sup> See Footnote 2 above.

this Court in conformity with the law, and that same be issued and be effective without the execution and filing of a bond as Plaintiff, the State of Texas, is exempt from such bonds under TEX. BUS. & COM. CODE ANN. § 17.46(b).

#### **XIV. PRAYER**

14.1 WHEREFORE PREMISES CONSIDERED, Plaintiff, the State of Texas, respectfully prays and requests that Defendants, FEDERAL CASH ADVANCE OF OKLAHOMA, LLC, d/b/a CASHMAX, and d/b/a FED CASH and d/b/a/ TOPCASH, and d/b/a CASH SERVICE CENTER, (“Federal Cash”) and PATRICK “DYLAN” D. WHITE, Individually, be cited according to law to appear and answer herein; that an Ex Parte Temporary Restraining Order be issued by the Court ordering the Defendants to appear for Temporary Injunction Hearing within 14 days therefrom; that leave be granted for the State to engage in discovery prior to the Temporary Injunction Hearing; that a Temporary Injunction be issued; that this matter be set for trial; and upon final hearing a Permanent Injunction be issued, restraining and enjoining Defendants, their successors, assigns, officers, agents, servants, employees, and representatives from making representations, doing the acts, and engaging in the unlawful practices set out in the preceding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices and conduct of trade or commerce within the State of Texas as follows:

- A. Attempting to collect debts by sending the same or similar fraudulent collection letters (attached hereto as Exhibit A and) subject of this suit to any consumers;
- B. Attempting to collect debts by sending similar false or fraudulent collection letters collection letters to any consumers, making any similar representations;
- C. Attempting to collect debts by sending collection letters to consumers bearing the

forged signature of a public official;

- D. Attempting to collect debts by sending collection letters to consumers bearing the unauthorized use of a government seal or a deceptively similar government seal;
- E. Attempting to collect debts by sending collection letters to consumers bearing false representations regarding prosecution by the District Attorney;
- F. Attempting to collect debts by sending collection letters to consumers bearing false representations of an existing criminal case;
- G. Attempting to collect debts by sending collection letters to consumers bearing false representations of applicable fines and jail terms;
- H. Attempting to collect debts by sending collection letters to consumers which fail to state the actual name and actual address of the creditor and debt collector; or,
- I. Spoliating, destroying, altering, changing, obliterating or removing from the jurisdiction of this Court or failing to preserve, protect and produce as may be required during the pendency of this suit, any and all documents and records, including but not limited to consumer files and collection letters, notices or correspondence in any form, related to Defendants business of operating a pay day loan and collection business in Texas.

14.2 The State respectfully further prays and requests that the Court award judgment against the Defendants FEDERAL CASH ADVANCE OF OKLAHOMA, LLC, d/b/a CASHMAX, and d/b/a FED CASH and d/b/a/ TOPCASH, and d/b/a CASH SERVICE CENTER, (“Federal Cash”) and PATRICK “DYLAN” D. WHITE, Individually, jointly and severally, as follows:

- A. That Defendants be adjudged and ordered to pay to the State civil penalties of up to

\$20,000 for each and every violation of the DTPA, pursuant to sections 17.08 and 17.47(c)(1) of the Texas Business and Commerce Code and section 392.404 of the Texas Finance Code;

- B. That Defendants be adjudged and ordered to pay the State attorney's fees and costs of Court as provided by the laws of the State of Texas, including but not limited to, TEX. GOV. CODE ANN. §402.006(c); and,

14.3 The State further prays for the appointment of a Temporary and Permanent Receiver, as may become necessary, to locate, conserve and manage Defendants's assets so as to minimize harm to consumers who contracted with Defendants, and as may be necessary to comply with and obey any Orders and Judgments issued by the Court.

14.4 The State prays leave of Court to engage in discovery, issue subpoena's, take telephonic, video, written, and other depositions, and require production of documents in connection therewith, prior to any scheduled temporary injunction hearing upon reasonable shortened notice to the Defendants.

14.5 The State prays that all relief be denied Defendants and that the State receive such other and further relief to which it is justly entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

DANIEL HODGE  
First Assistant Attorney General

DAVID MORALES  
Deputy First Assistant Attorney General

BILL COBB  
Deputy Attorney General for Civil Litigation

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ATTORNEYS FOR PLAINTIFF  
THE STATE OF TEXAS

LIST OF ATTACHED EXHIBITS:

EXHIBIT A Copy of Defendants fraudulent collection letter.

EXHIBIT B Verification (pursuant to Tex. Rules of Civil Procedure 680 and 682).

***EXHIBIT B***

**VERIFICATION**

**STATE OF TEXAS**

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§

**COUNTY OF DALLAS**

§

BEFORE ME, the undersigned authority, on this day personally appeared the below named affiant, who, after being duly sworn, stated under oath that (s)he is competent and authorized to make this verification on behalf of the State of Texas, Plaintiff in this action; that (s)he is an Investigator for the Attorney General of the State of Texas; that (s)he has read the forgoing pleading; that every statement of fact concerning the violations of law by Defendants contained in the pleading is credibly and reliably true and correct, is within their personal knowledge and other employees of the Attorney General, are matters observed pursuant to a legal duty to report, are factual findings resulting from an investigation made pursuant to authority granted by law, or are matters of records, reports, statements, or data compilations of public offices or agencies setting forth the activities of the office or agency; that Defendants operated a pay day loan and collection business in Dallas County; caused the fraudulent collection letter attached as Exhibit A to be delivered to consumers in connection with an apparent attempt to threaten criminal prosecution to collect a civil obligation, in violation of the DTPA; that neither the Dallas County Clerk nor the Secretary of State authorized such a letter; nor did the Secretary of State license Defendants to use a representation of the state seal for commercial purposes; that the representation of the seal on the fraudulent collection letter was deceptively similar to the state seal; that the Dallas County Criminal District Attorney was not prosecuting any such criminal case against the consumer as was represented in such letter; and further that the consumer protection division believes that such an emergency exists such that irreparable harm is imminent and or that relevant records may be removed, secreted or destroyed,

and immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary restraining order. And further that a temporary restraining order is necessary because immediate harm and injury are presumed if a law is being violated.

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KELLE SLAUGHTER, Investigator  
Affiant

SUBSCRIBED AND SWORN TO before me, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
to certify which witness my hand and official seal.

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Notary Public in and for the State of Texas