Fighting Fraud in Texas:
An Attorney Toolkit

A guide to suing notarios, tax preparers and other fraudulent service providers under the Texas Deceptive Trade Practices Act
Acknowledgements

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1. INTRODUCTION: ADVOCATING FOR VICTIMS OF SERVICE PROVIDER
FRAUD THROUGH CIVIL LAWSUITS
LISA VIRGEN

In Arizona, a group of undocumented immigrants were promised a visa and legal status by an
immigration consultant. The consultant said her sister worked for U.S. Customs and Immigration
Services (USCIS) and she could use her connections to get them a visa fast. For an additional $1,500 she
would escort their family members from Mexico into the country in an official Department of Homeland
Security vehicle. If someone hesitated to pay her the $4,000 for these services, she told them that her
sister at USCIS was about to retire, so they needed to act quickly. But after these immigrants charged
their credit cards or borrowed from friends and family to pay her fees, no visas or family members ever
arrived. These immigrants were defrauded thousands of dollars and left with nothing to show for it,
while the immigration consultant took off with their money.¹

Unfortunately, this case is a common occurrence. Across the country undocumented immigrants
are falling prey to this fraud scheme—fake promises of visas in exchange for cash. These unscrupulous
consultants trick immigrants into believing they are licensed or authorized to practice law because of
cultural and linguistic factors. In Latin America, a “notario” is an experienced attorney.² A fraudulent
notary takes advantage of the similarity between “notary” and “notario” to misrepresent the
qualifications of a notary in the U.S. to be the same as a “notario” in Mexico. An undocumented
immigrant who lives under the radar for fear of deportation may not know where to go for legal
services. So they go to the notario in their neighborhood who advertises locally and speaks Spanish. In
Washington, a notary charged immigrants $2,000 each to fill out immigration paperwork he was not
authorized or qualified to prepare.³ In Georgia, an immigration consultant’s bad legal advice placed her
client in deportation proceedings.⁴

Fortunately, Texas has passed legislation to fight notario fraud.⁵ Specifically, the Deceptive Trade
Practices Act allow consumers to bring private lawsuits against notarios. Consumer lawsuits can be a
strong tool for victims of notario fraud. Victims can recover their money and hold notarios accountable

²Americanbar.org, About Notario Fraud, last accessed April 1, 2017, americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud.html
experts-warn-of-immigration-fraud.
for their actions. Although state offices and federal agencies can sue a notario, they only have the resources to focus on big cases. When a single victim has a claim against a notario, an attorney can represent them under a private cause of action. A civil lawsuit allows a victim to sue for monetary loss, damages, attorney’s fees, and request an injunction against the notario.

Generally, false, misleading, or deceptive acts or practices that the consumer relied on are unlawful. Misleading activities include: an advertisement representing legal services or “notario public,” communication that represents oneself as a lawyer; or promises of a visa or immigration relief. A consumer who relies on an advertisement or believes a notary could practice law may have acted reasonably. And it is likely that the victim relied on the notario’s promises. Attorneys may also bring lawsuits under fraud, negligent misrepresentation, or breach of contract.

Lawsuits have been successful in obtaining relief. The Texas Office of the Attorney General has brought several lawsuits against notarios under the state’s Deceptive Trade Practices Act. In Texas v. Diaz, a notary public advertised that she had immigration forms and was a “notario publico.” The notario charged hundreds of clients $400 to $1,500 each for immigration services. The Attorney General secured an injunction against the notario, $683,000 in civil fines, and $684,000 in restitution.

Civil lawsuits, especially through consumer statutes, give victimized immigrants a remedy against immigration services fraud. When the immigrant has no relief available under immigration law, a civil lawsuit can help them recover the money they paid and deter the notario from defrauding more victims. However, in bringing these lawsuits, the client’s immigration status is an important factor. An undocumented immigrant may be unwilling to file suit and risk deportation. The attorney must weigh the costs and benefits of bringing a lawsuit against the notario on behalf of the immigrant. If the client is already facing immigration proceedings, than a civil suit may be their only form of restitution. In a Texas case, the victim was already deported as a result of the notario fraud, but the attorney brought a lawsuit against the notario and successfully recovered damages for the victim’s wife who was still in the United States. Through civil lawsuits pro bono attorneys can advocate for immigrants, stop notarios from preying on this vulnerable community, and bring justice to victims of notario fraud.

7 Id.
10 americanbar.org/content/dam/aba/administrative/immigration/fightnotariofraud/texas_v_diaz.authcheckdam.pdf
2. IMMIGRATION LAW FACT SHEET

Legal representation is not required for obtaining immigration benefits, but it is highly recommended given the complexity of the immigration system. The following provides general information on immigration legal topics.¹

How can someone immigrate to the United States?

Our immigration system has three main “pathways” for those who want to immigrate permanently:

- **Family reunification** allows a U.S. citizen or permanent resident to petition for specific family members – spouses, parents, children or siblings – to join them in the U.S. There are numerical caps on certain petitions, and waits can be substantial.
- **Employment-based** immigration allows an individual to remain permanently in the U.S. based on the terms of their specific employment visa. For example, the high-skilled H-1B visa.
- **Humanitarian grounds**: there are several forms of humanitarian relief, including asylum and refugee status, T Visas for survivors of human trafficking, the U Visas for victims of crime, and others (see definitions, below).

In addition to these three broad avenues for immigration, the diversity visa allows for permanent immigration for individuals from countries with low immigration to the U.S. Additionally, thousands of people come to the U.S. each year as “nonimmigrants” for a variety of purposes.

What is the difference between an immigrant and a nonimmigrant?

When granting permission for individuals to come into this country (a visa), our immigration system generally divides these new arrivals into two large categories: immigrants and nonimmigrants.

- “Immigrant” status is attached to a person who is granted permission to permanently reside in the U.S. through, for instance, an approved family petition filed by a family member who is a permanent resident, U.S. citizen. Immigrants may work without restriction and are eventually eligible to apply for citizenship.
- A “nonimmigrant” enters the U.S. on a temporary basis and for a specific purpose (e.g.: to visit, go to school, or work for a specific company). The amount of time that a non-immigrant may remain in the U.S., as well as the specific terms of their status here (for instance, whether and where they may work) depend on the type of visa. In certain cases, a nonimmigrant may apply for and adjust to immigrant status.

What governs immigration to the United States?

Immigration to the U.S. is governed exclusively by federal law, most notably the Immigration and Nationality Act (INA). The INA is implemented by a number of federal agencies. The most prominent of these is the Department of Homeland Security (DHS), which houses U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP). These three sub-agencies are responsible for the enforcement of immigration law as well as making decisions on applications for immigration benefits. Several other federal agencies also play a role in implementing U.S. immigration law, including the Department of Justice, the Department of State, the Department of Health and Human Services, and the Department of Labor.

¹ Created based on materials by Houston Immigration Legal Services Collaborative, American Gateways, Friends of Farmworkers (Philadelphia), and the New York Immigration Coalition.
Is immigration court the same as criminal court?

No. Immigration courts are special courts that exist within the Department of Justice. Unlike in criminal courts (part of the judicial branch), there is no right to an attorney at government expense in immigration courts (part of the executive branch). The responsibility of immigration courts is to evaluate the cases of individuals in removal proceedings to determine if they should be deported or if they can stay in the U.S. with some form of immigration benefit. Immigration court proceedings have their own rules and substantive body of law.

What is the timeline for a someone who is trying to get lawful status?

Individuals can apply for an immigration benefit affirmatively to USCIS, or if they are in removal proceedings, they will apply for immigration relief to the immigration court. The length of time depends on the type of proceeding they are in, and the type of benefit they are seeking:

- **Affirmative:** USCIS adjudicates petitions for benefits for individuals who are not in removal proceedings, ranging from asylum to family-based petitions to naturalization. Generally, USCIS is facing severe backlogs and may even take several years to make a determination.
- **Defensive:** The length of time spent in immigration court proceedings varies greatly depending on the location and case backlog of the court in your jurisdiction, whether you have legal representation, and where you are in detention. Detained cases in Houston can take three to nine months to complete, while cases on the non-detained docket may take two to four years, if not longer. If an individual decides to appeal a decision, then the length of the case is prolonged.

Should immigrants file their taxes?

Undocumented immigrants are able to complete and file federal income tax returns using an Individual Taxpayer Identification Number (ITIN). Filing taxes annually can be hugely beneficial for undocumented immigrants who may someday be eligible for relief by proving continuous presence in the U.S., the existence of a marital relationship, or good moral character.

Should undocumented victims of crime avoid reporting crimes to the police?

No. The ultimate objective of law enforcement agencies is to protect and serve the entire community. No matter immigration status, a victim of a crime should not be afraid to speak out. Additionally, if a person is a direct or indirect victim of a particularly serious crime in the U.S., they may be eligible for a form of humanitarian relief known as a U visa. They must report the crime, assist with the investigation, and comply with reasonable requests from law enforcement in order to proceed with the visa.
The ABC’s of Immigration: Common Terms in Immigration Law

Immigration Law Sources

- **Immigration and Nationality Act (INA):** Contains the statutory provisions related to immigration, temporary admission, naturalization, and removal of noncitizens.
- **8 Code of Federal Regulations (8 C.F.R):** General provisions of law dealing with “Aliens and Nationality,” also codified in Title 8 of the U.S. Code.

Immigration Agencies

**Department of Homeland Security (DHS):** The agency responsible for enforcing the immigration laws of the U.S., issuing notices to appear, and prosecuting noncitizens in immigration court. *This agency was created in 2003, abolishing the former Immigration and Naturalization Services (INS).*

**U.S. Citizenship and Immigration Services (USCIS):** The adjudicative arm of DHS responsible for denying or granting certain immigrant and non-immigrant petitions and benefits, such as applications to become an LPR and applications to obtain work authorization. It also conducts naturalization interviews.

**Immigration and Customs Enforcement (ICE):** The enforcement and investigative arm of DHS responsible for enforcing immigration and customs laws. ICE officers are typically the agents to apprehend an individual in the interior of the US, while CBP agents usually apprehend a person near the border or at a port of entry. ICE agents meet with individuals in detention centers and are the officers who physically deport individuals.

**Customs and Border Patrol (CBP):** The protective arm of DHS responsible for patrolling and securing U.S. borders – such as airports, bridges, and other points of entry – by preventing the unlawful entry of people and goods. CBP maintains temporary detention facilities along the borders, where immigrants can be housed for a few days before release or transfer to ICE custody for longer-term detention.

**Executive Office of Immigration Review (EOIR):** Branch of the Department of Justice responsible for adjudicating removal proceedings. Also known as the immigration court.

**Board of Immigration Appeals (BIA):** The highest administrative body for interpreting and applying U.S. immigration law. The BIA has jurisdiction to hear appeals from certain decisions rendered by an immigration judge.

Process Terms

**Admitted:** The lawful entry of the alien to the U.S. after inspection and authorization by an Immigration Officer.

**Adjustment of Status:** Process by which an individual can adjust immigration status from nonimmigrant (temporary) status to immigrant (permanent) status, so long as the individual meets lawful permanent residency requirements.

**Alien Registration Number (A Number or A#):** A unique seven-, eight-, or nine-digit number assigned to a noncitizen by the Department of Homeland Security (DHS).

**Beneficiary:** Noncitizens on whose behalf a U.S. citizen, legal permanent resident, or employer have filed a petition for that noncitizen to receive immigration benefits from USCIS.

**Biometrics:** Process of identifying a person by unique biological features, such as fingerprints. Most applicants are required to go to a USCIS service center to be photographed and fingerprinted.

**Deferred Action:** Type of discretionary relief from removal that defers removal action against an individual for a certain period of time.
**Entry Without Inspection (EWI):** The act of entering the U.S. without being inspected or admitted by an immigration officer at the port of entry. A common EWI scenario is when an immigrant crosses the border by foot.

**Notice to Appear (NTA):** Charging document issued by DHS to persons who will face removal in adversarial proceedings before an immigration judge.

**PERM:** The process of obtaining labor certification, the first step in the green-card process for foreign nationals seeking permanent residence through their employment.

**Petitioner:** The individual or entity that files for an immigration benefit on behalf of an eligible noncitizen. The petitioner in family-based petitions is the U.S. citizen or LPR; in employment-based petitions, it is the U.S. employer.

**Priority Date:** The date a petition for an immigrant visa was filed. Generally, if the applicant has a priority date on or before the date listed in the visa bulletin for his country of origin, then the applicant is currently eligible for a visa.

**Removal Proceedings:** A person in violation of an immigration law may be placed in removal proceedings, which are administrative proceedings to determine whether a person will be deported or has some relief to stay in the U.S. The hearing process consists of two hearing types: “master calendar hearings” and “individual hearings.”

**Removal order ("deportation order"):** An order issued by the immigration court ordering a person be removed from the U.S. This order is typically (though not exclusively) given after a removal hearing. If someone does not show up to a court hearing, they will be ordered removed *in absentia*.

**Visa:** A legal document that allows a foreign national to enter the U.S. either temporarily under a nonimmigrant visa or permanently under an immigrant visa. The Department of State manages the visa process.

**Types of Immigrant Relief or Status**

**Asylum:** Form of immigration relief that may be applied for defensively during removal proceedings, or affirmatively by a recent entrant. An individual must show he is unable or unwilling to return to his country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

**Deferred Action for Childhood Arrivals (DACA):** Executive Order that allows certain individuals who came to the U.S. as children and who meet certain requirements to apply for deferred action for a period of two years, subject to renewal. Commonly referred to as “Dream Act,” but DACA is not a law.

**Employment Authorization Document (work permit):** A document issued by USCIS that provides temporary employment authorization to noncitizens in the United States. In Texas, a work permit will allow someone to obtain a social security card and a Texas driver’s license or State ID.

**Family petition:** A U.S. citizen or legal permanent resident may petition for a relative to become an LPR. Immediate relatives (spouses, unmarried children under 21, and parents of children over 21) can immediately become LPRs. Other qualifying relatives of citizens (adult or married children) must wait until a visa number is available to apply.

**Lawful Permanent Resident (LPR, or “green card holder”):** Lawful permanent residence allows someone to stay in the U.S. indefinitely. It grants permission to work and, after a certain number of years, a person may apply to become a citizen through naturalization. Permanent residence is “permanent” in that it cannot be taken away without an administrative hearing, and it can also be lost if relinquished or deemed relinquished. Note: The Green Card is the actual Permanent Resident Card, so called because it used to be green.
Naturalization: The process by which a lawful permanent resident becomes a U.S. citizen. In most cases, an individual must have been an LPR for five years before applying for naturalization. A naturalized citizen has all the rights and responsibilities of a U.S.-born citizen (except eligibility for the presidency).

Non-immigrant status: A person who holds a temporary visa, such as a student visa or a visitor visa, and intends to reside in the U.S. on a temporary basis.

Special Immigrant Juvenile Status (SIJS): A status available to children who have been abused, abandoned, or neglected by at least one parent and for whom it is not in their best interest to return to their country of nationality. Individuals granted SIJS may be able to adjust.

Temporary Protected Status (TPS): An immigration status granted to noncitizens in the U.S. who temporarily cannot safely return to their home country because of violence, natural disaster, or another unusual condition. TPS does not lead to permanent residence but allows a person to remain and work in the US.

T-visa: Visa eligible to individuals who are the victims of human trafficking. Individuals may be able to adjust to LPR status after obtaining this visa.

Undocumented Immigrant: Any person who is present in the U.S. without the permission of the U.S. government

U-visa: Visa eligible to individuals who cooperate in the prosecution of a crime and/or are victims of certain crimes (often used for domestic violence survivors, but not exclusively as it is also eligible for assault victims, kidnapping victims, etc.). Individuals may be able to adjust to LPR status after obtaining this visa.

VAWA: The Violence Against Women Act is a protective law that grants legal status to domestic violence survivors if the abuser is a U.S. or LPR or has certain other legal status. Individuals may be able to adjust to LPRs under VAWA.

Voluntary Departure: A form of relief from removal whereby the noncitizen agrees to leave the U.S. voluntarily by a specific date rather than being subject to an official order of removal by an immigration judge. If the individual does not leave in the appointed time, the voluntary departure order will automatically convert to a removal order.

Common Immigration Forms

- Form G-28: Notice of Entry of Appearance as Attorney or Accredited Representative. Filed by an attorney to confirm his/her eligibility to act on behalf of a client.
- Form I-485: Application to Register Permanent Residence or Adjust Status. Filed by a noncitizen of the U.S. seeking to adjust status to that of a lawful permanent resident.
- Form I-130: Petition for Alien Relative. Filed by a U.S. citizen or LPR seeking to help an immediate relative immigrate to the U.S.
- Form I-140: Immigrant Petition for Alien Worker. Filed by a U.S. employer seeking to petition for an alien worker to become a permanent resident.
- Form I-765: Application for Employment Authorization: Filed by certain noncitizens eligible to work in the U.S.
- Form I-821D: Consideration of Deferred Action for Childhood Arrivals. This form is used to apply for DACA.
- Form N-400: Application for Naturalization. This is the form used by LPRs to apply to become a naturalized U.S. citizen.
- Form I-601: Application for a Waiver of Grounds of Inadmissibility. This form is used to waive certain grounds of inadmissibility that may be a barrier to receiving certain immigrant benefits and nonimmigrant status.
- Form I-601A: Application for Provisional Unlawful Presence Waiver. Certain immediate relatives of U.S. citizens use this form to request a waiver of unlawful presence.
- Form I-912: Request for a Fee Waiver. Used to request a fee waiver for certain nonimmigrant benefits/services based on an inability to pay.
Tax season is an opportunity for unscrupulous tax return preparers to commit fraud. Tax preparers target low income populations because of their large refunds, based on tax credits like the Earned Income Tax Credit and the Additional Child Tax Credit. These can add thousands of dollars to a person’s refund. Fraudulent tax preparers misrepresent their services and charge huge fees for simple services.

**How do tax preparers commit fraud?**

Fraudulent tax preparers can claim an erroneous credit or filing status on a taxpayer’s tax return to increase the refund, and they frequently keep a portion of the tax return for themselves. The more money the taxpayer gets, the more money in the preparer’s pocket. Low income taxpayers typically do not have enough money to pay fees upfront, so fraudulent tax preparers will offer to take their fees out of the tax refund. They contract with a third party to offer a Refund Anticipation Check and a temporary bank account. The tax return directs the IRS to deposit the entire refund into this temporary account. The preparer can take their fees from the refund and give the rest of the refund to the taxpayer. Or, the tax preparer can put their own bank account information on the tax return and receive it directly. The IRS currently allows a tax refund to be directed into as many as three accounts.

**How do the taxpayers not know that fraud is going on?**

The number one reason is that they put too much trust in the tax preparer. They assume that their tax preparer has their best interests in mind, perhaps even thinking that their preparer is trained or certified. However, the IRS does not regulate tax preparers. The tax preparer can hide their fraud by refusing to give the client a copy of the tax return or having them sign blank pages or multiple copies – only one of which the tax preparer will file. Or the tax preparer may claim that they cannot provide a copy of the return because of a technical issue and make a false promise to provide it later.

**What happens in an IRS audit?**

The IRS targets tax returns that claim certain credits. Low income taxpayers have a higher than average rate of audits because they typically receive the Earned Income Tax Credit and other refundable credits. In an audit, the IRS can question everything on the return, including dependents, filing status, and the credits claimed. This usually requires the taxpayer to provide several documents proving everything on their return, including birth certificates and lease agreements. An IRS audit can be a hard thing to face alone. Too often, low-income taxpayers cannot defend themselves in the audit. The IRS takes the position that if a taxpayer received a wrongful refund, they must pay it back, even if they relied on a tax preparer. Thus, many taxpayers are left with an IRS debt that they cannot afford to repay.
The Tax ABC’s

**American Opportunity Credit (also known as the Education Credit)** is a refundable credit for students who paid qualified educational expenses for the first four years of higher education. Eligible taxpayers may qualify for the maximum annual credit of $2,500 per student. Generally, 40 percent of the credit is refundable, which means that a taxpayer may be able to receive up to $1,000, even if they owe no taxes.

**EITC (The Earned Income Tax Credit, EITC or EIC)** is a refundable credit that benefits working people with low to moderate income.

**CTC (The Child Tax Credit)** is a refundable credit that consists of a nonrefundable and refundable part (additional child tax credit). The nonrefundable credit can reduce tax liability up to $2,000 per qualifying child starting in 2019. If the taxpayer’s taxable income is $0, they may qualify to have some of the credit refunded.

**ITIN (An Individual Taxpayer Identification Number)** is a tax processing number issued by the IRS to individuals who are not eligible to obtain a Social Security number (SSN) from the Social Security Administration (SSA) but need to report their income.

**LITC (Low Income Taxpayer Clinics)** provide representation for individuals in disputes with the Internal Revenue Service (IRS), including audits, appeals, collection matters, and federal tax litigation. LITCs can also help taxpayers respond to IRS notices and correct account problems. LITC services are free or low cost for eligible taxpayers. Although LITCs receive partial funding from the IRS, they are completely independent of the IRS.

**RAL (Refund Anticipation Loan)** is a loan made by a lender that is based on and usually repaid by an anticipated federal income tax refund. They are offered starting in December through the end of the tax season in April. Taxpayers are generally charged high fees and interest to obtain a RAL.

**RAC (Refund Anticipation Check)** directs the refund to a financial institution which disburses fees to the tax preparer and the balance to the taxpayer. The financial institution acts as a third party.

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4. BEST PRACTICES FOR INTERVIEWING CLIENTS OF SERVICE PROVIDER FRAUD

Make sure to clearly explain your role, your organization, and the purpose of the interview process. Discuss your credentials and what you can – and cannot – offer a potential client. Discuss your professional duties, especially with regard to client confidentiality. Many immigrants are unfamiliar with the U.S. legal system and may not understand the scope of your role as a lawyer. Careful explanation will help dispel any misconceptions and may actually serve to elicit pertinent information about the client’s past experiences with legal representation.

- Consider beginning the interview by having a broad conversation about who the person is and why she is seeking your services. Immediately writing notes might be jarring. Starting with an open conversation may help the potential client relax and build trust.

- Think about removing physical obstacles, such as a desk, between you and the individual. This can help facilitate a more intimate conversation that does not feel overly formal or sterile.

- Whenever possible, conduct the interview in the language most comfortable for the potential client. If you are not fluent in that language, try to use a competent or professional interpreter rather than relying on family members or friends of the victim who might add their own commentary. Remember your ethical duties as a practitioner and explain how the presence of a family member may impede full and complete communication. Where professional interpreters are used, explain that they are also subject to ethical standards, which include a duty to maintain confidences.

- Return any original documents and keep copies for your records. Exploitative tactics used by notarios include retaining personal documents of the victims, so your client may be particularly wary of providing you with originals. If you must keep any original documents, explain why and provide receipts to the client.

- Keep literature in your office to inform immigrants about notario fraud. The FTC has several short handouts that can be ordered for free. Many immigrants do not realize notarios are unqualified to provide immigration services and often hurt those they purport to serve. Giving potential clients this information may serve as a preventive measure and help reduce the number of immigrants who use notarios.
• Ensure the individual understands that the interview process does not mean you are her legal representative. However, also make sure that she understands this initial interview will remain confidential regardless of whether you agree to take her on as a client. Again, many immigrants may be confused about the role of legal representatives in the United States. Notarios often overpromise. It is important to be explicit about the scope of your representation.

• If you decide you can offer representation, take appropriate steps to ensure that the client feels that she is in control of the decision-making. Many notarios simply tell their clients, “I will take care of it,” and proceed to file documents incorrectly or to do absolutely nothing. Notarios may even falsely claim to have obtained immigration relief for their victims. Be careful to explain what is and is not a viable possibility. This may help to reduce the feeling of helplessness and confusion caused by the prior interaction with a notario. Sometimes it can be frustrating when you find that a client visited a notario who seems obviously unqualified.

• As lawyers, we are trained to be skeptical and have greater knowledge about ways to access accredited legal services. Victims of fraud may be embarrassed about the fact that they were victimized. Making an effort to withhold judgment or to empathize with the circumstances that might have led to her reliance on a notario may increase the likelihood that the potential client will be forthcoming. Going to the notario made logical sense to this person. You are likely to gain trust and gather more information if you approach the potential client with compassion and with the goal of building an open relationship.

5. IMMIGRATION AND TAX PREPARER FRAUD
SAMPLE CLIENT INTERVIEW QUESTIONS

General Questions

1. Name of notario or tax preparer:

2. Address of notario or tax preparer:

3. How did the client find out about the services of this person or company?

4. When did the client last visit the service provider?

5. Was the client charged for these services? How much?

6. If the client paid for services, how did he make a payment?

7. Did the client sign a contract or any other form for the services?

8. Does the client have any documents of the transactions? (e.g. bank statements, copies of checks, receipts, copies of prepared documents by the service provider).

Notario Fraud Questions

9. How did the notario describe their profession?

10. What did the notario offer to the client? (e.g. a special deal, discount, low-cost services, mention a special relationship with an immigration official or office, etc.)

11. What type of services did the notario provide? (e.g. provided legal advice, translated or notarized documents, filled out immigration forms, sent documents on client's behalf to immigration)

12. If the notario completed an immigration form, did she sign as preparer?
13. After the “service” was provided, what happened in the client's case (was the benefit sought granted, for instance)?

14. If the client confronted the notario, did the notario threaten or blackmail client? If so - and if the client reported to police and assisted in the investigation - the client could be eligible for a u-visa, depending on the criminal charges filed against the notario. Please refer to an immigration attorney.

15. If the client did not report the notario, why not?

**Tax Preparer Fraud Questions**

16. What type of services did the preparer offer to the client?

17. Did the preparer make promises or statements to the client about how much tax refund he would receive?

18. Did the preparer do any of the following:
   
   a. Give the client a blank tax return?
   
   b. Offer a loan or advance of the tax refund so the client would get it faster?
   
   c. Charge the client a fee based on a percentage of the tax refund?
   
   d. Ask the client to have the deposit sent to preparer's bank account?
   
   e. Allow the client to review the tax return before it was sent to the IRS to make sure everything was correct?

19. Did the client receive any letters from the IRS after the preparer sent in the forms?

20. Does the client now owe additional taxes?
I. Introduction

Section 17.50 of the DTPA creates a private right of action for the injured consumer:
   a. A consumer may maintain an action where any of the following constitute a producing cause of economic damages or damages for mental anguish:
      (1) the use or employment by any person of a false, misleading, or deceptive act or practice that is:
         (A) specifically enumerated in a subdivision of Subsection (b) of Section 17.46 of this subchapter; and
         (B) relied on by a consumer to the consumer’s detriment;
      (2) breach of an express or implied warranty;
      (3) any unconscionable action or course of action by any person; or
      (4) the use or employment by any person of an act or practice in violation of Chapter 541, Insurance Code.

   The DTPA provides for these damages: economic damages, mental anguish, additional damages, and attorney’s fees. If the consumer establishes a “tie-in” violation (a violation of a statute independent of the DTPA that can be pled as a DTPA violation), then the consumer can recover actual damages (anything recoverable under common law), additional damages, and attorney’s fees.

II. Pre-Suit Notice

Before any DTPA lawsuit can be filed, the plaintiff must give the defendant the required statutory notice. The purpose of the notice is to encourage settlement of the action before trial, so the statute allows the defendant 60 days after receipt of the notice to agree to the plaintiff’s demand. The defendant could make a counter-offer. The giving of notice is not jurisdictional. Failing to provide this notice only allows the defendant to seek an abatement of the action until the required notice is given.

The notice requirement of the DTPA is set forth in Section 17.505, as follows:
   (a) As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 60 days before filing the suit advising the person in reasonable detail of the consumer’s specific complaint and the amount of economic damages, damages for mental anguish, and expenses, including attorneys’ fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. During the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer’s action or claim may be presented to the consumer.
   (b) If the giving of 60 days’ written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations or if the consumer’s claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by Subsection
(d), Section 17.506 of this subchapter may be made within 60 days after service of the suit or counterclaim.

(c) A person against whom a suit is pending who does not receive written notice, as required by Subsection (a), may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending. This subsection does not apply if Subsection (b) applies.

(d) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section. A suit is automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed under Subsection (c) if the plea in abatement:

1. is verified and alleges that the person against whom the suit is pending did not receive the written notice as required by Subsection (a); and

2. is not controverted by an affidavit filed by the consumer before the 11th day after the date on which the plea in abatement is filed.

(e) An abatement under Subsection (d) continues until the 60th day after the date that written notice is served in compliance with Subsection (a).

The Fort Worth Court of Appeals has noted, “The requirements establish a fairly low threshold for a notice letter.” Richardson v. Foster & Sear, L.L.P., 257 S.W.3d 782, 786 (Tex. App.—Fort Worth 2008, no pet.). A DTPA notice letter must advise the defendant in reasonable detail of 1) the consumer’s specific complaint; and 2) the amount of economic damages, damages for mental anguish, and expenses, including attorneys’ fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. Id. The notice does have to provide specific factual allegations and not just parrot specific DTPA violations. In re Liberty Mut. Fire Ins. Co., No. 14–09–00876–CV (Tex. App.—Houston [14th Dist.] Apr. 27, 2010, orig. proceeding)(mem. op.).

III. Consumer Status

Texas courts have described a DTPA cause of action as comprising three elements: (1) the plaintiff is a “consumer” as defined in the statute; (2) the defendant committed one of the four defined violations; and (3) the violation was the producing cause of economic or mental anguish damages.

A private party who wishes to sue under the DTPA must establish what is called “consumer status.” In other words, “consumer status” gives the plaintiff standing to sue under the DTPA; without it, no DTPA action exists. The starting point for determining consumer status is the definition section of the act, Section 17.45, which contains many definitions to be used in interpreting the statute. The definition of “consumer” is found in subsection (4):

“Consumer” means an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of $25 million or more, or that is owned or controlled by a corporation or entity with assets of $25 million or more.


Subsections (1) and (2) of § 17.45 provide further guidance by defining “goods” and “services,” respectively:

1. “Goods” means tangible chattels or real property purchased or leased for use.
"Services" means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.

Texas courts have established a two-part test: 1) the person must have sought or acquired goods or services by purchase or lease, and 2) the goods or services purchased or leased must form the basis of the complaint. *Cameron v. Terrell & Garrett, Inc.*, 618 S.W. 2d 535, 539 (Tex. 1981).

Establishing consumer status in a notario fraud case is relatively easy: the individual purchased the services of the notario and those services are the basis of the individual’s complaint.

If an individual purchased the notario’s services for somebody else, then that third person may be able to sue as a consumer under the DTPA as a third-party beneficiary. A consumer need not be the actual purchaser or lessor of goods or services; a beneficiary of goods or services may be a consumer for purposes of the DTPA. *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 815 (Tex. 1997). The Fort Worth Court of Appeals has explained:

Thus, a person need not be a direct purchaser to satisfy the requirement that he seek or acquire goods or services by purchase or lease; in very limited situations, a third-party beneficiary may qualify as a consumer of goods or services as long as the transaction was specifically required by or intended to benefit the third-party and the good or service was rendered to benefit the third party. *Okland v. Travelocity. Com, Inc.*, No. 2-08-260-CV[Tex. App.—Fort Worth June 18, 2009, pet. denied](mem. op.); see also *Lukasik v. San Antonio Blue Haven Pools*, 21 S.W. 3d 394, 401 (Tex. App.—San Antonio 2009, no pet.); *Bohls v. Oakes*, 75 S.W.3d 473, 475 (Tex. App.—San Antonio 2002, pet. denied).

### IV. Venue

Venue is not going to be a big issue in a notario fraud case. The plaintiff can sue in the county where the deceptive conduct giving rise to the claim occurred or the county where the notario resides. The general rule for venue in the Civil Practice and Remedies Code provides that all lawsuits shall be brought:

1. in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
2. in the county of defendant’s residence at the time the cause of action accrued if defendant is a natural person;
3. in the county of the defendant’s principal office in this state, if the defendant is not a natural person.


The DTPA has its own venue provision, which generally incorporates the Texas venue statute found in the Texas Civil Practice and Remedies Code but also adds the county where “the defendant or an authorized agent of the defendant solicited the transaction made the subject of the action at bar.” Tex. Bus. & Com. Code § 17.56.

### V. DTPA Violations

Three of the four types of statutory violations might apply in a DTPA claim based upon notario fraud: so-called “laundry-list” violations, breach of warranty, and unconscionability.
A. Laundry-List Violations

The DTPA “laundry list” enumerates thirty-two violations. What makes many DTPA violations easier to prove than actual fraud is proof of intent or knowledge of the deceit isn’t necessary to prove liability for most laundry-list violations (knowledge or intent might affect recovery of damages). Thus, in a notario fraud case, the plaintiff suing under the DTPA wouldn’t have to meet the higher proof required for fraud.¹ The plaintiff will have to show that he or she detrimentally relied upon the defendant’s misrepresentation. Tex. Bus. & Com. Code § 17.50 (a)(1)(B).

Here are the “laundry-list violations that would be most useful in a notario fraud case:

(5) 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 the person does not;
(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
(24) 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;
(28) using the translation into a foreign language of a title or other word, including “attorney,” “lawyer,” “licensed,” “notary,” and “notary public,” in any written or electronic material, including an advertisement, a business card, a letterhead, stationery, a website, or an online video, in reference to a person who is not an attorney in order to imply that the person is authorized to practice law in the United States. Tex. Bus. & Com. Code § 17.46(b).

The violations for misrepresenting the “characteristics” or “quality” of a service are very broad and pliable. The Texas Supreme Court has held, “Misrepresentations, so long as they are of a material fact and not merely ‘puffing’ or opinion, are nevertheless actionable even though they are broad descriptions.” Pennington v. Singleton, 606 S.W. 2d 682 (Tex. 1980). The violation for misrepresenting that an agreement involves rights or remedies that it does not have might apply to what the notario has promised for his or her services. The “failing to disclose” violation might apply if the notario failed to disclose he or she was not an attorney, if the notario intended to induce the consumer into a transaction the consumer would not have otherwise entered. This violation would require proof of intent.

The last violation is one that is specifically aimed at notarios. It is a DTPA violation to use the word “notario” in advertisements or business cards or letterhead “in order to imply that the person is authorized to practice law in the United States.” This provision was added by the Texas legislature in 2015. While this provision certainly can be used in a private lawsuit, the focus of bill’s sponsors was to provide a tool for district and county attorneys. The House Bill Analysis for H.B. 2753 states:

¹ The elements of fraud are: (1) that a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury. In re First Merit Bank, 52 S.W. 3d 749, 758 (Tex. 2001).
Interested parties contend that it is difficult to prosecute certain kinds of immigration consulting fraud, including the practice of notaries public, or notarios, who take advantage of a misconception some Spanish speakers have that notaries public are licensed to provide legal services. The parties also report that local district, county, and city attorneys would prosecute these offenses if they were provided with the tools to do so. H.B. 2573 seeks to address this issue.

Similarly, the Senate Bill Analysis for H.B. 2573 noted, “The type of immigration consulting fraud covered under this bill is not currently an explicit offense under the Texas Deceptive Trade Practices Act. This bill would expand authority and streamline the process in order to assist agencies who do not have the capacity to prosecute all immigration services fraud” (emphasis added). The Senate Bill Analysis also noted that a committee substitute bill included “advertising by electronic communications, such as websites and online videos, in the list of deceptive trade acts where many brazen notarios advertise almost exclusively in the United States.”

B. Warranty

A DTPA consumer can sue for breach of an express or implied warranty. “The DTPA does not define the term ‘warranty.’ Furthermore, the act does not create any warranties; therefore any warranty must be established independently of the act.” La Sara Grain Co. v. First National Bank of Mercedes, 673 S.W.2d 558 (Tex. 1984). Only service warranties would apply in DTPA lawsuit against a notario. Implied warranties for services are very limited in Texas; no implied warranties appear to apply. However, express warranties are available for services. Southwestern Bell Telephone Co. v. FDP Corp., 811 S.W.2d 572, 575-576 (Tex. 1991). Express warranties would functionally be the same as the laundry-list misrepresentations of “characteristics.” A plaintiff would have to prove the express warranty was an affirmation of fact or promise.

C. Unconscionability

Section 17.50 (a)(3) proscribes “any unconscionable action or course of action by any person.” Section § 17.45(5) defines “unconscionable conduct or course of conduct” as “an act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.” The resulting unfairness must be “glaringly noticeable, flagrant, complete and unmitigated.” Chastain v. Koonce, 700 S.W.2d 579, 584 (Tex. 1985).

A typical notario fraud case should be rife with unconscionability. Immigrants in these situations have been taken advantage of their lack of knowledge to a grossly unfair degree. In a typical notario fraud case, the notario has preyed upon the immigrant’s confusion surrounding the term notario.

The Texas Supreme Court addressed unconscionability in a case where a lawyer had lied to his clients about filing a wrongful death lawsuit when, in fact, he had missed the statute of limitations. The plaintiffs had asserted that their lawyer acted unconscionably in falsely representing that he was actively prosecuting their medical malpractice claim for their child’s death. The court noted that the plaintiffs had depended on the lawyer to file suit. One of the plaintiffs testified, “You trust in a professional because they know more than you.” The supreme court concluded that the lawyer “took advantage of the trust the [plaintiffs] placed in him as an attorney. Therefore, the [plaintiffs] have presented some evidence that they were taken advantage of to a grossly unfair degree.” Latham v. Castillo, 972 S.W.2d 66, 69 (Tex. 1998).
Many Texas statutes are tied into the DTPA—a violation of the statute can be treated as a violation of the DTPA. There is one such relevant tie-in statute for notario fraud. In the section of the Texas Government Code regulating notaries public, a statutory violation is established for “representation as attorney.” This section states:

(a) A person commits an offense if the person is a notary public and the person:
   (1) states or implies that the person is an attorney licensed to practice law in this state;
   (2) solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration or admission to the United States, United States citizenship, or related matters;
   (3) solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;
   (4) uses the phrase “notario” or “notario publico” to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television; or
   (5) advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, if the person does not post or otherwise include with the advertisement a notice that complies with Subsection (b).

(a-1) A person does not violate this section by offering or providing language translation or typing services and accepting compensation.

(b) The notice required by Subsection (a)(5) must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

   “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

(c) It is an exception to prosecution under this section that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas.

(d) Except as provided by Subsection (e) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

(f) Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code.

Tex. Gov’t Code § 406.017.

This notary law violation is a better claim than the new specific DTPA laundry-list violation aimed at notarios. An immigrant could sue because the notario stated or implied that he or she was an attorney. An immigrant could sue for the notario preparing the documents to be filed “in a proceeding” relating to immigration or citizenship. These violations are broader than the specific violation in the DTPA. Moreover, the tie-in violation will afford better remedies, as explained below.
VII. Remedies

A. Producing Cause

Section 17.50 of the DTPA requires the violation “constitute a producing cause of economic damages or damages for mental anguish.” Tex. Bus. & Com. Code § 17.50 (a). Producing cause is different than proximate cause as it only requires showing the violation was the cause in fact of the damages; it does not require showing the damages were foreseeable. Arthur Andersen v. Perry Equipment Corp., 945 S.W. 2d 812, 816 (Tex. 1997) (“Of course, foreseeability is not an element of producing cause under the DTPA.”) The Texas Supreme Court has explained:

For DTPA violations, only producing cause must be shown. The element common to both proximate cause and producing cause is actual causation in fact. This requires proof that an act or omission was a substantial factor in bringing about injury which would not otherwise have occurred.

Prudential Ins. Co. of Am. v. Jefferson Assocs., Ltd., 896 S.W.2d 156, 161 (Tex. 1995). The court also has noted:

Defining producing cause as being a substantial factor in bringing about an injury, and without which the injury would not have occurred, is easily understood and conveys the essential components of producing cause that (1) the cause must be a substantial cause of the event in issue and (2) it must be a but-for cause, namely one without which the event would not have occurred.

Ford Motor Co. v. Ledesma, 242 S.W. 3d 32, 46 (Tex. 2007). If damages are too remote, too uncertain, or purely conjectural, they cannot be recovered. Arthur Andersen v. Perry Equipment Corp., 945 S.W. 2d at 816.

B. Remedies for DTPA Violations

1. Economic Damages

A DTPA consumer can recover economic damages. Economic damages are defined as “compensatory damages for pecuniary loss, including costs of repair and replacement. The term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.” Tex. Bus. & Com. Code § 17.45 (11).

2. Mental Anguish

DTPA plaintiffs can recover mental anguish if they can show the defendant acted knowingly and they can meet the evidentiary standard for mental anguish.

“Knowingly” is defined in the DTPA as “actual awareness, at the time of the act or practice complained of, of the falsity, deception, or unfairness of the act or practice giving rise to the consumer’s claim.” Texas Bus. & Com. Code § 17.45 (9).

The plaintiff also will have to meet the Parkway standard. In Parkway Co. v. Woodruff, 901 S.W.2d 434 (Tex. 1995), the Texas Supreme Court established the evidentiary requirements for recovery of mental anguish damages. To survive a legal sufficiency challenge, plaintiffs must present “direct evidence of the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in the plaintiffs’ daily routine.” Id. at 444. If there is no direct evidence, the reviewing court will apply
“traditional ‘no evidence’ standards to determine whether the record reveals any evidence of ‘a high degree of mental pain and distress’ that is ‘more than mere worry, anxiety, vexation, embarrassment, or anger’ to support any award of damages.” Id.

3. Additional Damages

The factfinder also can award “additional damages,” which are discretionary (they aren’t technically “treble” damages because the award is discretionary). The upper limit for such award depends upon the predicate finding that is made. If the factfinder determines the defendant acted “knowingly,” then “the trier of fact may award not more than three times the amount of economic damages.” Texas Bus. & Com. Code § 17.50 (b)(1). If the factfinder finds the defendant acted “intentionally,” then “the trier of fact may award not more than three times the amount of damages for mental anguish and economic damages.” Id. “Intentionally” means:

- actual awareness of the falsity, deception, or unfairness of the act or practice, or the condition, defect, or failure constituting a breach of warranty giving rise to the consumer’s claim, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness. Intention may be inferred from objective manifestations that indicate that the person acted intentionally or from facts showing that a defendant acted with flagrant disregard of prudent and fair business practices to the extent that the defendant should be treated as having acted intentionally.


4. Attorney’s Fees

If a consumer prevails, the DTPA mandates an award of attorney’s fees. Tex. Bus. & Com. Code § 17.50 (b) (“Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys’ fees.”). In these types of cases, the lodestar method, rather than a contingent fee, would probably be the basis of the fee award. Attorneys will have to be mindful of recent case law that requires contemporaneous records to establish their reasonable hours. See Mark E. Steiner, Will El Apple Today Keep Attorney’s Fees Away?, 19 JOURNAL OF CONSUMER AND COMMERCIAL LAW 114 (2016).

C. Remedies for Tie-In Violations

The remedial scheme for a tie-in statute like the Notary Public Act is different than that afforded an ordinary DTPA violation. Remedies for a tie-in statute violation are essentially what DTPA remedies were before tort reform: actual damages, additional damages based upon actual damages, and attorney’s fees. Consequently, tie-in statute violations afford better remedies. Texas Business & Commerce Code Section 17.50 (h) outlines the remedies available for tie-in provision:

- Notwithstanding any other provision of this subchapter, if a claimant is granted the right to bring a cause of action under this subchapter by another law, the claimant is not limited to recovery of economic damages only, but may recover any actual damages incurred by the claimant, without regard to whether the conduct of the defendant was committed intentionally. For the purpose of the recovery of damages for a cause of action described by this subsection only, a reference in this subchapter to economic damages means actual damages. In applying Subsection (b)(1) to an award of damages under this subsection, the trier of fact is authorized to award a total of not more than three times actual damages, in accordance with that subsection.
“Actual damages,” as used in the DTPA, means those recoverable at common law. Brown v. American Transfer & Storage Co., 601 S.W.2d 931, 939 (Tex. 1980). That allows plaintiffs to recover any item of damages available under the common law. It might be possible, for example, for the plaintiff to recover for loss of consortium or loss of society damages.

Additional damages are based upon actual damages, not just economic or mental anguish damages, and only require the knowingly predicate. The prevailing consumer will recover attorney’s fees.

VIII. Relevant Case Law

I am not aware of any appellate cases in Texas involving private lawsuits against notarios. There is a very instructive case involving an attorney’s mishandling of a N-400 application. In McLeod v. Gyr, the Dallas Court of Appeals affirmed a judgment against an attorney based upon the attorney’s misrepresentations about his ability to handle a N-400 application. McLeod v. Gyr, 439 S.W. 3d 639 (Tex. App.—Dallas 2014, pet. denied). The court of appeals affirmed a judgment that included $23,000 in actual damages, $46,000 in additional damages, and $28,000 in attorney’s fees. Gyr, a lawful permanent resident, contacted McLeod about handling his naturalization application. McLeod told Gyr that he “specialized in immigration matters” and “handled immigration matters,” including N-400 applications. McLeod unsuccessfully submitted four N-400 applications, charging $23,000 for his fruitless efforts. Among other things, McLeod checked “No” to these questions in the application:

- Do you support the Constitution and form of government of the United States?
- Are you willing to take the full Oath of Allegiance to the United States?
- If the law requires it, are you willing to bear arms on behalf of the United States?

Gyr ultimately hired another lawyer, who charged him $2,000 to prepare the N-400 application. Gyr became a citizen three months later.

It is worth noting that the court of appeals had very little difficulty affirming the additional damages award. McLeod “knowingly” misrepresented that he “specialized” in immigration matters and handled N-400 applications because he had never before filed a N-400 application, which he admitted in his deposition. Id. at 652.

IX. Defenses

A. DTPA Defenses

The DTPA has limited statutory defenses, most of which would not apply to a claim brought against a notario (e.g., an exemption for claims for bodily injury). One defense, if pled, would essentially prove liability under the Notary Act. The DTPA exempts “professional services,” the “essence of which is the providing of advice, judgment, opinion, or similar professional skill.” Tex. Bus. & Com. Code Ann. § 17.49(c). The plaintiff can overcome this exemption by showing (1) an express misrepresentation of a material fact that can’t be characterized as advice, judgment, or opinion; (2) a failure to disclose information; (3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion; or (4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion. Id.

If a notario pled this exemption, he or she would be admitting liability under the Notary Act because it prohibits notaries from giving legal advice or preparing documents for an immigration proceeding. Tex.
Gov’t Code § 406.017. A notary would not be able to claim an exemption for rendering professional services when the notary wasn’t supposed to be rendering professional services in the first place.

The only defense that seems plausible in a notario fraud case pled under the DTPA is limitations. The statute of limitations for a DTPA claim is two years. Tex. Bus. & Com. Code Ann. § 17.565. The period begins to run within two years after the date on which the false, misleading, or deceptive act or practice occurred or “within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice.” id. Section 17.565 states:

All actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the plaintiff proves that failure timely to commence the action was caused by the defendant’s knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

The discovery rule tolls the statute of limitations for fraudulent misrepresentations until the claimant discovers the falsity of the representations. Galindo v. Snoddy, 415 S.W.3d 905, 910 (Tex. App.—Texarkana 2013, no pet.).

Although the DTPA is the optimal consumer cause of action against a notario, fraud nonetheless could still be available if the DTPA claim is stale because fraud has a four-year statute of limitations. Tex. Civ. Prac. & Rem. Code § 16.004(4).

B. Common-Law Defenses

The case law is inconsistent about whether common-law defenses can apply in a DTPA claim. Earlier cases suggested that common-law defenses weren’t available. The Texas Supreme Court in 1980 explained, “The DTPA does not represent a codification of the common law. A primary purpose of the enactment of the DTPA was to provide consumers a cause of action for deceptive trade practices without the burden of proof and numerous defenses encountered in a common law fraud or breach of warranty suit.” Smith v. Baldwin, 611 S.W. 2d 611, 616 (Tex. 1980)(defense of substantial performance doesn’t apply to DTPA claim); see also Weitzel v. Barnes, 691 S.W. 2d 598, 599-600 (Tex. 1985)(parol evidence rule doesn’t apply to DTPA misrepresentations). In 1999, the Texas Supreme Court held that the affirmative defense of mitigation was available in a DTPA case. Gunn Infiniti, Inc. v. O’Byrne, 996 S.W. 2d 854 (Tex. 1999). The court failed to cite Smith v. Baldwin, which appears to conflict with its holding. It asserted instead, “Nothing in the DTPA evidences a legislative intent to withdraw mitigation of damages as an affirmative defense, even when a defendant alleges that the consumer failed to mitigate by failing to accept the defendant’s offer to mitigate. Nor does the concept of mitigation inherently conflict with the DTPA.” Id. at 856-857. In 2012, the supreme court held that the common-law requirements for restoration didn’t apply to restoration under the DTPA, favorably citing Smith v. Baldwin. Cruz v. Andrews Restoration, Inc., 364 S.W. 3d 817, 826 (Tex. 2012). It’s unclear when common-law defenses are viable.
It is also unclear whether any common-law defenses would actually benefit notarios. In other jurisdictions, common-law or non-statutory defenses have failed in claims brought against notarios. In one case where undocumented immigrants were the plaintiffs, the Illinois court of appeals rejected the defense of illegality of contract as the plaintiffs weren’t suing to enforce the contract. *Gamboa v. Alvarado*, 941 N.E. 2d 1012, 1016-1017 (Ill. App. 2011). In another case involving undocumented plaintiffs, the Wisconsin Court of Appeals rejected the notion that an undocumented immigrant lacked “standing” to sue notarios. *Encisco-Lopez v. Monteagudo*, No. 2010AP1519 (Wisc. Ct. App. June 1, 2011). A California Court of Appeal held that the “unclean hands” doctrine may not be raised as an affirmative defense to claim brought under that state’s Immigration Consultants Act. *Mendoza v. Ruesga*, 169 Cal. App. 4th 270, 86 Cal. Rptr. 3d 610 (Cal. Ct. App. 2008).

Recovering money for a victim once a judgment has been obtained can be difficult. Often times, the fraudulent service provider has no searchable assets or is unresponsive to the lawsuit. However, if the defendant was a registered notary in Texas, they may have a notary bond. A plaintiff who suffered injury as a result of a notary’s negligence may recover against the notary both individually and on the notary’s official bond.\(^1\) The notary’s official misconduct or negligence must be directly and proximately related with the plaintiff’s injury.\(^2\) Failure to plead the notary’s negligence or that the notary’s negligent action proximately caused the plaintiff’s injury will render the pleading insufficient.\(^3\) Whether a plaintiff relied on the notary public’s certificate is immaterial if the notary public was guilty of no negligence.\(^4\) Also, independent causes, such as acts of others, may break the causal connection between the notary’s negligence and plaintiff’s damage.\(^5\)

**Acts by a notary public actionable under the Texas Deceptive Trade Practice**

1. Stating or implying that he or she is an attorney licensed to practice law in Texas.
2. Soliciting or accepting compensation to prepare documents for or otherwise representing the interest of another in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters.
3. Soliciting or accepting compensation to obtain relief of any kind on behalf of another from any officer, agency or employee of Texas or the United States.
4. Using the phrase “notario” or “notario publico” to advertise services of a notary public.
5. Advertising the services of a notary public in a language other than English, if the person does not post or otherwise include with the advertisement a notice that states that the notary is not an attorney in compliance with the Tex. Gov’t Code Ann. § 406.017 (b).

You can check to see if your defendant has a notary bond under the Texas Secretary of State office. Ensure that your petition properly pleads one of the unlawful actions above to recover money for your client.


\(^3\) *Id.*


\(^5\) *Id.*
8. ADDITIONAL RESOURCES

Please visit www.houstonimmigration.org/notariofraud/ for these resources:

**Presentation: Protecting Your Clients Against Notorious Notarios**
By: Lisa Virgen, *Equal Justice Works Fellow, Lone Star Legal Aid*
   Covering what is notario fraud and tax preparer fraud, how it impacts immigrant communities, and how can lawyers help notario and tax preparer fraud victims.

**Pamphlet: Notario Fraud**
By: HILSC Notario Fraud Prevention Working Group
   Learn how to identify and avoid “notarios” or fraudsters who offer legal services without a license or specialized knowledge, and where to report them.

**Pamphlet: Tax Preparer Fraud**
By: HILSC Notario Fraud Prevention Working Group
   Learn how to identify and avoid fraudulent tax preparers, and where to report them.

**Presentation: Community Outreach PowerPoints on notario and tax preparer fraud**
By: HILSC Notario Fraud Prevention Working Group
   Provides community groups with information about how to identify and avoid “notarios” and fraudulent tax preparers and where to report them. It also provides referral information for accessing legal help.
APPENDIX A: SAMPLE DEMAND LETTER
January 7, 2014

By Fax to & CM/RRR # 7013 1710 0001 4433 2791

Attorney-at-law

Houston, TX 77002

Re: Pre-suit notice of claims

Your clients: 

Our client:

Dear Ms. Davis:

Texas RioGrande Legal Aid, Inc. represents (Plaintiff) in her claims arising out of misrepresentations, breaches of implied and express warranties, fraud, and unconscionable acts committed by (f/k/a ), D/B/A , (a/k/a ), , D/B/A , and tax return preparer (a/k/a ), collectively referred to as “Defendants.”

I have instructed my client to cease all communications with Defendants. From this point forward, kindly direct all communications intended for to me. I understand that you represent and

I am in receipt of your letter dated December 19th requesting that my client contact you regarding your client’s dispute with Wells Fargo bank. I tried to speak with you about that today, but you requested a letter of representation. I look forward to your phone call upon receipt of this letter.

A. Notice of Claim

This letter serves as notice prior to filing a lawsuit for violations of the Texas Deceptive Trade Practices Act (DTPA), Sections 17.46 and 17.50 of the Texas Business and Commerce Code, and other provisions of Texas law.
B. Notice to Insurance Carrier or Bonding Company

In the event that Defendants have insurance coverage or a bond that may cover all or any part of the claim made in this letter, Defendants are requested to notify their insurance carrier or bonding company immediate.

C. Revocation of IRS Form 2848 “Power of Attorney and Declaration of Representative”

Plaintiff hereby revokes the Form 2848 “Power of Attorney and Declaration of Representative” signed on April 11, 2013, and alleges that her signature on that form was procured by fraud and misrepresentation, as discussed below.

D. Statement of Facts

The following facts reflect my investigation to date and are subject to amendment as further facts become available.


(2) Defendants represented to Plaintiff that Plaintiff would receive the refund in one week if she permitted the refund to be deposited into Defendants’ bank account. Defendant told Plaintiff that Defendant would take $200 directly from Plaintiff’s refund in exchange for its services, and give the remainder to Plaintiff. Based on these representations, Plaintiff agreed.

(3) But Defendants did not give Plaintiff the $7,064 she was expecting. In fact, they have never paid her anything.

(4) Plaintiff contacted Defendants numerous times in the following weeks and months to attempt to obtain her federal tax refund. When Plaintiff was able to speak with Defendants, they provided various excuses and explanations for the delay and failure to tender the funds, including that the IRS failed to transfer the funds to All Star’s bank account and that the bank had placed a “hold” on [redacted] bank account.

(5) Plaintiff’s attended a meeting organized by Defendants. The meeting was attended by at least five other tax preparation customers who were experiencing similar problems obtaining their refunds. At the meeting, Defendants provided Wells Fargo
bank documents alleged to show that the funds were not available due to a bank "hold" and promised the funds would be released in "about two weeks."

(6) Defendants requested that Plaintiff come to their office to sign documents Defendants had prepared. Defendants represented to Plaintiff that she would not receive her refund if she did not sign the documents. Under duress and relying on these misrepresentations, Plaintiff signed the documents on April 11, 2013.

(7) In fact, Defendants had prepared an IRS Form 3911 for Plaintiff's signature. The form misrepresented a material fact to the IRS regarding who owned the bank account into which the refund had been deposited. On information and belief, the form was not designed to help Plaintiff recover her refund at all, but rather was drafted to prevent the IRS from learning about Defendants' fraudulent and illegal conduct.

(8) Also among the forms Plaintiff was induced to sign on April 11, 2013 was an IRS Form 2848 authorizing [Redacted] to act as Plaintiff's attorney-in-fact vis-à-vis the IRS. The "authorized years" section of Form 2848 were left blank. Although Plaintiff objected to this form, she relied on Defendants' representation that the form was required to assist Defendants to locate Plaintiff's missing tax refund.

(9) In fact, Plaintiff was unwittingly induced to sign a document (the Form 2848) that provided Mrs. Flores unfettered access to all of Plaintiff's tax information for any tax year and the ability to represent Plaintiff before the IRS, including calling the IRS to confirm the tax refund had been received when, in fact, Plaintiff had not received it.

(10) As a result of Defendants' intentional misrepresentations on Form 3911, and perhaps even oral communications to the IRS by [Redacted] pursuant to her Form 2848 Power of Attorney, the IRS made an administrative determination on July 18, 2013, that Plaintiff had received her refund, when nothing could have been further from the truth.

(11) Following the IRS administrative determination in July, Plaintiff continued her efforts to speak with Defendants and Defendants' bank.

(12) Defendants continued to provide empty promises that the refund would be forthcoming. Defendants eventually stopped taking Plaintiff's telephone calls, shut up their store front, and left town.

(13) To this day, Plaintiff has not received her refund.
E. Available Causes of Action

DTPA and Other Statutory and Common Law Violations

Defendants’ conduct violates the DTPA, Chapter 17 of the Texas Business and Commerce Code. The Defendants engaged in false, misleading, or deceptive acts or practices within the meaning of section 17.46, both independently and through the common law causes of action listed below:

(1) Defendants represented that [REDACTED] services had characteristics which they do not have, in violation of TEX. BUS. & COM. CODE § 17.46(a) and (b)(5);

(2) Defendants represented that [REDACTED] services were of a particular standard, quality, or grade, when they were not, in violation of TEX. BUS. & COM. CODE § 17.46(a) and (b)(7);

(3) Defendants advertised goods and services with the intent not to provide them as advertised, in violation of TEX. BUS. & COM. CODE § 17.46(a) and (b)(9);

(4) Defendants represented that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, in violation of TEX. BUS. & COM. CODE § 17.46(a) and (b)(12);

(5) Defendants failed to disclose information concerning its services which was known at the time of the transaction and such failure to disclose such information was intended to induce Plaintiff into a transaction into which Plaintiff would not have entered had the information been disclosed, in violation of TEX. BUS. & COM. CODE § 17.46(a) and (b)(24);

(6) Defendants made and breached express and implied warranties, in violation of common law duties and TEX. BUS. & COM. CODE § 17.50(a)(2);

(7) Defendants’ entire course of conduct is unconscionable within the meaning of the DTPA in that Defendants took advantage of the lack of knowledge, ability, experience or capacity of Plaintiff to a grossly unfair degree. TEX. BUS. & COM. CODE § 17.50(a)(3);

(8) Defendants’ conduct also gives rise to claims for common law negligence, intentional infliction of emotional distress, breach of contract, fraud, and common law intentional misrepresentation.
F. Available Remedies

"Knowing" and "intentional" conduct that violates the DTPA permits trebling of a Plaintiff's economic and mental anguish damages. **TEX. BUS. & COM. CODE §§ 17.45(13), 17.50(b)(1).**

The wrongful actions of Defendants were committed knowingly and intentionally and caused Plaintiff injury for which she is entitled to recover:

1. Economic damages (**TEX. BUS. & COM. CODE § 17.50(b)(1));**
2. Three times the amount of economic damages (**TEX. BUS. & COM. CODE § 17.50(b)(1));**
3. Mental anguish damages (**TEX. BUS. & COM. CODE § 17.50(b)(1));**
4. Three times the amount of mental anguish damages (**TEX. BUS. & COM. CODE § 17.50(b)(1));**
5. Any other relief the court deems proper (**TEX. BUS. & COM. CODE § 17.50(a)(4);** and
6. Attorney's fee's (**TEX. BUS. & COM. CODE § 17.50(b)(1));**

By my preliminary calculations, if we are forced to litigate this matter through trial, your clients' exposure could exceed $40,000.

G. Offer of Settlement

One purpose of this letter is to meet Plaintiff's obligations under the notice provision of the DTPA. However a second purpose of this letter is to encourage the prompt and fair settlement of this matter without the need for litigation. With this in mind and solely for the purpose of settlement, Plaintiff will forego the trebling of damages and settle all claims for the amount of economic damages, mental anguish damages, and attorneys' fees to date. Therefore, my client authorizes me to settle this matter for payment of $9,500.

Your clients may accept this offer of settlement by forwarding the certified funds to the order of "Texas RioGrande Legal Aid, Inc., in client trust" to: Texas RioGrande Legal Aid, Inc., ATTN: Mandi L. Matlock, 4920 N. IH-35, Austin, TX 78751. In exchange, my client will execute a release of all claims against Defendants.

Although I am conciliatory in this letter, let me make clear that in the event that we fail to reach a prompt, fair settlement of this matter, I will recommend to my client that a lawsuit be filed as outlined above. In the event of a lawsuit, I will vigorously pursue the full measure of damages the law allows, plus attorney's fees and costs. As
times passes and as work continues on the file, fees, costs, and damages will increase, resulting in an increase in the amount of money needed to settle.

Please contact me upon receipt of this letter so that we may work to finalize the release and settlement.

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.

Mandi Lee Matlock
Attorney at Law

cc: [redacted]
APPENDIX B: SAMPLE TEXAS PETITION (TAX PREPARER FRAUD CLAIMS)
NO. ______________

CIVIL DISTRICT COURT OF
HARRIS COUNTY, TEXAS

§ 1ST JUDICIAL DIVISION

Plaintiff's Original Petition

Plaintiff _____ files this Petition complaining of Defendants ____ and ___. Plaintiff would respectfully show this Court as follows:

I. DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends to conduct discovery under Level 1.

II. PARTIES

2. Plaintiff ___ ("___") is a resident of Fort Bend County.

3. Defendants are ____ and ___. ___ ("Ms. ___") is an individual who does business in Harris County and owns a franchise office of ___. ___. is a Texas Corporation and can be served through its registered agent, _, at _.

IV. JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties and the subject matter of this claim. Further, venue of this suit lies in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1), because all or a substantial part of the events or omissions giving rise to the claims occurred in Harris County. This Court also has jurisdiction over the TILA claim in this proceeding under 15 U.S.C. § 1640(e).
IV. CONDITIONS PRECEDENT

5. All conditions precedent necessary to maintain this action have been performed or have occurred.

V. FACTUAL BACKGROUND

A. Refund Anticipation Checks

6. Refund anticipation checks (RACs) are a financial product offered by banks and other financial institutions during tax season. RACs are used by tax preparers to finance tax preparation services. RACs allow tax preparers, such as [Company Name], to obtain additional money from taxpayers. The taxpayer has to pay a fee to both the bank and the tax preparer. Through a RAC the bank opens a temporary bank account into which the IRS deposits the taxpayer’s refund. After taking the tax preparation fees and all additional fees of the RAC, the remaining amount is deposited into taxpayer’s actual bank account. The fees for this simple service can amount to over one-hundred dollars.

7. The RAC does not offer any advantage to the taxpayer other than delaying the payment of the tax preparation fee. [Company Name] can always have the IRS deposit the refund directly into their bank account. However, the taxpayer must agree to use a RAC to defer payment of the tax preparation fees. The RAC provides financing of the tax preparation fee and the additional fees are finance charges.

8. TILA requires that certain disclosures be given to the consumers prior to the consumer credit transaction. These disclosures must be given to the taxpayer by the tax preparers.

B. Factual Allegations to Ms. [Name]

9. On or about February 2017, [Name] went to a [Company Name] Tax office located on [Address] for tax preparation of her 2016 federal income tax return. She was met by [Name] (“Ms. [Name]”) and [Name] (“Mr. [Name]”). Ms.
told Ms. that she could prepare her 2016 tax return.

10. Ms. asked Ms. for her social security number and whether she had children or health insurance. Ms. only provided her one copy of her 2016 W-2 form—her only form of income in 2016. never asked her if she was in school. never told or provided information that asserted that she was enrolled in school in 2016.

11. When asked about the fee for tax preparation services, told not to worry, because the IRS would pay them. waited in the office for a copy of her return. But Ms. said they were too busy to provide Ms. with a copy and that it would be emailed to her. never gave Defendants consent to deposit her refund into a bank account associated with a Refund Anticipation Check (“RAC”).

12. On February 22, 2017, Ms. received a $4,700 bank deposit from “Refund Advantage.” never agreed or authorized Ms. to involve such third party to process her tax return.

13. Around August 2017, Ms. learned that she had a federal tax debt for tax year 2016 in the amount of about $4,095 and that the IRS had actually given her a refund in the amount of $5,422. and had retained $722 of her refund despite Ms. ’s claims that Ms. would not have to pay a fee. contacted office and was told that Ms. was on vacation. She was directed to call the corporate office of . told her they would email Ms. to get in contact with Ms.

14. 

15. Through a refund trace, Ms. also learned that her refund was directly deposited into an Ohio Valley Bank account associated with a RAC. Prior to filing her tax return,
and Ms. [redacted] failed to disclose the terms associated with a RAC.

16. [redacted]

VI. CAUSES OF ACTION

A. Deceptive Trade Practices Act

17. Plaintiff incorporates paragraphs 6-16 above.

18. [redacted] is a consumer under the Texas Deceptive Trade Practices Act (“DPTA”) of the Texas Business & Commerce Code, because she is an individual who sought and acquired services by purchase.

19. Defendant [redacted] is an individual that can be sued under the DTPA. Defendant [redacted] is a corporation that can be sued under the DTPA.

20. Defendants violated the DTPA when they engaged in false, misleading, or deceptive acts or practices that [redacted] relied on to her detriment.

21. Defendants misrepresented the amount of their fees in violation of the Texas Business & Commerce Code sections 17.46(a) and (b)(5).

22. Defendants caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of his services by failing to provide [redacted] a copy of her tax return and by claiming business expenses and a credit without [redacted] knowledge or consent in violation of Texas Business & Commerce Code section 17.46(b)(2). Additionally, Mr. [redacted] was listed as the tax preparer of her form even though Ms. [redacted] met with Ms. [redacted].

23. Defendant [redacted] made statements that she would not charge Ms. [redacted] a tax preparation fee but instead withheld $722 of Ms. [redacted]’s refund and instead caused $722 of Ms. [redacted]’s refund to be withheld from her in violation of Texas Business & Commerce Code section 17.46(b)(2).
§17.46(b)(7).

24. Defendants failed to disclose this information about their services and this was done to induce Ms. into entering a transaction with them in violation of Texas Business & Commerce Code section 17.46(b)(24).

25. Defendants engaged in an unconscionable action or course of action that to Ms.’s detriment took advantage of Ms.’s lack of knowledge, ability, experience, or capacity to a grossly unfair degree. Tex. Bus. & Com. Code §17.50(a)(3). Specifically, Defendants charged Ms. $722 without her consent and failed to give Ms. a copy of her tax return that claimed incorrect expenses and a tax credit. Defendants further took out an RAC for Ms.’s refund without her authorization or knowledge.

26. Ms. reasonably relied on Defendants to provide professional and honest tax preparation and filing services. Instead, Defendants took advantage of her and caused her considerable damages.

27. Defendants acted intentionally, which entitles to recover treble, actual, and mental anguish damages. Tex. Bus. & Com. Code § 17.50(b)(1). Defendants claimed egregious expenses and a credit on tax return without her consent. Defendants never gave Ms. the opportunity to review her tax return before Defendants filed it with the IRS. Additionally, Defendants never received Ms.’s consent to withhold $722 of her tax refund.

B. Violation of the Truth in Lending Act

28. Plaintiff incorporates paragraphs 6-16 above.

29. The Truth in Lending Act (“TILA”) requires each creditor who enters into a consumer credit transaction or lease to disclose specific information about the terms of the credit transaction to the consumer prior to entering into the transaction. 15 U.S.C. § 1601(a). Defendants failed to disclose material information concerning the Refund Anticipation Check
30. Defendants [REDACTED] and [REDACTED] are creditors as defined in 15 U.S.C. section 1602(g) and 12 C.F.R. section 226.2(17). [REDACTED] is a consumer whom consumer credit may be offered as defined in 12 CFR section 1026.2(a)(11).

31. Defendants violated TILA by failing to disclose the required credit terms prior to consummating the transaction—filing her tax return with a bank account associated with RAC.

32. Ms. [REDACTED] never consented to a RAC and never authorized for her refund to be deposited into a different bank account. Neither Defendant disclosed the interest and fees associated with the RAC. Additionally, Defendants collected fees association with the RAC prior to it being deposited into the incorrect bank account.

33. Defendants Ms. [REDACTED] and [REDACTED] violated 15 U.S.C. sections 1638 (a) (2)-(4) by failing to disclose that Ms. [REDACTED] retained $722 in fees from Ms. [REDACTED]’s refund. In addition to the $555 tax preparation fee, Ms. [REDACTED] was charged a $35.00 Service Bureau Fee, $57.00 Transmitter Fee, and a $39.00 Disbursement Fee.

34. Ms. [REDACTED] was unaware that her refund was deposited into a bank account associated with a RAC. Prior to filing of her tax return, Ms. [REDACTED] never signed an agreement authorizing the RAC or consented to pay additional fees associated with the RAC.

35. Defendants failed to provide Ms. [REDACTED] the disclosures required by TILA.

C. Breach of Contract

36. Plaintiff incorporates paragraphs 6-16 above.

37. On or about February 2017, Defendants and [REDACTED] executed a valid and enforceable oral contract that was performable within one year. [REDACTED] agreed to receive tax preparation services from Defendants. In return, Defendants would receive their tax preparation fee from the IRS.
38. Defendants breached the contract by improperly claiming expenses and a tax credit on her return, and diverting $722 of Ms. federal tax refund without her consent.

39. Defendants’ breach caused injury to Ms. which directly resulted in Ms. actual damages of $722 in fees paid for tax preparation services and $4,095.59 for tax owed to the IRS for the improper credit and business expenses claimed by Defendants.

D. Common Law Fraud

40. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs.

41. made false statements that she would provide tax preparation services at no cost to never showed a copy of her 2016 tax return, which claimed business expenses and a tax credit without knowledge.

42. The tax return had a bank account number that did not belong to Ms. . Defendants never gained consent to keep part of her tax refund and never informed that she would be charged $722 in preparation fees.

43. Ms. on statements that she would not be charged for the tax preparation and that the full refund would be deposited to bank account.

44. Ms. suffered injury in actual damages of $722 in fees paid for tax preparation services and $4,095.59 for tax owed to the IRS for the improper credit and business expenses claimed by Defendants.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for the following:

a. Actual damages

b. Economic damages
c. Treble damages

d. Prejudgment and post judgment interest

e. Court costs

e. Attorney’s Fees

f. All other relief to which plaintiff is entitled.

Respectfully submitted,

ATTORNEY FOR PLAINTIFF
APPENDIX C: SAMPLE TEXAS PETITION (NOTARIO FRAUD CLAIMS)
STATE OF TEXAS,
Plaintiff,

v.

HECTOR ALFONSO SANCHEZ AND
CHERYL BOONE-DELGADO,
Defendants.

IN THE DISTRICT COURT
§
§
§

288TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY AND PERMANENT INJUNCTIONS


In support hereof, Plaintiff will respectfully show the Court the following:

1. DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3(a).

2. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because:
   a. The relief sought by the State includes non-monetary injunctive relief, and
   b. The State’s claims for monetary relief including penalties, consumer redress, and attorney’s fees and costs are in excess of $100,000.00.
II. JURISDICTION

3. This enforcement action is brought by the Attorney General of Texas, Greg Abbott, through his Consumer Protection Division, in the name of the State and in the public interest, pursuant to the authority granted to him by section 17.47 of the DTPA – Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41 et seq. upon the ground that Defendants have engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, sections 17.46 (a - b) and 17.49(c)(1-3) of the DTPA.

4. In enforcement suits filed pursuant to section 17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers, and injunctive relief.

III. DEFENDANTS

5. Defendant Hector Alfonso Sanchez is an individual who is doing business in Texas as alleged specifically below and may be served with process at his residence located at 10122 Sandlet Trail, San Antonio, TX 78254, 12139 Patton Point, San Antonio, TX 78254, or wherever he may be found.

6. Defendant Cheryl Boone-Delgado is an individual who is doing business in Texas as alleged specifically below and may be served with process at her residence located at 104 Rosemary Avenue, San Antonio, TX 78209, or wherever she may be found.

IV. VENUE

7. Venue of this suit lies in BEXAR County, Texas for the following reasons:

a. Under section 17.47(b) of the DTPA, venue is proper because Defendants reside in Bexar County, Texas;

b. Under section 17.47(b) of the DTPA, venue is proper because Defendants’ principal place of business has been in Bexar County, Texas; and

State of Texas v. Hector Alfonso Sanchez et al.
Plaintiff’s Original Petition and Application for Temp and Perm Injunctions

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c. Under section 17.47(b) of the DTPA, venue is proper because transactions made part of this suit occurred in Bexar County, Texas.

**V. PUBLIC INTEREST**

8. Plaintiff, State of Texas, has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below, that Defendants have, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons, and that Defendants adversely affected the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

**VI. NOTICE BEFORE SUIT**

9. The Consumer Protection Division informed Defendants in general of the alleged unlawful conduct described below, at least seven (7) days before filing suit, as may be required by section 17.47(a) of the DTPA.

10. On April 7, 2014 and April 10, 2014, Civil Investigative Demands and Statutory Directives pursuant to sections 17.60 and 17.61 of the DTPA were issued to Sanchez advising him of the alleged unlawful conduct. Sanchez then appeared at the State’s office on April 23, 2014, to provide his statement under oath pursuant to section 17.60 of the DTPA.

11. On April 29, 2014 a Civil Investigative Demand and Statutory Directive pursuant to sections 17.60 and 17.61 of the DTPA were issued to Boone-Delgado advising her of the alleged unlawful conduct. Boone-Delgado then appeared at the State’s office on May 20, 2014 to provide her statement under oath pursuant to section 17.60 of the DTPA.
VII. TRADE AND COMMERCE

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

VIII. ACTS OF AGENTS

13. Whenever in this petition it is alleged that Defendants did any act, it is meant that at least one Defendant performed or participated in the act, or that the officers, agents or employees of Defendants performed or participated in the act on behalf of and under the authority of Defendants.

IX. SPECIFIC FACTUAL ALLEGATIONS

Sanchez’ Deceptive Acts and Practices on Internet Websites

Sanchez, “Su abogado para Colombia”

14. Sanchez claims to be “an attorney by trade in Colombia.” He is not licensed to practice law in the United States yet, through numerous misleading and deceptive websites, he advertises and offers legal services that only attorneys authorized to practice state and federal law in Texas may provide. See Exhibit 1 (pg. 10, In. 15; pg. 102, In. 9 - 10). In one such website, abogadosanchezhector.com (“Sanchez su abogado para Colombia”), Sanchez represents himself as “Partner – Senior Counsel” of RSG Bourdoumis Zuluaga – Attorneys at Law (hereinafter, “RSG”), a multi-practice international law firm with offices in Colombia, Texas, and Minnesota. When asked to describe his firm’s office locations, Sanchez stated that the addresses corresponded to “an office” that he “has access to [in Colombia],” his residential home in Texas, and his father’s residential home in Minnesota. See Id. (p. 92, In. 3 – p. 93, In. 8) and Exhibit 2. Sanchez “understands” that the content of his website could confuse consumers, yet his website
remains active and he continues to advertise and offer legal services to the public. See Exhibit 1 (pg. 93, ln. 3 – p. 94, ln. 5).

Sanchez, “FCPA Counsel” for Latin America Compliance Solutions

15. Sanchez also solicits business through another website, compliancelatinamerica.com (“Latin America Compliance Solutions”). He operates this business with his sister, “Dr. Sanchez,” and claims to “work from the United States as a commercial representative of [RSG] before American law firms.” Sanchez also represents on a social media website that as “FCPA [Federal Corruption Practices Act] Counsel” and “Compliance - Senior Counsel” of [RSG], he “[p]rovided legal advice regarding compliance programs under FCPA…local anti-corruption laws, anti-fraud operations and similar activities” and also “[w]orked with clients to identify needs and potential liabilities in a consultative approach; provided expertise to reach conciliations and other legal solutions” even though he has never been licensed to practice law in any United States jurisdiction. See Exhibits 3 and 4.

16. Sanchez also represents on his website that his sister is a physician who “has been a member of the International Scientific Advisory Board of the Southwest Interdisciplinary Research Center at the University of Arizona since 2010.” However, when asked whether his sister is licensed to practice medicine in the United States, Sanchez responded that “she was a physician in Colombia” and conceded that “it does create confusion” to refer to her as a physician on his website. Sanchez also admitted that “it confuses” the public to post on his website a photograph of an attractive young woman in a lab coat who is not his sister and represent her as such. See Exhibits 1 (pg. 99, ln. 3 – pg. 100, ln. 6) and 3.

17. As with his other websites, Sanchez creates a false impression that Latin America Compliance Solutions is a large international company with offices in the United States and
Colombia. Sanchez also lists the addresses of his home in Texas, his “law office” in Colombia, and “an address where [his] brother...lived in the past in Florida” as business locations. See Id. (pg. 95, ln. 24 – p. 99, ln. 2) and Exhibit 3. Even though his brother has never been affiliated with the business, Sanchez lists his brother’s address because he “thought there were a lot of Florida companies that had interests in Colombia.” Sanchez conceded that doing so was misleading, yet this website remains active. See Exhibit 1 (pg. 95, ln. 24 – p. 97, ln. 11).

**Sanchez, “Partner” and “Senior Counsel” at RSG & Bourdoumis Zuluaga**

18. Sanchez misrepresents his experience and qualifications on LinkedIn, a social media website. He represents to the public that he is “FCPA counsel” and “Compliance - Senior Counsel” at RSG even though he is not an attorney in the United States. Sanchez concedes that doing so is misleading and deceptive. See Id. (pg. 101, ln. 17 – p. 102, ln. 20) and Exhibit 3.

19. RSG is advertised as “a law firm composed of expert lawyers in multiple fields of the law, with the core objective of providing legal services to local and foreign clients.” Locations for the firm include an address in Colombia and Sanchez’ home in Texas. See Exhibit 5.

**Sanchez’ Deceptive Acts and Practices at Immigration Detention Facilities**

**Sanchez Solicits Business and Deceives Consumers**

20. Sanchez solicits business and deceives consumers at immigration detention facilities nationwide. While employed as a Legal Assistant, Sanchez was fired from his employment and banned from an immigration detention facility in Pearsall, Texas after his employer discovered that Sanchez was “taking clients from [employer’s] office” by distributing cards to potential clients with Sanchez’ personal contact information. Even though Sanchez was banned from the Pearsall facility, he continued to solicit business at other immigration detention facilities and accept payment for legal services. See Exhibit 1 (pg. 53, ln. 17- pg. 57, ln. 9).
21. Consumers accuse Sanchez of misrepresenting himself to them as an attorney. Sanchez acknowledges that “it could generate confusion” for a consumer to pay a non-attorney for legal services, yet he instructs consumers to pay him, not an attorney, for legal services. *See Id.* (pg. 68, ln. 8 – p. 71, ln. 9). Sanchez concedes that this payment arrangement is “not proper,” “[struck] him as odd,” and “made [him] uncomfortable.” He also admits that in Colombia the “attorney is the one who receives the payments,” yet Sanchez continues to offer legal services in exchange for compensation. *See Id.* (pg. 58, ln. 20 – pg. 59, ln 20; p. 70, ln. 20 – pg. 71, ln. 9).

**Attorney Boone-Delgado Perpetuates the Fraud**

**Boone-Delgado Allows Sanchez to Accept Cases and Receive Payment for Legal Services**

22. Boone-Delgado is an immigration attorney who operates the Law Offices of Cheryl Boone-Delgado from her residence in San Antonio, Texas. Since Sanchez began working as Boone-Delgado’s “Legal Assistant” in February 2013, Sanchez “got payments from clients that became [Boone-Delgado’s] clients.” When Sanchez “started to work for...Boone-Delgado[,] [Boone-Delgado] indicated to [Sanchez] that [Sanchez] should receive payments, that [Boone-Delgado] would later open a trust account, and [Boone-Delgado] never did that.” *See Exhibit 1, (p. 58, ln. 13 – pg. 57, ln. 2).* Boone-Delgado concedes that allowing Sanchez to receive payments from clients “violates a rule” and admits that she and Sanchez “ended up pretty much splitting it [legal fees].” She claims “this is the one thing where we definitely messed up.” *See Exhibit 6 (pg. 50, ln. 15 – pg. 51, ln. 6).*

23. Boone-Delgado knows that Sanchez is not authorized to practice law in the United States, yet she allows Sanchez to decide which cases to take. In fact, Boone-Delgado claims that Sanchez decided which cases to take “probably 80 percent, at least, maybe more” of her law office’s fifty to seventy-five cases” since working with him. *See Id.* (pg. 81, ln. 2 – p. 82, ln. 14).
X. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

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

25. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, engaged in false, misleading, or deceptive acts or practices in violation of section 17.46(a) of the DTPA.

26. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, violated the DTPA by passing off goods and services as those of another. *Id.* at (b)(1).

27. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, violated the DTPA by causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services. *Id.* at (b)(2).

28. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, violated the DTPA by causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another. *Id.* at (b)(3).

29. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, violated the DTPA by representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have. *Id.* at (b)(5).

30. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, violated the DTPA by advertising goods or services with intent not to sell them as advertised. *Id.* at (b)(9).
31. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, violated the DTPA by representing that an agreement confers or involves rights, remedies, or obligations that it does not have or involve, or which are prohibited by law. Id. at (b)(12).

32. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, violated the DTPA by failing to disclose information concerning goods or services that was known at the time of the transaction and 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. Id. at (b)(24).

33. Boone-Delgado, as alleged and detailed above, has in the conduct of trade and commerce, violated the DTPA by making express misrepresentations of a material fact and engaging in unconscionable actions or courses of actions that cannot be characterized as advice, judgment, or opinion. Tex. Bus. & Com. Code Ann. § 17.49(c)(1) and (3) (West 2011).

34. Boone-Delgado, as alleged and detailed above, has in the conduct of trade and commerce, violated the DTPA by failing to disclose information in violation of section 17.46(b)(24). Tex. Bus. & Com. Code Ann. § 17.49(c)(2) (West 2011).

**XI. DISGORGEMENT AND RESCISSION**

35. Defendants' assets are subject to the equitable remedy of disgorgement, which is the court-ordered relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits resulting from Defendants' violations of Texas law. Defendants should be ordered to disgorge all illegally obtained monies from consumers, together with all proceeds, profits, income, interest, and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State.
36. Any contracts or agreements between consumers and Defendants for services secured in violation of the DTPA or otherwise obtained from consumers in violation of Texas law should be rescinded by order of this Court. All ill-gotten gains, benefits, or profits that Defendants have obtained from any such contracts or agreements should be returned to the State and consumers.

XII. TRIAL BY JURY

37. State herein requests a trial by jury and tenders the jury fee to the Bexar County District Clerk’s office pursuant to Rule 216 of the Texas Rules of Civil Procedure and section 51.604 of the Texas Government Code.

XIII. PRAYER

38. Because Defendants have engaged, will continue to engage, or are about to engage in the unlawful acts and practices described above, State believes that proceedings against Defendants are in the public interest. Unless restrained and enjoined by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause harm to the State of Texas and the general public.

39. Therefore, State requests Temporary and Permanent Injunctions as indicated below. Pursuant to section 17.47(b) of the DTPA, a court may issue temporary restraining orders, temporary injunctions, and permanent injunctions to prevent continuing violations of the DTPA. A court shall issue such injunctive relief without requiring a bond. Tex. Bus. & Com. Code § 17.47(b) (West 2003).

40. State prays that this Court, after trial, finds that Defendants deceived and misrepresented themselves to consumers and received monies from consumers under fraudulent and false pretenses.
41. The State further prays that, after notice and hearing, a TEMPORARY INJUNCTION be issued as to the Defendants and, upon final hearing, a PERMANENT INJUNCTION be issued to restrain and enjoin Defendants (including any business entities established by Defendants) and any officers, agents, servants, employees, or other person in active concert or participation with them from engaging, directly or indirectly, in the following acts or practices:

**Relief Requested as to Defendant Sanchez**

a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer-generated materials that relate to Defendants' business that are currently or hereafter in Defendants' possession, custody or control, except in response to further orders or subpoenas in this cause;

b. Transferring, withdrawing, liquidating, spending, concealing, encumbering, removing, dissipating, distributing, assigning, granting a lien or security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, agreements, shares of stock, or other assets, or any interest therein, wherever located, that are:

   i. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to Defendants;

   ii. in the actual or constructive possession of Defendants; or

   iii. in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, or belonging to, any other corporation, trust, or other entity directly or indirectly owned,
managed, controlled by, or under the common control of Defendants;

c. Allowing the transfer or withdrawal of funds or other assets that are:
   i. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to Defendants, including but not limited to, any accounts to which Defendants have signatory authority and any accounts in which Defendants own any interest;
   ii. in the actual or constructive possession of Defendants; or
   iii. in the actual or constructive possession of, or owned, controlled or held by, or subject to access by, or belonging to, any other corporation, partnership, trust, or any other entity directly or indirectly owned, managed, or controlled by, or under common control of Defendants;

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

e. Advertising via print, billboard, Internet, social media, or through any other means immigration or bond services;

f. Offering for sale, selling, soliciting, or providing immigration services unless Defendant is a duly licensed attorney or properly accredited by the BIA;
g. Failing to honor any requests by consumers (before and after this Court’s order) to rescind any agreements or contracts with Defendant without further obligation and failing to cease any and all collection efforts until further order of this Court;

h. Harassing or threatening consumers with deportation or other legal action;

i. Operating a notary public business until further order of this Court;

j. Requesting/obtaining a notary public commission until further order of this Court;

k. Accepting money or valuable consideration in exchange for providing immigration services unless Defendant is a duly licensed attorney or properly accredited by the BIA;

l. Accepting money or valuable consideration from any person seeking assistance to obtain a benefit under U.S. immigration laws for himself/herself or any other person unless Defendant is a duly licensed attorney or properly accredited by the BIA;

m. Advising any person whether to file a petition, application, or seek any form of relief to obtain a benefit under U.S. immigration laws for himself/herself or any other person unless Defendant is a duly licensed attorney or properly accredited by the BIA;

n. Preparing for any person a petition, application, or other form(s) to obtain a benefit under U.S. immigration laws for himself/herself or any other person unless Defendant is a duly licensed attorney or properly accredited by the BIA;

o. Holding himself out to the public as an “attorney,” “immigration specialist,” “immigration counselor,” “immigration consultant,” or the like, and by any title or
designation incorporating the word “immigration” or an abbreviation thereof unless Defendant is a duly licensed attorney or properly accredited by the BIA;

p. Representing, directly or by implication, that Defendant has the skill, expertise, or competence to handle immigration matters unless Defendant is a duly licensed attorney or properly accredited by the BIA;

q. Showing, directly or by implication, any affiliation, connection, or association of an address or telephone number in the United States with an immigration service in another country;

r. Advertising, offering for sale, selling, or performing notarial services until further notice of this Court;

s. Sharing fees with attorneys for legal services;

t. Accepting money or valuable consideration for performing notarial services until further notice of this Court; and

u. Representing, directly or by implication, that this Court, the BIA, ICE, DHS, or Office of the Attorney General have approved any good or service sold or offered for sale by Defendants, or approved of any of Defendants’ business practices.

**Relief Requested as to Defendant Boone-Delgado**

a. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer-generated materials that relate to Defendants’ business that are currently or hereafter in Defendants’ possession, custody or control, except in response to further orders or subpoenas in this cause;
b. Transferring, withdrawing, liquidating, spending, concealing, encumbering, removing, dissipating, distributing, assigning, granting a lien or security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, agreements, shares of stock, or other assets, or any interest therein, wherever located, that are:

i. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to Defendants;

ii. in the actual or constructive possession of Defendants; or

iii. in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, or belonging to, any other corporation, trust, or other entity directly or indirectly owned, managed, controlled by, or under the common control of Defendants;

c. Allowing the transfer or withdrawal of funds or other assets that are:

i. owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to Defendants, including but not limited to, any accounts to which Defendants have signatory authority and any accounts in which Defendants own any interest;

ii. in the actual or constructive possession of Defendants; or

iii. in the actual or constructive possession of, or owned, controlled or held by, or subject to access by, or belonging to, any other corporation, partnership, trust, or any other entity directly or
indirectly owned, managed, or controlled by, or under common control of Defendants;

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

e. Harassing or threatening consumers with deportation or other legal action;

f. Failing to honor any requests by consumers (before and after this Court’s Order) to rescind any agreements or contracts with Defendants without further obligation and failing to cease any and all collection efforts until further Order of this Court;

g. Failing to provide case files to clients who request such files;

h. Failing to keep clients reasonably informed of their case status;

i. Failing to communicate to clients the scope of representation;

j. Failing to maintain control over business bank accounts, including but not limited to, maintaining a trust account for client funds;

k. Making false representations to opposing counsel, judges, or any other officer of any Court;

l. Failing to adequately supervise all non-lawyers who are under Boone-Delgado’s employment, direction or control;

m. Aiding any non-lawyer in the unauthorized practice of law;

n. Entering into a partnership regarding the practice of law with any non-lawyer; and

o. Sharing fees with non-attorneys for legal services.
42. In addition, Plaintiff State, respectfully prays that this Court ORDER:

a. Defendants to notify any agents and assignees to cease debiting or collecting monies from former and current clients' banking or checking accounts and to cease any and all collection efforts until further order of this Court;

b. Defendants to produce the contact information for all consumers Defendants solicited for immigration or bond services;

c. Defendants to pay civil penalties in favor of the State in the amount not to exceed $20,000.00 per each violation of the DTPA;

d. The disgorgement of Defendant's assets, as provided by law and rescission of any contracts or agreements illegally obtained;

e. Defendants to restore all money or other property acquired by means of unlawful acts or practices;

f. Defendants to pay all court costs, costs of investigation, and reasonable attorney's fees pursuant to Texas Government Code sections 402.006(c) and 521.151(f) of the Texas Business & Commerce Code;

g. Defendants to pay pre-judgment and post-judgment interest at the highest lawful rate on awards of restitution or civil penalties as provided by law; and

h. Defendants to rescind all agreements entered into by and between Defendants and consumers.

43. Plaintiff State also respectfully prays that this Court adjudge that all fines, penalties, or forfeitures payable to and for the benefit of the State, are not dischargeable under bankruptcy pursuant to 11 U.S.C. section 523(a)(7).
44. The State further respectfully prays for all other relief to which the State may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN SCOTT
Deputy Attorney General for Civil Litigation

TOMMY PRUD'HOMME
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[Signature]

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ATTORNEYS FOR PLAINTIFF
APPENDIX D: SAMPLE DISCOVERY REQUESTS FOR TEXAS
PLAINTIFF’S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION

To:

COMES NOW in the above-styled and numbered cause and pursuant to Texas Rules of Civil Procedure 196.1, 196.2, 197.1, 197.2, 198.1 and 198.2 you are served with the attached Interrogatories, Requests for Admissions, and Requests for Productions. The answers to them should be made under oath, separately and fully in writing 30 days after the service of such Interrogatories, Requests for Admissions, and Requests for Production to:

Demand is made for the periodic ongoing supplementation of your answers to these interrogatories, and requests for admissions and requests for production as required by Rule 193.5 of the Texas Rules of Civil Procedure, so that any additional information relating in any way to these interrogatories which you acquire or which becomes known to you up to and including the time of trial will be furnished to the party serving these interrogatories upon you promptly.
Respectfully submitted,

[Signature]

ATTORNEY FOR PLAINTIFF

Certificate of Service

Service of this instrument has been made on all parties by mailing a copy via certified mail thereof to [Redacted] whose address is [Redacted] on this
DEFINITIONS AND INSTRUCTIONS

DEFINITIONS

As used herein, the words defined below shall be deemed to have the following meanings unless indicated otherwise in an individual Request or Interrogatory.

“Document” and “Documents” shall be used in their broadest sense and mean all originals and non-identical copies of any papers, books, accounts, writings, drawings, graphs, charts, photographs, phone records, audio recordings, video recordings, and other data compilations from which information can be obtained and translated, if necessary, by Defendants, through detection devices into reasonably usable form. “Document” and “documents” means and includes all matter within the foregoing description that is in the possession, control or custody of the Defendants or any attorney for Defendants. Without limiting the term “control,” a document is deemed to be within your control if you have ownership, possession or custody of the document, or the right to secure the document or copy thereof from any person or public or private entity having physical possession thereof.

“Communication” means and oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultation, agreements, and all other understandings between or among two or more persons.

“Plaintiff” means

“You,” ”Your” and “Defendants” means and any of your officers, employees, agents, or representatives, and further including “
“Account” means the subject of this lawsuit.

“Marketing materials” means any document that markets or provides information to others concerning your business or occupation. This includes, but is not limited to, print advertisements, such as newspapers, fliers, social media posts, business cards, signs or posters.

“Refer to” or “relating to” or “pertaining to” or “concerning” or any derivative thereof means, in whole or in part, relating to, pertaining to, concerning, constituting, demonstrating, describing, identifying, evaluating, analyzing, discussing, supporting, stating, summarizing, reflecting, involving, containing, embodying, mentioning, showing, comprising, evidencing, discussing, commenting about, referring to, in any way dealing with, or logically or factually connecting with the matter described in the applicable discovery request, and including without limitation documents that relate to the preparation of another document, and documents that are attached to or enclosed with another document.

**INSTRUCTIONS**

**Scope of Inclusion:** Unless otherwise indicated, the use in a Interrogatory or Request of the term Defendants or the name of a party or business organization shall specifically include all employees, agents, representatives, and attorneys of Defendants, party or business organization.

**Computer Data:** In those instances when requested information is stored only on software or other data compilations, Defendants should produce the information in a finished usable form, which would include all necessary glossaries, keys and indices for interpretation of the material.

**Document Destruction:** It is requested that all documents and/or other data
compilations which might impact on the subject matter of this litigation be preserved and that any ongoing process of document destruction involving such documents cease.

**Objections:** To the extent any request is objected to, please set forth a complete basis for the objection. If you object to only a portion of a particular request, specifically identify the portion of the request to which you are objecting and answer the remainder completely. If you claim privileges as grounds for not answering any request in whole or in part, state the privilege you are asserting, describe the factual basis for your claim of privilege, including relevant data and persons involved, in sufficient detail so as to permit the court to adjudicate the validity of the assertion. In any of the requests for admissions are denied, please provide the basis of such denial. If there is an objection to the number of requests, please notify Plaintiff’s counsel immediately so that either an agreement may be obtained or the matter may be set for hearing.

**IT IS NOT ACCEPTABLE TO STATE IN YOUR RESPONSE TO A REQUEST FOR PRODUCTION YOU WILL PRODUCE DOCUMENTS AT A MUTUALLY AGREEABLE PLACE AND TIME. YOU MUST PRODUCE ALL RESPONSIVE DOCUMENTS ALONG WITH WRITTEN RESPONSES, I.E., 30 DAYS FROM RECEIPT OF THESE REQUESTS FOR PRODUCTION.**
FIRST REQUESTS FOR ADMISSIONS TO DEFENDANT

Request for Admission 1: Admit that in 2016 you prepared federal income tax returns under the assumed name of [Redacted].

Request for Admission 2: Admit that you entered into a transaction with Plaintiff to prepare her federal income tax return.

Request for Admission 3: Admit that you listed yourself as the paid preparer on Plaintiff’s 2015 federal income tax return.

Request for Admission 4: Admit that you provided Plaintiff’s 2015 federal income tax information to [Redacted].

Request for Admission 5: Admit that you told Plaintiff to talk to [Redacted] about obtaining her refund.

Request for Admission 6: Admit that you never gave Plaintiff her federal income tax refund.

Request for Admission 7: Admit that you obtained money from Plaintiff’s 2015 federal income tax refund to pay for your tax preparation services.

Request for Admission 8: Admit that you breached the contract that is the subject matter of this litigation.

Request for Admission 9: Admit [Redacted].


Request for Admission 11: Admit that your Internal Revenue Service Paid Preparer Tax Identification Number is [Redacted].
**FIRST SET OF INTERROGATORIES TO DEFENDANT**

**Interrogatory No. 1:** Identify each individual who participated in preparing the answers to these interrogatories.

ANSWER:

**Interrogatory No. 2:** State the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person’s connection with the case.

ANSWER:

**Interrogatory No. 3:** Identify any and all representations made by you (and/or any of your employees, representatives, associates, agents, or partners) to Plaintiff regarding the tax preparation and any other services provided in connection therewith, including any quotes, promises, warranties, or calculations. Include in your answer when the representation was made, the total verbatim representation (if that is not possible, then state the detailed substance of the representation), the date, time and location the same occurred, and the identity of any employee or other person present at the time such representation was made.

ANSWER:

**Interrogatory No. 4:** If you contend that the damages claimed herein were caused by some other person, occurrence, condition or cause, either before or after the incidents made the basis of this case, describe in detail such other person, occurrence, condition or cause.

ANSWER:

**Interrogatory No. 5:** Describe all payments, compensation, and/or commissions you (and/or any of your employees, representatives, associates, agents or partners) received in connection with the services you provided for Plaintiff, including the date, amount, and nature of such amount, and your basis for receiving or obtaining such amount.

ANSWER:

**Interrogatory No. 6:** State the basis of your claim that [redacted] is involved in this matter.

ANSWER:

**Interrogatory No. 7:** State your relationship with co-defendant

ANSWER:
FIRST REQUESTS FOR PRODUCTION TO DEFENDANT

The following are to be produced for inspection, examination and copying within thirty (30) days of this request:

1) All correspondence, communications, transmissions, or other documents sent by you to the Plaintiff between January 2016 and December 2016 regarding her federal income tax return.

2) All correspondence, communications, transmissions, or other documents sent to you by the Plaintiff between January 2016 and December 2016 regarding her federal income tax return.

3) All correspondence, communications, transmissions, or other documents, evidencing a conversation, consultation, or other communication that you had with the Plaintiff regarding her 2015 federal income tax return.

4) All marketing materials connected with your business, or occupation. This includes, but is not limited to, all marketing materials that relate to providing tax related services.

5) All correspondence, communications, transmissions, or other documents, evidencing a relationship, conversation, consultation, or other communication that you had with regarding Plaintiff.

6) All documents sent to regarding Plaintiff’s 2015 tax refund.

7) All documents relating to the Plaintiff’s 2015 federal income tax return. This includes, but is not limited to, all correspondence, contracts, notes, drafts, affidavits, or other materials created by you, received by you, or held by you, relating to any of Plaintiff’s forms and filings to the Internal Revenue Service.