

CAUSE NO. \_\_\_\_\_

CONSUMER SERVICE ALLIANCE OF TEXAS, INC.	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	TRAVIS COUNTY, TEXAS
	§	
CITY OF AUSTIN, TEXAS	§	
	§	
<i>Defendant.</i>	§	_____ <sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

Plaintiff Consumer Service Alliance of Texas, Inc. files its Original Petition and Application For Temporary And Permanent Injunction against the City of Austin and in support thereof would respectfully show the Court as follows:

**I. Discovery Plan**

1. Discovery will be conducted pursuant to Level 3, as described by Rule 190 of the Texas Rules of Civil Procedure.

**II. Parties**

2. Plaintiff Consumer Service Alliance of Texas, Inc. ("Consumer Service Alliance") is a Texas non-profit company. Consumer Service Alliance is a trade association comprised of businesses that provide credit access services to consumers in Texas. Consumer Service Alliance advocates for the protection of financial choice based on informed decision-making and personal responsibility for Texas consumers. Consumer Service Alliance represents the interests of its members, which include multiple credit access businesses that conduct business in Austin, Texas and which will be harmed by the ordinance that is at issue in this case. Numerous members of Consumer Service Alliance have standing to bring this suit on their own.

3. Defendant, the City of Austin (“City”) is an incorporated city in Travis County, Texas. The City of Austin may be served by serving the City’s mayor, clerk, secretary, or treasurer at the City’s offices at 301 West 2nd Street, Austin, Texas 78701.

### **III. Jurisdiction and Venue**

4. Jurisdiction is proper in this Court pursuant to art. 5 §§ 1 and 8 of the Texas Constitution and Texas Government Code §§ 24.007 and 24.008.

5. Venue is appropriate in Travis County pursuant to Section 15.002(a) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events giving rise to the claim occurred in Travis County.

### **IV. Summary**

6. City ordinance No. 20110818-075 (“Ordinance”) is unenforceable because it is preempted by state law and was adopted in violation of the Texas Open Meetings Act. Last session, the Texas Legislature passed two bills which provide for the licensing and regulation of credit access businesses (“CABs”) which were subsequently signed into law. Recently, the City passed the Ordinance, which also attempts to license and regulate CABs and conflicts with the Texas statute. In addition to conflicting with the Texas statute, the Austin City Council admitted that the Ordinance contains provisions that were rejected by the Texas Legislature.

7. Consumer Service Alliance also believes that the Ordinance was adopted in violation of the Texas Open Meetings Act. The purpose of the Texas Open Meetings Act is to safeguard the public's interest in knowing the workings of the City and provide a method for the public to have access to the decision making of the City. In its haste to enact the Ordinance, the City violated the Texas Open Meetings Act. Because the City violated the Texas Open Meetings Act, the Ordinance is unenforceable.

## V. Factual Background

8. On June 17, 2011, Governor Perry signed House Bills 2592 and 2594, both of which amended Chapter 393 of the Finance Code (“Texas CSO Law”). These amendments, which become effective on January 1, 2012, created a new Subchapter G. Subchapter G is entitled “Licensing And Regulation Of Certain Credit Services Organizations.” As the title suggests, Subchapter G governs the licensing and regulation of CABs. *See* Tex. Fin. Code § 393.601 *et seq.* (as amended).

9. The members of the CSAT include businesses that will be considered CABs under the Texas CSO Law, including many businesses that operate in Austin. CABs are credit service organizations that assist consumers in obtaining extensions of consumer credit from third-party lenders. The amendments to the Texas CSO Law require CABs to be licensed by the State of Texas and to comply with the applicable provisions of the Texas Finance Code. As amended, the Texas CSO Law regulates the field of business in which the CABs, including members of the CSAT, operate.

10. As the City Council admitted, the Texas Legislature refused to adopt other restrictions on the business of CBAs. As further admitted by the City Council, some of those same restrictions – rejected by the Texas Legislature – comprise part of the Ordinance.

11. On August 18, 2008, the City passed the ordinance. Like the amendments to the Texas CSO Law, the Ordinance also concerns the “Registration of Credit Access Business” and “Miscellaneous Requirements For Credit Access Businesses.” Not only does the Ordinance regulate the same field of business that is regulated by the Texas CSO Law, the Ordinance also conflicts with the Texas CSO Law.

12. For example, there is a conflict between the penalty provisions of the Texas CSO Law versus the Ordinance. Pursuant to the Texas CSO Law, a company may be assessed an administrative penalty if it “knowingly and willfully violates or causes a violation of Chapter 393, or a rule adopted under Chapter 393.” Tex. Fin. Code § 14.251 (a-1) (as amended). However, pursuant to the Ordinance, a company “who violates [the ordinance] commits a Class C misdemeanor punishable by a fine not to exceed \$500” and “each day that a violation occurs is a separate offense.” Austin City Code § 4-12-23. There is also a conflict between the required mental state for a violation of the Texas CSO Law versus the Ordinance. To be subject to a possible administrative penalty under the Texas CSO Law, a company must act both “knowingly and willfully.” On the other hand, the Ordinance expressly states that “[a] culpable mental state is not required for a violation of this chapter and need not be proved.”

13. Another example of the conflict is the fact that the Texas CSO Law broadly authorizes CABs to assess fees for their services on the terms agreed upon between the CABs and their customers:

A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly, or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed.

*See* Tex. Fin. Code § 393.602(b) (as amended). However, the Ordinance conflicts with the Texas CSO Law because the Ordinance restricts the terms of the cash advance and the repayment terms of the cash advance.

14. The Ordinance also conflicts with the Texas CSO Law with respect to the reporting requirements imposed on the CBAs. The Texas CSO Law regulates the reporting requirements of the CBAs. The Ordinance attempts to cover this same field. However, in doing so, the Ordinance conflicts with the Texas CSO Law. For example, the Texas CSO Law

includes a provision whereby the information reported by the CBAs must be kept confidential. See Tex. Fin. Code § 14.2015 (as amended). However, one of the conflicts in this area is the fact that the ordinance has no such confidentiality requirement.

15. Additionally, the Ordinance is preempted because it attempts to license and regulate the same activity that is the subject of the Texas CSO law and other Texas statutes. The Ordinance imposes a penalty of up to \$500 per day for any violation. If the ordinance is enforced, it will no longer be economically viable for many CABs to continue their current business in the City. Enforcement of the Ordinance would create a virtual prohibition on their current business, even though the Texas CSO Law expressly permits this exact type of activity.

#### **VI. Cause Of Action Number One: Declaratory Judgment**

16. The allegations in paragraphs 1 to 15 are incorporated herein by reference.

17. There is a real and substantial justiciable controversy between the Consumer Service Alliance and the City concerning their rights and obligations.

18. To resolve this controversy, Consumer Service Alliance seeks a declaratory judgment pursuant to the Uniform Declaratory Judgments Act regarding the rights and obligations of the parties, including the following declarations:

- a. That the Ordinance is preempted and unenforceable, in its entirety, because it conflicts with the Texas CSO Law and other Texas statutes which regulate the same activity;
- b. That the Ordinance is unenforceable, in its entirety, because it was adopted in violation of the Texas Open meetings Act;

- c. That the Ordinance's Credit Restrictions are preempted and unenforceable because they conflict with the Texas CSO Law and other Texas statutes which regulate the same activity; and
- d. That the Ordinance is preempted and unenforceable, in its entirety, because it amounts to a virtual prohibition against CABs doing business in the City.

19. Consumer Service Alliance seeks recovery of its attorney's fees and pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code and Rule 131 of the Texas Rules of Civil Procedure.

**VII. Cause Of Action Number Two: Violation of The Texas Open Meetings Act**

20. The allegations in paragraphs 1 to 19 are incorporated herein by reference.

21. Pursuant to Section 551.002 of the Texas Government Code, every regular, special, or called meeting of the City must be open to the public and the City must provide the required notice. Although there are a few exceptions to this rule, none apply in this case.

22. Pursuant to Section 551.141 of the Texas Government Code, "[a]n action taken by a governmental body in violation of this chapter is voidable." Any interested person, such as the Consumer Service Alliance, may bring an action reverse a violation of the Texas Open Meetings Act. *See* Tex. Gov't Code § 551.142.

23. On information and belief, the City violated the Texas Open Meetings Act by conducting closed meetings.

24. Consumer Service Alliance seeks recovery of its attorney's fees and costs under Section 551.142 of the Texas Government Code Tex. Gov't Code § 551.142 and Rule 131 of the Texas Rules of Civil Procedure.

### **X. Application For Injunctive Relief**

25. The allegations in paragraphs 1 to 24 are incorporated.

26. Consumer Service Alliance requests that the Court enter a temporary injunction and, thereafter, a permanent injunction prohibiting the City from enforcing the Ordinance.

27. It is probable that Consumer Service Alliance will prevail on the merits. The Ordinance is unenforceable for the reasons identified herein.

28. If Consumer Service Alliance's application is not granted, Consumer Service Alliance and its members will suffer imminent harm because of the damage to their business. For example, if the Ordinance is enforced, it will restrict member company's ability to provide services to their customers with respect to the extension of consumer credit in a manner expressly permitted by the Texas CBO Law. Enforcement of the ordinance will make a member company's service, which are expressly permitted under the Texas CSO Law, so unprofitable that it will ultimately prohibit many of the member companies from engaging in their business in the city. This harm is irreparable and there is no adequate remedy at law because damages will be difficult to calculate and the nature of the damage to Consumer Service Alliance's business.

29. Any harm associated with the entry of a temporary injunction is outweighed by the potential damage to the members of the Consumer Service Alliance and their customers.

30. Consumer Service Alliance is willing to post a bond.

### **XI. Request for Attorney's Fees**

31. The allegations in paragraphs 1 to 30 are incorporated herein by reference.

32. Consumer Service Alliance is entitled to recover its reasonable attorney's fees as permitted by law, including reasonable fees for the cost of successfully making or responding to an appeal to the court of appeals and the Texas Supreme Court pursuant to Section 37.009 of the

Texas Civil Practice and Remedies Code. Consumer Service Alliance is also entitled to its reasonable attorney's fees pursuant to Section 551.142 of the Texas Government Code and Rule 131 of the Texas Rules of Civil Procedure.

**XII. Jury Demand**

33. Consumer Service Alliance respectfully requests a trial by jury.

**XIII. Prayer for Relief**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Consumer Service Alliance Of Texas, Inc. respectfully requests the following relief:

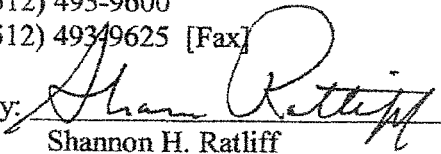
- (1) that this matter be set down for trial by jury;
- (2) that, upon trial/hearing, the Court enter a judgment pursuant to the Uniform Declaratory Judgment Act declaring that the Ordinance is unenforceable because it is preempted and was adopted in violation of the Texas Open Meetings Act;
- (3) that, upon trial/hearing, the Court enter a temporary injunction and, thereafter, a permanent injunction prohibiting the City from enforcing the Ordinance;
- (4) that, upon trial/hearing, the Court award the Consumer Service Alliance its reasonable attorney's fees as permitted by law, including reasonable fees for the cost of successfully making or responding to an appeal to the court of appeals and the Texas Supreme Court;
- (5) that, upon trial/hearing, the Court award the Consumer Service Alliance its costs of court; and
- (6) for all such other relief, at equity or otherwise, to which Consumer Service Alliance may show itself entitled.



Respectfully submitted,

RATLIFF LAW FIRM, P.L.L.C.  
600 Congress Avenue, Suite 3100  
Austin, Texas 78701  
(512) 493-9600  
(512) 493-9625 [Fax]

By:



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Shannon H. Ratliff  
State Bar No. 16573000  
Michael L. Navarre  
State Bar No. 00792711

ATTORNEYS FOR PLAINTIFF  
CONSUMER SERVICE ALLIANCE OF  
TEXAS, INC.



**Amalia Rodriguez-Mendoza**  
District Clerk, Travis County  
Travis County Courthouse Complex  
P. O. Box 679003  
Austin, Texas 78767

Date: November 3, 2008

TO: All attorneys of record in cases pending in Travis County District Court

**NOTICE OF ENTRY OF NEW E-FILE MANDATE ORDER**

The 2008 Court Order Regarding E-filing is effective as of November 1, 2008. You can view this order by selecting the link near the top of the following web page:

[http://www.co.travis.tx.us/district\\_clerk/default.asp](http://www.co.travis.tx.us/district_clerk/default.asp)

If you have not yet established an e-filing account, please refer to Texas Online's eFiling Main Information at:

<http://www.texasonline.com/portal/tol/en/info>

We are asking that you establish your account as soon as possible, but a grace period through the end of the year has been implemented to allow you adequate time to make e-filing preparations.

If you have any questions regarding the e-filing process or the order's application to any of your pending cases, you may call 512-854-FILE (512-854-3453) for assistance.

Thank you.

A handwritten signature in black ink that reads "Amalia Rodriguez-Mendoza". The signature is fluid and cursive.

Amalia Rodriguez-Mendoza  
Travis County District Clerk

Travis County District Clerk's Office  
Civil Division

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**Administrative Offices**  
(512) 854-9737  
Fax: 854-4744

**Civil and Family Division**  
(512) 854-9457  
Fax: 854-6610

**Criminal Division**  
(512) 854-9420  
Fax: 854-4566

**Jury Office**  
(512) 854-4295  
Fax: 854-4457