

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

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
SECOND CHANCE BODY ARMOR, INC.	§	
Defendant.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott (“State” or “Plaintiff”), sues SECOND CHANCE BODY ARMOR, INC., (“Defendant”), based on alleged misrepresentations and omissions of material facts in the promotion and sale of defective ballistic resistant body armor to Texas law enforcement personnel and other Texas consumers, and for cause of action would respectfully show as follows:

**I. DISCOVERY CONTROL PLAN**

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.2(b)(3); 190.3(a).

**II. JURISDICTION**

2.1 This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (Vernon 2004) (“DTPA”) upon the ground that Defendant has engaged in false, deceptive and misleading acts

and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b) of the DTPA.

### **III. DEFENDANT**

3.1 Defendant Second Chance Body Armor, Inc., (“Second Chance”) is a Michigan corporation with a principal place of business in Central Lake, Michigan. Second Chance is in the business of designing, manufacturing, marketing, distributing and selling ballistic resistant vests and other body armor, including the subject product, in Texas and throughout the United States. Second Chance designed, manufactured, promoted, distributed and sold ballistic resistant vests constructed with Zylon, to consumers in Texas. The cause of action asserted arose from and is connected with purposeful acts committed by Second Chance in Texas because Second Chance’s alleged misrepresentations and omissions of material facts in connection with the sale of its products in Texas form the basis of this suit. Second Chance does not maintain a place of regular business in Texas and has no designated agent in Texas on whom service of citation may be made in this cause. Accordingly, Defendant may be cited by serving the Secretary of State of Texas, provided that the citation and petition are forwarded to Defendant’s office address, 7915 Cameron Street, Central Lake, Michigan 49622, by certified mail, return receipt requested.

### **IV. VENUE**

4.1 Venue of this suit lies in DALLAS County, Texas, for the following reasons:

A. Under TEX. CIV. PRAC. & REM. CODE §5.001, venue is proper because all or a substantial part of the events or omissions giving rise to the causes of action alleged herein occurred in Dallas County, Texas;

B. Under the DTPA §17.47(b), venue is proper because Defendant has done business in Dallas County, Texas.

## V. PUBLIC INTEREST

5.1 Texas law enforcement personnel wear ballistic resistant armor every day, and many Texas officers have escaped serious injury or death because their armor performed as promised. State and local law enforcement agencies, and individual officers, spend thousands of dollars each year to purchase equipment they believe will offer the best protection to their officers. Beginning in 1998, Defendant Second Chance offered a new line of ballistic resistant vests, warranted for 5 years and represented to be as effective as the Kevlar vests that were then the industry standard, yet much more lightweight and flexible. The “Ultima” line of vests, which contained ballistic resistant panels made of 100% Zylon, were significantly more expensive than comparably rated Kevlar vests. Nonetheless, attracted by the promise of superior protection and comfort, many Texas police departments and other law enforcement agencies purchased the Second Chance Zylon based vests for their officers. Records produced by Second Chance to Plaintiff indicate that Second Chance sold over 5000 Ultima and Ultimax vests in Texas. Each vest cost approximately \$800. Texas officers wore the vests with confidence, unaware that by July 2001, Second Chance had information from Zylon’s manufacturer that Zylon degraded more rapidly than anticipated when exposed to light, heat and moisture and that there were serious questions about the suitability of Zylon for ballistic resistant body armor. Not until September 2003, two months after a police officer in Pennsylvania was shot and seriously wounded when the six month old Second Chance Zylon vest he was wearing failed, did Second Chance warn its customers that its vests might not perform as warranted. Even then, Second

Chance did not offer to refund money paid for the defective vests or to replace the defective vests at no additional cost to the customers.

5.2 The Attorney General has reason to believe that Defendant has engaged in the unlawful practices set forth below, and that Defendant has thereby caused harm to Texas consumers of its goods and to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, it serves the public interest to bring these proceedings.

## **VI. TRADE AND COMMERCE**

6.1 Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by DTPA §17.45(6).

## **VII. ACTS OF AGENTS**

- 7.1 Whenever in this Petition it is alleged that Defendant did any act, it is meant that:
- A. Defendant performed or participated in the act, or
  - B. Defendant’s officers, agents, or employees performed or participated in the act on behalf of and under the authority of Defendant.

## **VIII. NOTICE BEFORE SUIT**

8.1 Pursuant to DTPA §17.47(a), the Consumer Protection and Public Health Division informed Defendant in general of the alleged unlawful conduct described below, at least seven days before filing suit.

## IX. SPECIFIC FACTUAL ALLEGATIONS

9.1 Second Chance Body Armor, Inc., is a manufacturer of ballistic resistant body armor (commonly called bullet proof vests) and other products used by law enforcement personnel in Texas and throughout the United States.

9.2 In 1996, Second Chance began developing a vest that employed ballistic panels constructed entirely of Zylon, the trade name of a fiber made by Japanese manufacturer Toyobo from a polymer referred to as PBO. Initial tests showed that PBO had strength and ballistic resistance similar to aramid fibers like Kevlar, but was much lighter and more flexible, hence more comfortable to wear.

9.3 As Second Chance was developing the vests, Toyobo began to inform Second Chance of studies that indicated that Zylon lost strength more rapidly than anticipated when exposed to light. Second Chance responded with assurances that its construction would protect the Zylon panels from light, and expressed concern only that competitors could use Toyobo's revelations against them.

9.4 In 1998, Second Chance began to promote its new line of body armor. Second Chance touted its Zylon vest, the "Ultima", as:

“The ***Lightest*** vest in the World!  
The ***Thinnest*** vest in the World!  
The ***Strongest*** vest in the World!  
on a Pound per Pound Basis  
The Most ***Concealable*** vest in the World  
The Only ***8<sup>th</sup> Generation*** vest in the World  
that's ***Waterproof & Breathable***

(Exhibit A)

9.5 Second Chance provided a 5 year limited warranty with its vests. The warranty covered the protective integrity of the panels, and stated, “This vest is warranted to provide

protection as stated on the protective panel label and to be free of defects in material and workmanship.” Second Chance warrants that it will, “in its discretion, without cost to you, . . . repair or replace the defective part or the entire vest.” (Exhibit B)

9.6 Despite Toyobo’s continuing cautions about the longevity of Zylon’s ballistic resistant properties, Second Chance continued to market its Ultima line of vests to an ever growing customer base in Texas and throughout the United States. Relying on Second Chance’s promises of a vest that offered superior protection and comfort, many Texas police departments and other law enforcement agencies purchased the expensive Zylon Ultima and/or Ultimax vests beginning in 1998 and continuing into 2003.

9.7 Warnings about the durability of Zylon increased. In July 2001, a Dutch testing lab informed its German customer that, based on its testing, it could not support the use of Zylon UDSB10 for ballistic resistant armor. Second Chance, learning of the lab’s conclusion, began to implore Toyobo to warrant that Zylon was suitable for use in body armor and would retain its ballistic resistant properties for 10 years. Toyobo refused. (Exhibit C)

9.8 Second Chance continued to assure its customers that its Zylon armor was performing as promised and emphasized the armor’s “*wearability*.” Second Chance claimed that “at least ten US law enforcement officers have already been saved by their Second Chance Zylon vests.” Second Chance mentioned in passing the “recent concerns over the performance of a competitor’s product” that had prompted Second Chance to “re-visit its extensive ballistic data bases to evaluate the shelf-life of Zylon” and concluded that:

“we see no reason to suspect any premature decline in Zylon® fiber properties. Indeed, as you will see below, we have strong reasons to believe that woven Zylon® could demonstrate superior performance durability. It is true that Zylon® PBO is relatively new to our industry. Its structure, poly(p-phenylene-2,6-

bezobisoxazole), is different from aramids (Para-phenylenediamine terephthalamide). Zylon® fiber tensile, flexural strength, impact energy absorption and thermal durability properties are significantly higher than aramids. Although structurally different, Zylon® and aramids are chemically similar. Since aramids have demonstrated excellent durability in field use over the last twenty-eight years, with proper care, we would expect the same - or more- from Zylon®. We have seen no data to indicate otherwise.”

(Exhibit D)

9.9 During the summer and fall of 2001, Second Chance and Toyobo continued to communicate about testing used Zylon vests for degradation.

9.10 In August 2001, Second Chance began to “repatriate” Zylon vests for testing because of continuing concerns based on the European testing and Toyobo’s own test results, and asked for Toyobo’s help in understanding Zylon’s performance and the test results. Upon information and belief, Second Chance did not communicate those concerns to its customers but simply offered selected customers new model Zylon vests free of charge in exchange for used vests for testing. (Exhibit E)

9.11 Toyobo continued to publish its own test results to Second Chance and its other customers, much to Second Chance’s concern. Second Chance urged Toyobo to keep its graphs to itself and to get some marketing communications help to package their story. (Exhibit F)

9.12 In December 2001 Toyobo and Second Chance met to review the alarming test results of the used Zylon vests and to craft a strategy for dealing with the growing loss of confidence in the vests. By that time, test data indicated that Zylon in fact deteriorated much more rapidly than aramid fibers and Second Chance proposed design changes and a warranty adjustment program. Second Chance urged that the companies concurrently communicate the problem pro-actively, as an industry issue rather than a Second Chance issue, communicate positively and consistently with their employees, and their customer base, and launch a new

product line. They discussed communication strategy, ending with the suggestion to “Pray!” (Exhibit G) At that time, Second Chance estimated that it would have 236,000 vests in use by the end of 2002.

9.13 In a memo dated December 18, 2001, Dr. Aaron Westrick, Second Chance’s director of research informs Second Chance’s president:

Per our conversation today I am writing this Memo so my view is clear:

- Second Chance should immediately notify our customers of the degradation problems we are experiencing with Ultima armor.
- Second Chance should clarify this issue with major customers that have placed orders and after clarification, cancel orders if requested.
- Second Chance should make the right difficult decisions regarding this issue. Lives and our credibility are at stake.
- You should cease all bonuses’ etc. to keep funds within the company.

We will only prevail if we do the right things and not hesitate. This issue should not be hidden for obvious safety issues and because of future litigation. If Second Chance acts properly we will prevail.

(Exhibit H)

9.14 Second Chance did not follow Dr. Westrick’s advice.

9.15 On June 23, 2003, a Forest Hills, Pennsylvania police officer was seriously wounded when a bullet penetrated his Second Chance Ultima vest.

9.16 On July 11, 2003, Second Chance acknowledged that its Ultima vest level 2A was penetrated by a .40 caliber projectile, and that it was performing a root cause analysis. The company promised to “communicate factual, accurate information as it becomes available,” and expressed concern that officers would discontinue wearing their vests, “due to the negative publicity, sensationalism, unethical competitive practices and self-serving claims that contribute to misinformation in the marketplace. We at Second Chance Body Armor maintain complete



confidence in our products and continue to encourage all officers to wear their armor daily.”  
(Exhibit I)

9.17 Finally, in September, 2003, Second Chance notified its customers that Zylon vests “wear out sooner than expected and . . . there is a potential officer safety issue.” Second Chance offered a free “upgrade” that consisted of ballistic pads to be inserted in front of the Zylon pads, and represented that “Once upgraded the vest will then maintain its expected performance throughout the original warranty period.” Second Chance also offered to replace the Zylon vests with new non-Zylon vests at a discounted price. (Exhibit J) Second Chance did not offer to refund the purchase price of the defective vests or to provide free replacements.

9.18 Law enforcement agencies and officers in the Texas cities of Addison, Carrollton, Farmer’s Branch, Temple, and others, purchased Ultima and/or Ultimax vests from Second Chance, relying on Defendant’s misrepresentations of the product’s properties and the five year warranty. Each of these agencies and officers has incurred substantial expense in replacing the Second Chance vests with reliable body armor.

## **X. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT**

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

10.2 Defendant, as alleged and detailed above, has engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA §17.46(a).

10.3 Defendant, as alleged and detailed above, has represented that its ballistic resistant vests have characteristics, uses, or benefits which they do not have, in violation of DTPA §17.46(b)(5).

10.4 Defendant, as alleged and detailed above, has represented that its ballistic resistant vests are of a particular standard, quality, or grade while they are of another, in violation of DTPA §17.46(b)(7).

10.5 Defendant, as alleged and detailed above, misrepresented that to consumers that its warranty entitled consumers to repair or replacement of a ballistic resistant vest that failed to meet advertised standards, in violation of DTPA §17.46(b)(20).

10.6 Defendant, as alleged and detailed above, has failed to disclose information concerning its ballistic resistant vests which was known at the time of the transaction with an intent to induce Texas consumers into a transaction into which they would not have entered had the information been disclosed, in violation of DTPA §17.46(b)(24).

## **XI. PRAYER**

11.1 Because Defendant has engaged in the unlawful acts and practices described above the Defendant has violated the law as alleged in this Petition, thereby causing financial harm to Texas consumers.

11.2 WHEREFORE, Plaintiff prays that, upon final hearing, a permanent injunction be issued, restraining and enjoining Defendant, its officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant, from engaging in the following acts or practices:

- a. selling ballistic resistant vests constructed of Zylon to Texas consumers;
- b. eliminating or reducing the benefits extended under its October 6, 2003 bulletin providing for a “Performance Pac” upgrade, warranty adjustment trade-in, at buyers’ option, and to offer Texas the full benefit of any legal settlement or program that would upgrade or enhance the October 6, 2003 program so that no consumer, outside of Texas, obtains a more favorable term of settlement than that provided to a Texas consumer.

11.3 In addition, Plaintiff respectfully prays that this Court will:

- a. Order Defendant to pay civil penalties of up to \$20,000.00 per violation to the State of Texas for violations of the DTPA;
- b. Order Defendant to replace their defective products that were sold to Texas consumers, or sold within Texas, since August 31, 1998, or make full restitution to such consumers by reimbursing customers for the cost of the vests, as provided by law;
- c. Order Defendant to pay pre-judgment and post-judgment interest on all awards of damages or civil penalties, as provided by law; and
- d. Order Defendant to pay all costs of Court, costs of investigation, and reasonable attorney’s fees pursuant to TEX. GOVT. CODE ANN. §402.006(c).

11.4 Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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