

141-316172-20  
CAUSE NO. \_\_\_\_\_

POPULUS FINANCIAL GROUP, INC.  
D/B/A ACE CASH EXPRESS,

*Plaintiff,*

v.

CITY OF SAGINAW,

*Defendant.*

§ IN THE DISTRICT COURT OF

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TARRANT COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL VERIFIED PETITION AND APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

Plaintiff Populus Financial Group, Inc. d/b/a ACE Cash Express (“ACE”) files this Original Verified Petition and Application for Temporary Restraining Order and Temporary Injunction complaining of Defendant City of Saginaw (the “City”), and for cause of action would respectfully show:

**I. INTRODUCTION**

ACE is a financial institution providing a number of financial services, including bill pay services, wire transfer services, ATM services, debit card services, money orders, and also check cashing services and access to short-term installment loans. These financial services are both essential and critical to citizens in Tarrant County and the City of Saginaw during the COVID-19 pandemic while various shelter-in-place orders are in effect. Therefore, County Judge Glen Whitley deemed financial institutions like ACE as an Essential Business and exempted them from his Executive Order dated March 24, 2020 shutting down non-essential businesses in Tarrant County to curb the spread of COVID-19 in Tarrant County (the “Executive Order”). Specifically, the Executive Order designates Financial Institutions like ACE as Essential Businesses, which broadly includes “banks and related financial institutions, consumer lenders,

alternative financial services companies, sales and finance lenders, credit unions, appraisers, and title companies.”

On March 26, 2020, the City of Saginaw issued Ordinance No. 2020-08 (the “Ordinance”). *See* SAGINAW, TEX., ORDINANCES § 2020-08 (Mar. 26, 2020). While the Ordinance adopts and incorporates the entire Executive Order “as if set forth verbatim,” and despite the fact that ACE is clearly an Essential Business under the terms of the Executive Order, the City’s Ordinance nevertheless attempts to unilaterally narrow the definition of Essential Business in the Executive Order to exclude: (1) pawnshops; and (2) nondepository financial institutions (as defined in the Saginaw City Code). *See* SAGINAW, TEX., ORDINANCES § ch. 14, art. VII. § 14-250 (2019). That same day, under the purported authority of the Ordinance, and in violation of the County’s Executive Order, the City of Saginaw ordered the ACE store located at 1029 N. Saginaw Blvd., Suite F8 (the “Store”), to close.

Because ACE is an Essential Business under the Executive Order, and because the Texas Emergency Act of 1975 specifically provides that the terms of the Executive Order take precedence over any conflicting terms in the City’s Ordinance, the City cannot legally require the Store to close. Therefore, as a result of the City’s illegal closure of the Store, ACE files this suit seeking a declaratory judgment that: (1) the Ordinance is legally invalid and unenforceable to the extent it conflicts with the Executive Order; (2) ACE is an Essential Business under the terms of the Executive Order, which legally prevails over any terms of the Ordinance to the contrary; and (3) ACE is not a “nondepository financial institution” subject to the Ordinance. ACE also seeks a temporary injunctive relief and permanent injunctive relief preventing the City from continuing to force the closure of the Store.

## **II. PARTIES**

1. **ACE.** Plaintiff ACE is a Texas corporation with its principal place of business in Irving, Texas.

2. **The City.** The City is a Texas incorporated city. Pursuant to TEX. CIV. PRAC. & REM. CODE § 17.024, it may be served with process in this action by delivering a citation and a copy of this petition, any Temporary Restraining Order, and any Writ of Injunction to the City of Saginaw mayor, clerk, secretary, or treasurer.

### **III. JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction because no other court has exclusive jurisdiction of the subject matter of these causes and the relief sought herein is within the jurisdictional limits of this Court. Additionally, inasmuch as this is a suit for injunctive relief, venue is proper in this Court because Tarrant County, Texas is the county in which the City of Saginaw is located and it is the county where injunctive relief is sought to be enforced. TEX. CIV. PRAC. & REM. CODE § 15.0151 and § 65.023(a).

4. The City does not possess immunity from this suit or any such immunity has been waived by the Declaratory Judgment Act, Texas Civil Practice & Remedies Code Chapter 37.

### **IV. BACKGROUND FACTS**

5. **The Disaster Declaration.** On March 13, 2020, pursuant to Texas Government Code § 418.108, Tarrant County Judge Glen Whitley (the “County Judge”) issued a Declaration of Local Disaster due to Public Health Emergency due to the imminent threat of widespread illness from COVID-19 (the “Disaster Declaration”). Thereafter, the County Commissioners issued a Renewal of Declaration of Local Disaster due to Public Health Emergency on March 17, 2020, and on March 18, 2020, the County Judge issued a First Amended Declaration of Local Disaster due to Public Health Emergency. The County Judge issued a Second Amended Declaration of Local

Disaster due to Public Health Emergency to implement additional measures to ensure the protection of the residents of Tarrant County on March 21, 2020.

6. **The Executive Order.** On March 24, 2020, to remain consistent with the declaration of the Texas Department of State Health Services and the executive order issued by Governor Greg Abbott as of March 19, 2020 and to harmonize, to the extent possible, the executive orders of Governor Greg Abbott, the County Judge and the mandates contained in similar disaster declarations by the Mayors of Fort Worth, Arlington and the other cities of Tarrant County, the County Judge issued the Executive Order. A true and correct copy of the Executive Order is attached hereto as Exhibit A. The Executive Order states in relevant part:

All businesses operating in Tarrant County, except Essential Businesses as defined below, are required to close to the public. Non-essential businesses may continue Minimum Basic Operations consisting exclusively of the following as long as Social Distancing is maintained between all employees and contractors during the activities:

- a. Operations necessary to maintain security, upkeep, and maintenance of premises, equipment or inventory, including but not limited to the care and maintenance of livestock or animals;
- b. IT or other operations that facilitate employees working from home;
- c. Facilitate online or call-in sales performed by employees in a store or facility closed to the public;
- d. In-store repair services performed by employees in a store or facility closed to the public.

7. Under the Executive Order, Essential Businesses are defined to include:

Financial Institutions. Banks and related financial institutions, consumer lenders, alternative financial services companies, sales and finance lenders, credit unions, appraisers, and title companies. As much business as possible shall be conducted with web-based technology to limit in-person contact.

8. **The Executive Order is Consistent with CISA Guidance.** On March 19, 2020, the Cybersecurity and Infrastructure Security Agency (“CISA”) issued guidance on the

identification of essential critical infrastructure workers (the “CISA Guidance”). At true and correct copy of the CISA Guidance is attached as Exhibit B. Importantly, the CISA Guidance provides the following examples of critical financial services workers, which includes ACE’s workers:

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities);
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers); and
- Workers who support financial operations, such as those staffing data and security operations centers.

9. **The City of Saginaw Ordinance**. On March 26, 2020, the City of Saginaw issued the Ordinance. A true and correct copy of the Ordinance is attached as Exhibit C. While the Ordinance adopts the Executive Order, it purports to change the definition and scope of what constitutes an Essential Business. The Ordinance states in relevant part:

It is hereby ORDERED that the following businesses located within the City of Saginaw are not considered Essential Business (as that term is defined in the Tarrant County Order) and are required to immediately close to the public:

1. Pawnshops, as the term is defined by Section 371.003 of the Texas Finance Code.
2. Nondepository Financial Institutions, as that term is defined in Chapter 14, Article VII of the Saginaw City Code.

10. **The Saginaw City Code**. Under the Saginaw City Code, Nondepository Financial Institutions “means any check cashing business, payday advance/loan business, or car title loan business, as defined in this section.” *See* SAGINAW, TEX., ORDINANCES § ch. 14, art. VII. § 14-250. “Check cashing business” means an “establishment, entity, or person registered with the Texas Secretary of State as a Credit Services Organization (CSO) under V.T.C.A., Finance Code § 393

that provides one or more of the following: (1) An amount of money that is equal to the face of the check or the amount specified in the written authorization for an electronic transfer of money, less any fee charged for the transaction;(2) An agreement not to cash a check or execute an electronic transfer of money for a specified period of time; or (3) The cashing of checks, warrants, drafts, money orders, or other commercial paper for compensation by any person or entity for a fee.” *See id.*

11. The Saginaw City Code defines “Payday/advance loan business” to mean an “establishment, entity or person registered with the Texas Secretary of State as a Credit Services Organization (CSO) under V.T.C.A., Finance Code § 393 that engages in any of the following activities:(1) Acts or operates as a loan broker between consumers and lending companies;(2) Issues a "letter of credit" or similar document on behalf of a consumer to a lender;(3) Collects any or all of the following fees: (a) A referral fee for referring a consumer to a lending company; (b) An application fee for filling out the CSO documents; or (c) Interest on the funds distributed to the consumer, or payments based on the amount of money distributed to the consumer; or (4) Requires the consumer to provide the CSO or lending company with a postdated check or authorization to make an electronic debit against an existing financial account.” *Id.*

12. **The City of Saginaw Orders the Store Closed.** On March 26, 2020, the City of Saginaw ordered that ACE close the Store based on the Ordinance. Despite the fact that ACE provided the City of Saginaw with information demonstrating that it was an Essential Business under the Executive Order, and that it was providing services other than those offered as a “Nondepository Financial Institution” under the Saginaw City Code, the City of Saginaw still ordered ACE to close the Store. A true and correct copy of the information provided to the City of Saginaw is attached hereto as Exhibit D.

13. **ACE's Operations at the Store are Essential.** The City of Saginaw's conduct has deprived the citizens of Tarrant County and the City of Saginaw of financial services from an Essential Business. Specifically, between March 1, 2020 and March 23, 2020, approximately half of the transactions at the ACE store in Saginaw, were depository activity on behalf of an FDIC-insured bank, MetaBank. Consumers rely on ACE to deposit funds into their accounts and to access cash from those accounts, which is no different than a depository institution. ACE is a distributor for prepaid debit cards and demand deposit accounts offered by MetaBank and managed by a third party. ACE consumers acquire these debit cards and open these accounts at ACE stores. Many consumers have their pay and benefits direct deposited to these products. ACE offers no-fee withdrawals, up to certain preset limits. These consumers would be robbed of the opportunity to cost-effectively manage their personal finances if ACE were required to close its Saginaw location and they were forced to pay fees or drive to another city when they would otherwise have a no-fee option at home in Saginaw.

14. Importantly, ACE offers a multitude of essential financial services that are NOT included within the City's definition of "nondepository financial institutions." For example, ACE offers bill pay services, wire transfer services, ATM and debit card services for cards in addition to those offered at ACE, and money order sales. It is indisputable that these functions are outside the definition of "nondepository financial institutions" in the Saginaw City Code. Notably, between March 1, 2020 and March 23, 2020, more than 75% of ACE's transactions in its Saginaw location were related to services other than check cashing and credit services organization activities.

15. ACE exists to serve the 60 million unbanked and underbanked Americans, many of whom are facing unprecedented and unexpected financial uncertainties due to the shelter-in-place

orders. The City's illegal and ultra vires order to close the Store jeopardizes the access of these citizens to financial during a time of crisis, which is when such access is most needed.

16. Lastly, ACE, and indeed residents of Saginaw and Tarrant County, will be irreparably harmed by the continued closure of the Store. Specifically, the underbanked citizens of Tarrant County served by the Store will not have access to their funds in this essential and critical time of need, as well as the other financial services offered by ACE at the Store. This will undisputedly cause the loss of ACE's goodwill, clientele, and destabilize the citizens of Tarrant County that utilize the services of the ACE store, which is exactly what the Executive Order was intended to prevent during this global pandemic.

#### **V. CAUSE OF ACTION – DECLARATORY JUDGMENT**

17. The City's authority and ability to regulate movement of persons and the occupancy of premises within the City during a declared local disaster is statutorily determined and constrained by TEX. GOV'T CODE § 418.108(f) and (g). Pursuant to § 418.108(h), the jurisdiction and authority of the County Judge includes all incorporated areas of Tarrant County, including the City. Furthermore, the statute expressly provides that to the extent of any conflict between the decisions of the County Judge and the Mayor regarding the movement of persons and the occupancy of premises during a declared disaster, the decision of the County Judge prevails.

18. In this instance, the County Judge determined, as set forth in the Executive Order, that ACE's business operations within the City constitute an Essential Business that is permitted to remain open in order to serve the needs of the citizens of Tarrant County. To the extent the City Ordinance purports to define ACE as a non-essential business and require the closure of



ACE's business operations in the City, it directly conflicts with the decision of the County Judge and is therefore invalid, illegal, and unenforceable.

19. Despite ACE's repeated requests that its business operations be allowed to remain open because it is an Essential Business under the Executive Order, the City has nevertheless wrongfully and illegally forced ACE to close its operations in the City. Accordingly, a real and justiciable controversy exists between the parties regarding, *inter alia*, the construction and application of the Texas Disaster Act of 1975, TEX. GOV'T CODE §§ 418.001, *et seq.*, the Executive Order, and the Ordinance.

20. Pursuant to TEX. CIV. PRAC. & REM. CODE §§ 37.001, ACE requests that the court enter a declaratory judgment determining (a) ACE's status and rights as an Essential Business during the local disaster declared by the County Judge and Mayor, (b) that the terms of the Executive Order prevail over the terms of the Ordinance, (c) that the Ordinance is invalid, illegal and unenforceable to the extent it purports to require the closure of ACE's operations within the City, (d) that the City's closure of ACE's business operations was ultra vires and illegal, (e) that ACE is not a "nondepository financial institution" under the Ordinance in any event, and (f) such other and further matters necessary to adjudicate the respective rights and obligations of the parties.

21. ACE requests that it recover its reasonable attorneys' fees and costs from the City pursuant to TEX. CIV. PRAC. & REM. CODE §§ 37.009.

**VI. APPLICATION FOR *EX PARTE* TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

22. ACE incorporates the allegations above as if fully stated herein.

23. The factual and injunctive allegations contained in paragraphs 5 through 16, *infra*, are supported by the sworn verification of ACE.

24. ACE will suffer immediate and irreparable harm if a restraining order is not issued to prevent the City's wrongful enforcement of the Ordinance against the Store until a temporary injunction hearing is held. Specifically, as stated above, the City has wrongfully and illegally forced ACE to close its Essential Business operations in the City during the pendency of the declared local disaster, notwithstanding ACE's legal right to remain open for business pursuant to the Executive Order. As long as the City's closure order remains in effect, ACE is unable to serve the essential financial needs of its customers in the City, which includes giving customers access to their depository funds and ACE's other financial products. As a result of the illegal closure order, ACE has suffered, and will continue to suffer, damages to its business reputation, goodwill, and legal rights that are not susceptible to reasonable or precise measurement during the pendency of this lawsuit. ACE therefore lacks an adequate remedy at law and is entitled to immediate injunctive relief.

25. Accordingly, pursuant to TEX. R. CIV. P. 680 and TEX. CIV. PRAC. & REM. CODE § 65.001, *et seq.*, ACE requests that, pending a final trial of this action, the Court issue a temporary restraining order and a temporary injunction prohibiting and restraining the City, along with its employees, agents, attorneys, affiliates, associates, and anyone acting in concert with them (the "Restrained Parties") as follows:

- (a) Enjoining the Restrained Parties from refusing to treat ACE and the Store as an Essential Business pursuant to the Executive Order;
- (b) Enjoining the Restrained Parties from taking any action, or refusing to take any action, that would interfere with or prevent ACE's ability to open, operate, and support its business operations in the City located at 1029 N. Saginaw Blvd., Suite F8, Saginaw, Texas; and
- (c) Enjoining the Restrained Parties from taking any action, or refusing to take any action, that would interfere with, restrain, or prevent any individual from travelling to or

from ACE's business locations, including its location at 1029 N. Saginaw Blvd., Suite F8, Saginaw, Texas.

26. ACE is prepared and willing to post the bond required by the Court, but requests the Court only require it to post a nominal bond, given the nature of ACE's claim and the facts set out herein.

## **VII. RELIEF REQUESTED**

ACE requests that the City be cited to appear and answer, and that ACE be granted the relief requested herein, including temporary and permanent injunctive relief, damages, prejudgment and post-judgment interest, attorneys' fees, costs, and any other relief to which ACE is entitled, whether at law or in equity.

Respectfully submitted,

By: /s/ Ryan K. McComber

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