

XXX Services, North America LLC

Dallas, Texas

Re: Mr. Smith

Vin:

To Whom It May Concern:

This firm has been retained by John Smith to prosecute legal action against you for damages.

On or about _____, 20__ Mr. Smith was wrongfully terminated by XXX for excessive absenteeism. Unfortunately the cause of Mr. Smith's absence from work centered around the incredibly debilitating stomach virus Mr. Smith contracted from the cafeteria at your facility.

Based on Doctor's orders Mr. Smith missed a significant amount of time from work. Eventually, through no fault of his own, Mr. Smith was terminated by your company.

After summarily firing Mr. Smith on spurious grounds, XXX refused to forward Mr. Smith's final paycheck and certain other wages owed. Mr. Smith was forced to bring a proceeding against XXX before the Texas Work Force Commission, who issued Findings and Conclusions in Mr. Smith's favor, a copy of which are attached as "Exhibit A."

Despite being told by the Texas Work Force Commission on December 14, 2004 that Mr. Smith was entitled to certain funds, XXX refused to remit those funds. Yet again Mr. Smith was forced to seek the aid of the State of Texas to force XXX to do the right thing. Eventually, after numerous attempts to collect by Mr. Smith and even more numerous threats by the Texas Work Force Commission, XXX paid Mr. Smith his missing wages on or about April 25, 2005, over five months from the date of the original order and almost eight months after firing Mr. Dunagan. Unfortunately for Mr. Smith his problems with XXX were far from over.

In addition to being an employee of XXX, Mr. Smith was a customer. Specifically, Mr. Smith held a lease through Mercedes-Benz Credit for a 2004 Mercedes-Benz C Class, VIN WDBRF40J74F553963. Due to the actions of XXX Mr. Smith was unable to make the monthly lease payments and his vehicle was repossessed. In addition to repossessing his vehicle, XXX caused certain of its employees to contact Mr. Smith in an attempt to collect the past due lease payments. Many of these employees were co-workers of Mr. Smith and many of the collections efforts took place while Mr. Smith was still employed by XXX.

Not satisfied with destroying Mr. Smith's status and reputation with his co-workers, XXX contacted Mr. Smith's mother. XXX explained the situation to the 70 year old woman in excruciating detail, multiple times, each time closing with the threat that Mr. Smith's vehicle would be taken from him and his credit ruined.

Mr. Smith's life was now beginning to look like a bad western movie. The guys wearing black cowboy hats took away his means of making a living, knowing that they held the note to the family farm (or in this case the car). They then refused to pay wages that they wrongfully withheld; no matter who or what they were threatened with until Mr. Smith was behind on the payments. They threatened his family and friends, alienating him from all those around him. Then when there was nothing left for Brain Smith to do they swooped in and foreclosed.

Though Mr. Smith's life felt like a bad movie, the reality is different. In this day and age mustachio twirling wrong-doers are not allowed to perform their evil deeds unchecked.

In his dealings with you, John Smith contracted with you for goods and services. Accordingly, in this transaction John Smith was clearly a "consumer" as such term is defined in Section 17.45, TEXAS BUSINESS & COMMERCE CODE.

John Smith asserts that you committed a number of false, misleading or deceptive acts and practices prohibited by Section 17.46 of the TEXAS BUSINESS & COMMERCE CODE (the Texas Consumer Protection – Deceptive Trade Practices Act) including, but not limited to, the following:

1. Representing that goods or services have characteristics, uses, or benefits which they do not have, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(5);
2. Representing that goods or services are of a particular standard, quality, or grade, if they are of another, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(7);
3. Advertising goods or services with intent not to sell them as advertised, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(9);
4. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(12);
5. Knowingly making false or misleading statements of fact concerning the need for replacement or repair service, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(13); and
6. Failing to disclose information concerning goods or services which was known at the time of the transaction thereby intending to induce Mr. XXX into entering into the referenced agreement, knowing that they would not have entered into such agreement had such information been disclosed, in violation of TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(24).

Additionally, John Smith asserts that you committed a number of false, misleading or deceptive acts and practices prohibited by Section 392.300 *et seq.* of the TEXAS FINANCE CODE (TEXAS DEBT COLLECTION PRACTICES ACT) including, but not limited to, the following:

- (1) Representing or threatening to represent to any person other than the consumer that a consumer is willfully refusing to pay a non-disputed consumer debt when the debt is in dispute and the consumer has notified in writing the debt collector of the dispute in violation of FINANCE CODE §392.301(a)(3);
- (2) Placing telephone calls without disclosing the name of the individual making the call and with the intent to annoy, harass, or threaten a person at the called number in violation of TEXAS FINANCE CODE §392.302(2);
- (3) Using a name other than the true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection in violation of TEXAS FINANCE CODE §392.304(a)(1)(A);
- (4) Representing falsely that the debt collector has information or something of value for the consumer in order to solicit or discover information about the consumer in violation of TEXAS FINANCE CODE §392.304(a)(2);
- (5) Failing to disclose that the communication is an attempt to collect a debt in violation of TEXAS FINANCE CODE §392.304(a)(5)(A);
- (6) Representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business in violation of TEXAS FINANCE CODE §392.304(a)(14); and
- (7) Using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer in violation of TEXAS FINANCE CODE §392.304(a)(19).

The foregoing violations were committed knowingly and intentionally, and John Smith relied on your representations, acts, and omissions to his damage and detriment.

Further, the representations, acts, and omissions made by you in your dealings with John Smith constituted an "unconscionable action or course of action" as such term is defined in Section 17.45(5), TEXAS BUSINESS & COMMERCE CODE.

In addition to constituting numerous violations of the Texas Consumer Protection – Deceptive Trade Practices Act, the above-described acts and omissions made by you constituted, among other things: misrepresentation; negligence; negligent misrepresentation; constructive fraud; breach of contract; breach of express warranty; breach of implied warranty; fraud; and breach of duty of good faith and fair dealing.

As a direct result of your wrongful acts and omissions, John Smith has been compelled to retain the services of this firm to seek redress for the damages she has suffered. As of the date of this writing, the fee for the legal services and related costs incurred in this matter is \$5,000.00.

Therefore, the total damages thus far suffered by Mr. Smith as a direct consequence of your failure to correctly repair his condominium is \$16,392.00, itemized as follows:

1. Rental car - \$800.00;
2. Lost wages - \$112.00;
3. Loss of tuition due to forced withdrawal from Tarrant County College \$480.00;
4. Mental anguish-\$10,000.00; and
5. Attorney fees incurred to date in the amount of \$5,000.00 in connection with investigating and pursuing this claim.

Additionally, the following actions must be taken by you immediately:

6. Cancellation of any and all amounts purportedly owed by John Smith on account # _____, Mercedes-Benz Credit.
7. Notification to all three credit bureaus instructing them to remove any and all negative information with regard to Mercedes-Benz Credit account # _____.

Demand is hereby made upon you to immediately pay the total amount of damages sustained, \$6,735.00, to John Smith through this office immediately.

This letter constitutes notice that unless we receive a certified check, cashier's check, or money order for such full amount, \$16,392.00, and written confirmation of regarding the required actions on Mercedes-Benz Account # 7000802184 on or before July 20, 2005, this firm has been instructed to take whatever steps are necessary to protect our client's interests.

In such event, Mr. Smith has authorized and instructed us to file and prosecute a lawsuit against you to collect all damages caused by the above-described wrongful representations, acts, and omissions.

In connection with such litigation, we have been directed to pursue all proper legal remedies and to seek all available relief including, but not limited to, direct and consequential damages, penalties as provided by the Texas Consumer Protection – Deceptive Trade Practices Act, attorney fees, interest, court costs, and such additional punitive damages as may be legally appropriate.

Pursuant to Section 17.505, TEXAS BUSINESS & COMMERCE CODE, please be advised that if this claim has not been resolved within sixty (60) days from the date you receive this notice, the petition in the above-referenced lawsuit against you will be amended to request additional relief under the provisions of Section 17.50, TEXAS BUSINESS & COMMERCE CODE, including treble damages as authorized therein.

Please pay this claim now to avoid litigation and further expense. Your immediate response to this serious matter will be appreciated.

Sincerely,

Chris McHam