

XXX Toyota
Attention: Scott ____

Suite ____
Dallas, Texas

Re: *Angela YYY*
Vin:

To Whom It May Concern:

This firm has been retained by Angela YYY to prosecute legal action against you for damages.

On or about October 24, 2003 Mrs. YYY entered into a contract with you to purchase a used 2002 Nissan Xterra, VIN _____, for \$21,334.00 Mrs. YYY attempted to purchase insurance for this vehicle in January, 2004 and to her dismay was rejected because her insurance company determined that the vehicle had previously been totaled.

Mrs. YYY was understandably shocked. At no point has any employee of XXX Toyota ever stated that the vehicle had been damaged in anyway, much less totaled. Mrs. YYY requested a copy of the title to the Xterra from her lending institute to confirm that the vehicle had been salvaged. The title, granted by the State and based on information provided by you, failed to indicate that the vehicle had been totaled.

Mrs. YYY took the vehicle back to your dealership and demanded her money back. You refused.

After multiple attempts to convince your employees to rectify the situation Mrs. YYY had the Xterra appraised by an independent dealership. At that point Mrs. YYY was told that the total value of her salvaged car was, at most \$6,000.00.

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

Angela YYY 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. and Mrs. Giles 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).

The foregoing violations were committed knowingly and intentionally, and Mrs. YYY relied on your representations, acts, and omissions to her damage and detriment.

Further, the representations, acts, and omissions made by you in your dealings with Angela YYY 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, Angela YYY 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 \$2,000.00.

Therefore, the total damages thus far suffered by Mrs. YYY as a direct consequence of your fraudulent sale of a rebuilt vehicle is \$17,334.00, itemized as follows:

1. Total amount paid (\$21,334.00) minus market value at time of sale (\$6,000.00)
2. Attorney fees incurred to date in the amount of \$2,000.00 in connection with investigating and pursuing this claim.

Demand is hereby made upon you to immediately pay the total amount of damages sustained, \$17,334.00, to Angela YYY 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, \$17,334.00 on or before June 25, 2004, this firm has been instructed to take whatever steps are necessary to protect our client’s interests.

In such event, Mrs. YYY 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

cc: Angela YYY
Better Business Bureau