DEBT COLLECTION
TURNING YOUR RECEIVABLES INTO CA$H

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CHAPTER 11

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DEBT COLLECTION: TURNING YOUR RECEIVABLES INTO CASH

I. Introduction.

Advising small business owners about collecting their receivables can be most useful if the advice comes before credit is extended on an account, rather than when the receivable is six months old. I have written this paper with the intent that I could make a copy of the outline and hand it to a small business client as a follow up to a conference in which I have explained the reality of turning receivables into CA$H.

II. The Credit Application and Guaranty.

A. Scope of discussion.

The analysis of credit reports and relationships with credit reporting agencies is beyond the scope of this paper. Each business must assess for itself the level of risk it will assume in extending credit and the extent by which it will be guided by published reports. However, in the process of extending credit, the business extending the credit (hereinafter the "creditor") is in the best position it will ever be in with its potential customer to gain information that may later be useful in collecting the receivable (which often means locating the debtor) and to multiply the potential parties liable for the debt by the use of guaranties.

B. The Credit Application.

As a debt collector I often find myself asking clients for a copy of their customer's credit application in an effort to 1) identify the debtor; 2) locate the debtor and guarantors; 3) determine potentially liable parties; and 4) to determine if the client's charging of interest in excess of 6% is supported by an agreement in writing (*see* usury discussion at Part III., *infra*.). Important information can be gained from the application process when the potential customer is in business and anxious to obtain credit. Attachment 1 to this paper is a sample credit application. The form contains the usual provisions for references and a number of questions that a creditor needs answered in determining the credit-worthiness of the customer. It also provides vital identifying information which will assist the debt collector in identifying and locating the debtor.

1. Debtor "Entity" Identity and Guaranties.

Businesses routinely extend credit on account to an assumed name or the name on the sign hanging above the customer's door. This can cause a real problem if the account goes past due and collection action becomes necessary. Even before the account gets to that point, obtaining the proper legal identity of the customer will provide the creditor with the correct entity about which to make credit inquiries, the persons who can bind the customer and the need for guarantors.

a. Sole proprietorships. The sole proprietor or owner of the business is liable for the account. It is best to obtain that person's signature on the application (and contract or order form if in writing). Receptionists,

bookkeepers, and delivery personnel are seldom authorized to bind the owner and rarely have even provable apparent authority. Guaranties of third parties become necessary for extending credit to the sole proprietor when he or she has weak or no credit.

b. General partnerships. Any partner can bind a general partnership in the ordinary course of business and all partners are thereby jointly and severally liable for the debt; however, it is a good idea to identify all of the partners and, if at all possible, obtain their signatures as guarantors. The Business Organizations Code at Section 152.306 governs enforcement of judgments against the individual partners and should be reviewed before pursuing collection of judgments against partnerships and its partners. Also, it is often difficult to track down a partnership agreement and/or roster when the partnership's business fails and the partners go their separate ways. It is best to obtain the identity and signatures of all the partners up front.

c. Corporations. One of the purposes of incorporating a business is to limit its liability to the assets of the corporation and to protect its owners from personal liability. This is the very reason the creditor should require a personal guaranty. Corporate officers (including directors) should be listed on the application and an officer should sign the credit application. Personal liability may arise if the corporation's charter is forfeited for failure to file and/or pay franchise taxes, in which case the identity of the officers and directors will be useful. *Tax Code §171.252*. The president of the corporation is generally authorized to bind the corporation in routine matters in the ordinary course of business. Bylaws or a board of director's resolution supporting the president's action is best.

d. Limited Partnerships. Limited partnerships are often as insulating from personal liability (and hence collection) as corporations, with the limited partners' liability limited to their contribution to the partnership and only the general partner being fully liable. While individuals are usually the limited partners, the partnership will often have a corporation as the general partner. This should trigger an investigation of the corporation's assets and a red flag to secure a personal guaranty. General partners are authorized to bind the limited partnership in the ordinary course of business.

e. Other entities. A full discussion of Limited Liability Companies, Registered Limited Liability Partnerships, Associations and Non-Profit Organizations is beyond the scope of this paper. The key is determining the entity you're dealing with, the identity of the parties who can bind the entity (maybe require a resolution) and, above all, get one or more personal guaranties. The creditor that insists on the guaranty up front is the one most likely to get paid when the debtor's business goes south.

2. Identifying and Locating Liable Individuals.

Obtaining identifying information about the debtor's owners, partners, officers and guarantors is as important as knowing the identity of the debtor. Individuals that fall into these categories and who balk at furnishing the information are signaling a credit risk. Identifying information such as the driver's license number, social security number, date of birth, home address, phone number and email address is invaluable in locating missing debtors and guarantors for collection purposes. The information is also necessary for evaluating the application on the front end so that proper credit inquiries can be made. The Credit Application form marked as Attachment 1 to this paper makes it clear to the applicant that individual credit reports may be run. You can rest assured that individual shareholders and officers of a new corporation will bring to the corporation their talent for not paying debt.

a. Location information. For location purposes, information on the individuals involved may be used in a number of ways:

(1) Drivers license checks. The individual's name, date of birth and driver's license number submitted to the Department of Public Safety will produce a report containing the last address submitted to the Department of Public Safety. Similar information is available with search services such as Publicdata.com.

(2) Address Service Requested. Correspondence sent to an individual's address marked "Address Service Requested" will result in the correspondence being forwarded to the debtor (if the forwarding order has not expired) and a notice of the forwarding address to the sender.

(3) Professionals. Licensing boards often have current addresses for their licensees and a variety of other identifying information is available. If you know the individual has a professional license, a date of birth and a social security number may be necessary to confirm that you have identified the proper individual.

(4) Internet Searches. The internet is a great source for identity, location and asset information via subscription services and free public records. Appraisal district searches will reveal ownership and value of the debtor's location and business assets and are available for many Texas Counties. Secretary of State Direct is a relatively inexpensive service for UCC lien information and entity organization and other filings. Publicdata.com is relatively inexpensive and contains many database search options including driver's license records, criminal records, real property and vehicle ownership information. Accurint (accurint.com) and TLO (tlo.com) are also useful and inexpensive search tools. If the debtor has a website, it should be reviewed and a "Google" search of the debtor's name and/or address can prove useful.

b. Two John Does. In the process of running credit reports it will be necessary to have the individual's full name and social security number. In the collection process this may also be necessary for obtaining recent credit reports. The collector may also need to determine if the John Doe located through the phone book, criss-cross directories or other public records is the same John Doe who is liable for the debt. The date of birth, driver's license number and social security number will help to verify the individual's identity

C. The Guaranty. The sample credit Application, Attachment 1 to this paper, contains a continuing unlimited guaranty. It provides for joint and several liability for all the guarantors and is revocable in writing with the revocation applicable only to credit extended after the revocation.

The importance of diligently obtaining guaranties has been previously discussed. Accounts backed by personal guaranties are often the first, and sometimes only, debts that are paid when the debtor's business suffers or fails.

III. Avoiding the Usury Trap.

Small (and sometimes large) business owners often fall into the usury trap by adding to their invoices and billing statements "1½% interest on all past due amounts." Sometimes they include this language at the suggestion of their printer or because they see it on so many invoices and billing statements. A full discussion of usury is beyond the scope of this paper, but the guidelines are as follows:

A. Interest can be charged on past due accounts at the rate of 6% per annum beginning on the 30th day after the account is due, even if there is no agreement to pay interest;

B. Parties to a contract can agree to charge and pay interest up to 10% per annum, even orally (not a good idea!);

C. If agreed to in writing, signed by the customer, interest can be charged at 1½% per month or 18% per annum.

The most sobering usury penalty is when interest is charged at more than two times the permitted rate, i.e., when interest is charged at 18% per annum when there is no agreement in writing to pay and only 6% per annum is permitted. In that event the creditor forfeits its principal, interest, and other charges, and must pay three times the usurious interest. *See Finance Code Sec. 301.001, et.seq.* for a full discussion of interest, usury penalties and curing provisions.

The best way to avoid the usury trap is to obtain the customer's signature on the credit application and to include in the application a provision for charging interest. See Attachment 1. It is not a good idea to include the interest provision on the invoices only and attempt to rely on the delivery person's obtaining the

signature of an authorized party to each and every invoice.

IV. In-House Collectors.

Small business owners, their credit managers and other office personnel who find themselves making calls to customers who are past due often ask, "How should I initiate the call? What can I say will happen if they don't pay? How often should I call?" Without trying to explain "the art" of persuasive collections, some basic steps are suggested:

A. Know the current balance owing and have available the invoices comprising the balance;

B. Identify the debtor's accounts payable contact and contact that person; if no response, call the person who signed the credit application or the owner or manager of the business;

C. Listen to customer reasons for non-payment; this is an opportunity to resolve customer complaints;

D. When the customer agrees to make payments or pay in full by a date certain, monitor the date and make a timely follow-up call if payment is not received;

E. Letters accompanying re-bills are helpful;

F. Emails are a useful tool to informally memorialize communications and agreements with customers to pay, but use caution in composing emails – always consider that a judge or jury may eventually read them.

G. Do not threaten any action, i.e., turning over to collection agency or attorney, unless the action is intended.

A full discussion of the statutes and case law regarding collection practices is beyond the scope of this paper. However, the two statutes most usually addressed are the *Federal Fair Debt Collection Practices Act, 15 U.S.C. §§1692, et. seq.* and the *Texas Debt Collection Act, now included in Chapter 392 of the Finance Code*. These apply to the collection of consumer debts and each has its own definition of consumer debt. Basically it is a debt arising out of a transaction wherein the subject of the transaction is primarily for "personal, family or household purposes." Collection of commercial or business debt is not governed by these statutes; however, the statutes provide good standards to comply with even in collection of commercial accounts. The Texas Act applies to in-house collection activities by the creditor, as well as activities by collection agencies and other outside collectors. The Federal Act only applies to third party collectors who regularly collect consumer debt unless the creditor is collecting its own debt using a name other than its own that would indicate that a third party is attempting to collect a debt.

A copy of the Texas Act is included in Attachment 2.

V. Alternatives to Filing Suit.

A. Collection Agencies.

Collection agencies provide an alternative to filing suit if in-house collection efforts fail or if the business does not have the personnel to handle collection calls. The creditor is cautioned to fully investigate the collection agency before contracting with the agency. Inquiry should be made regarding:

1. charges or percentage of the account retained from collections;
2. rates of collection;
3. years in business;
4. extent of training the collectors receive;
5. whether the agency has posted the requisite bonds;
6. whether the agency has been sued;
7. three or more references; and,
8. ask to observe (listen to) the collectors making actual calls to determine their demeanor.

Collection agencies can be very effective. The collectors, however, can sometimes operate close to the line of being abusive and harassing. The creditor takes a chance in turning over its accounts to debt collection agencies that its customer relations will be harmed. Care should be taken in determining which accounts are placed with the agency. The creditor should also be sensitive to customer complaints about the collectors or the creditor may find itself the subject of a wrongful collection practices suit.

B. Factoring.

Factoring usually consists of an arrangement between a creditor and a factor whereby the creditor's receivables are turned over to the factor in exchange for the factor's payment of a percentage of the account. The factor then collects the receivable and retains the full amount collected. Sometimes the agreement will provide for charging uncollectible accounts back to the creditor. The benefit of a factoring arrangement is that it provides the business with a financing tool by turning receivables into ready cash.

VI. The Decision to Sue.

Suits on accounts receivable are warranted when the time and expense of pursuing the case is sufficiently exceeded by the likelihood of collection and amount to be collected, and when the threat of a counterclaim is remote (preferably non-existent) or the amount to be collected far exceeds the exposure posed by the potential counterclaim. In short, it's a business decision.

A. Suit by the Creditor, Pro Se.

In an effort to avoid payment of attorney's fees, small businesses often ask the question, "Can I represent myself in collection suits?" The answer is always "yes" when the creditor is an individual. Entities must be represented by a licensed attorney. An exception is found in cases filed in small claims courts by corporations. The corporation, however, must not be an assignee of the claim, a lender or a collection agency. The statute does not specifically address whether

partnerships and other entities can or cannot appear without legal representation. The jurisdiction of the small claims court is limited to claims of $10,000.00 or less. *Tex.Gov't.Code Ann. §28.003.*

Note: Effective May 1, 2013 the small claims courts will be abolished. The Supreme Court is promulgating rules to define which justice court cases constitute "small claims cases" and will provide rules for how the proceedings will be conducted. Informality in pleadings and proceedings is expected and none of the parties will be required to be represented by an attorney.

1. The Pleading. Justice and small claims courts often provide form pleadings that are fill in the blank. Small Claims Courts require a sworn statement of the claim. *Tex.Gov't.Code Ann. §28.012.* Accounts receivable are often claims based on accounts. As an alternative to using the court-provided form, Attachment 3 is a suggested petition for a suit on an account with a combination sworn account/business records affidavit. This form can be used in any court. It requires insertion of the Plaintiff's name, the court in which it is filed, the Defendant's name (and if the defendant is an entity, its agent for service), the defendant's address, the suit amount and the attachment of the affidavit and account documents (which can be the account summary, although inclusion of copies of the outstanding invoices is suggested).

2. Where to file the suit. A complete discussion of court jurisdiction and venue is beyond the scope of this paper. The general rules are provided.

a. Amount in controversy. Suits on accounts can be filed in a number of courts depending on the balance due:

(1) Justice and Small Claims Courts. - not to exceed $10,000.00. *Tex.Govt.Code Ann. §27.031 and 28.003.*

(2) County Courts. - exceeding $200.00, but not to exceed $10,000.00. *Tex.Govt.Code Ann. §26.042.*

(3) Statutory County Courts. - also known as County Courts-at-law - exceeding $500.00, but not to exceed $200,000.00. *Tex.Govt.Code Ann. §25.0003*, with additional variations in certain counties.

(4) District Courts. - exceeding $500.00, with no limit. *Tex.Govt.Code Ann. §24.007.*

b. Venue. The County (and precinct if the suit is filed in small claims or justice court) where suit should be filed is governed in part by whether the claim is related to consumer or commercial debt. Venue provisions also vary depending on the court in which the case is filed. *See Caution regarding consumer transactions at page H-8.*

(1) Small Claims Courts. Suit to collect a receivable must be brought in the county and precinct in which the defendant resides. An exception to the general rule is when the action is on an obligation that

the defendant has contracted to perform in a certain county in which event it may be brought in that county. *Tex.Gov't.Code Ann. §28.011 (See Caution note at page H-8 if it is a consumer transaction).* Therefore, if the creditor is pursuing its claim in justice court it is useful to have a contract (or credit application; *See* Attachment 1) that provides that the creditor be paid in the county where it is located. Otherwise it may be required to file suit in the county and precinct where the defendant resides.

Note again: Small claims courts will be abolished May 1, 2013.

(2) Justice Courts. Justice Courts have yet another set of venue provisions. *Civ.Prac. & Rem. Code §15.081, et.seq.* Again, the general rule provides for suit in the county and precinct where the defendant resides. A written contract promising performance at a particular place (i.e. a credit application providing for payment at a certain place; *See* Attachment 1) may be brought in the county and precinct in which the contract was to be performed. However, suit on a contract involving consumer matters may be brought only in the county and precinct in which the contract was signed or in which the defendant resides. A suit against a corporation may also be brought in the county and precinct in which all or part of the cause of action arose or where the corporation has an agency or principal office. It may be argued that the agreement to pay the creditor in the creditor's county and the failure to do so is all or part of the cause of action.

(3) County Courts, County Courts-at-law and District Courts. The general venue rules for these courts are found in Section 15.001, et seq. of the Civil Practices & Remedies Code. Suits on accounts can brought pursuant to the general rule:

> (1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
>
> (2) in the county of defendant's residence at the time the cause of action accrued if defendant is a natural person;
>
> (3) in the county of the defendant's principal office in this state, if the defendant is not a natural person; or
>
> (4) if the Subdivisions (1), (2), and (3) do not apply, in the county in which the plaintiff resided at the time of the accrual of the cause of action.

Civ.Prac. & Rem. Code §15.002.

For contracts in writing, suit may be brought in the county where the obligation is to be performed if expressed in the writing, or where the defendant resides. Here again, a credit application specifically requiring applicant to make payment at a particular place, i.e. at

the plaintiff's office, would allow suit in the county where the plaintiff does business. **Caution**: If it is a consumer debt, the action must be brought either in the county in which the defendant signed the contract or in the county where the defendant resides at the time the suit is filed. *Civ.Prac. & Rem. Code §15.035.* It is a violation of the Texas Deceptive Trade Practices Act to file suit on a consumer debt in any other county than where the defendant resides at the time of commencement of the action or in which the defendant in fact signed the contract. *Tex.Bus. & Com. Code §17.46 (23).*

3. Service. Citations can be served by the constable, Sheriff or private process server. As a general rule, service on a corporate defendant is accomplished by delivery of the citation to its registered agent at the registered office or to its president or vice president. The current registered agent and office can be obtained by calling the Texas Secretary of State at (512) 463-5555 or by going online at www.sos.state.tx.us. *Business Organizations Code Sections 5.201 (b) and 5.255 (1).* General partnerships are served by delivery of citation to any partner, but each partner to be held individually liable must also be served. *Civ.Prac. & Rem. Code, §17.022.* Limited partnerships are served by delivery of citation to any general partner or to the registered agent of the limited partnership. *Business Organizations Code Sections 5.201 (b) and 5.255 (2).*

4. Answer date and default judgments. After the defendant is served, the defendant must answer the suit or the plaintiff will be eligible to request a default judgment. The answer is due in justice and small claims courts on or before 10:00 a.m. on the Monday next after the expiration of ten days after the date of service. *Tex.R.Civ.P. 534.* The answer may be oral in justice courts. *Tex.R.Civ.P. 525.* If the defendant fails to answer, a default judgment will be entered. In justice and small claims courts, the court will likely render judgment using its own form. A sample default judgment is attached as Attachment 4. It will bear interest at the judgment rate (currently five percent (5%) per annum); but if based on a contract, then the lessor of the two the contract rate, or eighteen percent (18%). See Sections 304.002 & .003, Texas Fin. Code.

In county courts, county courts-at-law, and district courts the answer is due on or before 10:00 a.m. on the Monday next after the expiration of 20 days after the date of service. *Tex.R.Civ.P. 45.* The plaintiff will need to prepare the proposed default judgment for presentation to the Court.

B. Utilizing an Attorney.

1. The Collection Package. If the creditor does not want to represent itself and decides it wants to pursue collection through an attorney, the creditor can most effectively utilize the attorney's services by efficiently gathering all information the attorney may need to

pursue collection. The collection package forwarded to the attorney should include:

a. The credit application and any guaranties;

b. A copy of the summary statement of account as well as copies of the unpaid invoices;

c. The debtor's current address, phone number and accounts payable contact;

d. Copies of any agreements or correspondence between the creditor and its debtor relating to payment of the account and relating to any complaints by the debtor regarding the creditor's services or products furnished;

e. Copies of all financial statements and credit reports obtained on the debtor and, if the credit was not recently approved, new credit reports on the liable individuals.

2. The Fee Agreement. The fee structure available for collection matters will vary from firm to firm. Some collectors will handle collection matters on an hourly basis and others on a contingent fee basis. The size of the accounts and their collectibility will often dictate which arrangement makes the best business sense. Collections on a contingent fee basis should not be considered to be "free". Even though attorney's fees are not paid out of pocket, a portion of the account will go to the attorney if collected. And, regardless of whether the account is collected, there will still be costs associated with filing and service of the suit, perhaps copy and mailing costs, and various fees for post-judgment writs and service costs. Further, most contingent fee agreements provide for conversion to an hourly fee if a counterclaim is filed and must be defended. The best fee arrangement will vary and sometimes require the creditor to periodically do a cost benefit analysis of its collection activities.

3. What action is enough? Sometimes a demand letter from an attorney is enough to get the debtor to pay in full or enter into an installment agreement. If not, the attorney will proceed with suit taking into consideration the issues addressed in the discussion of pro se representation above.

The collection lawsuit is fairly straightforward once the defendant is properly identified and located. Some attorneys will file suit accompanied by pre-trial discovery, or, they will forward the discovery once an answer is filed. If the suit is merely a suit on an account with little room for contested issues, it will be more cost effective and efficient to skip the discovery and file the case as a suit on a sworn account and, if the defendant files an answer, proceed directly to summary judgment. Often collection claims can be reduced to judgment through the summary judgment process and thus expenses are kept down and the creditor can spend more time doing business than testifying in trial.

Assuming the claim is reduced to judgment, the creditor must make the decision of how far to press its

post-judgment collection efforts. A full discussion of discovery methods and post-judgment remedies is beyond the scope of this paper; however, the creditor will be asked to make some decisions regarding the additional expenses to incur beyond taking the judgment. Issues to be considered include the following:

a. Whether to do post-judgment discovery. In order to best evaluate the collectability of the judgment and to determine which post-judgment remedies should be utilized, the creditor should permit its attorney to take a post-judgment deposition. Interrogatories are useful, but often the debtor's answers are less than complete. Post-judgment depositions with a request for production of various documents reflecting the debtor's financial situation are much more flexible. They can be taken by tape recording and so the cost of a court reporter is not necessary. Often this is the first time the debtor is face to face with the collection attorney. In addition to discovering the debtor's assets and ability to pay, the deposition meeting can be useful in working on a payout of the debt.

Debtors who fail to cooperate in the post-judgment discovery process can be held in contempt of Court. The potential of jail time will usually bring the debtor to the table.

b. What assets can a judgment creditor reach? If the debtor is a corporation, or other entity, all of its assets are subject to seizure. However, if the assets are subject to a prior perfected security interest it may not be cost effective to go after the assets if the debtor has little equity in the property or, if the debtor's secured creditor seeks to protect its interest in the property.

With individual judgment defendants, the creditor has the added hurdle of determining whether the debtor's property is exempt from creditor claims under one or more statutes. Whole papers are written on this subject as well as the subjects of post-judgment discovery and post-judgment remedies. Basically the debtor's home is exempt regardless of value, with some restrictions on acreage depending on whether it is urban or rural. The debtor's home furnishings, clothing, tools of trade, vehicles and other specific personal property listed in the exemption statutes are exempt, up to $30,000 for single persons and $60,000 for families. Life insurance, retirement plans and wages are also exempt. The property not exempt from creditor claims will include rental property, bank and savings accounts, stock, and notes and accounts receivable. In spite of the broad exemptions enjoyed by individual Texas residents, individual debtors can often be encouraged to enter into payment agreements to prevent being sued. As judgment debtors they can eliminate followup depositions and the threat of collection remedies if a payout agreement is worked out with the judgment creditor.

c. What are the judgment creditor's remedies?

(1) Judgment Lien. The mere entry of a judgment by the Court is not enough to create a judgment lien. The judgment must be properly abstracted and filed with the county clerk. It will create a judgment lien on all non-exempt real property in the county where filed. It does not create a lien on the judgment debtor's personal property or accounts. *Tex.Prop. Code Ann. §52.001.*

(2) Executions. The judgment debtor's real and personal non-exempt property can be seized by a sheriff or constable with a writ of execution. After seizure, if the judgment debtor does not post a bond, the property will be sold and the proceeds paid over to the judgment creditor. The judgment creditor can buy the property at the sale by bidding credits to the judgment; however, all property is purchased as is and subject to all liens.

(3) Garnishments. A garnishment writ will be issued on application of the judgment creditor which must include a sworn statement that to the applicant's knowledge the judgment debtor does not possess property in Texas subject to execution sufficient to satisfy the judgment. *Tex.Civ.Prac. & Rem. Code Ann. §63.001(2)(B).* Creditors are often excited about proceeding with garnishments when they know or expect they know where the judgment debtor banks. They must often be cautioned about the required sworn statement. They must also be cautioned about the judgment debtor's bank's potential rights of offset in the event of garnishment when the judgment debtor owes money to its bank.

Garnishment actions are not limited to bank accounts. A judgment creditor can garnish savings and stock accounts as well as any non-exempt personal property of the judgment debtor held by the garnishee.

(4) Turnovers. While non-exempt real and personal property can be reached by execution and accounts and stock by garnishment, certain property interests may require the aid of the Court to reach. The turnover proceeding is a post-judgment remedy that in most cases involves a motion, hearing (which may be ex parte) and a resulting order. The order will require the judgment debtor to turn over its property to a constable or receiver for sale with the proceeds to be distributed to the judgment creditor. This order is enforceable by contempt. *Tex.Civ.Prac. & Rem. Code Ann. §31.002, et seq.* The proceeding may be used to reach property located outside of Texas, intangible property, property the debtor has secreted, accounts and notes receivable, and any other property that is difficult to reach.

(5) Other Remedies. If the debtor has a partnership interest it may be reached via a charging order under the Business Organizations Code, although turnover orders may be useful for that purpose. If the dollars are large enough and if fraudulent transfers are

discovered, the creditor may find the necessity to file yet another suit to set aside a fraudulent transfer in order to collect its judgment.

A more complete discussion of post judgment remedies can be found on this author's website at www.dbrownlaw.com.

Attachment 1

ABC Company

CONFIDENTIAL
CREDIT APPLICATION

SALESPERSON'S NAME _____

LEGAL NAME OF BUSINESS (Applicant): **ASSUMED NAME/DBAs:**

BUSINESS ENTITY:

- ☐ Proprietorship
- ☐ General Partnership
- ☐ Limited Partnership
- ☐ Non-Profit Organization
- ☐ Limited Liability Partnership
- ☐ Limited Liability Company
- ☐ Corporation
- ☐ Other: _____

MAILING ADDRESS:

Phone No. _____
Fax No. _____
Taxpayer ID: _____

DELIVERY ADDRESS:

Annual Sales: _____
Type of Business:: _____
Date Business Started: _____

	(A) Names Of Owners Partners, or Officers (B) Position	(C) Driver's License No. (D) Social Security No.	(E) Date of Birth (F) Cell Phone No.	(G) Home Address
1	(A)	(C)	(E)	(G)
	(B)	(D)	(F)	
2	(A)	(C)	(E)	(G)
	(B)	(D)	(F)	
3	(A)	(C)	(E)	(G)
	(B)	(D)	(F)	

(Attach additional pages if necessary)

Have any of the owners, partners or officers ever filed bankruptcy? Yes _____ No _____

If yes, Who/When/Where: _____

Are any judgments filed or suits pending against applicant? Yes _____ No _____

If yes, explain: _____

Have you done business in the last five years under any other name or are there any other related companies?
Yes _____ No _____

If yes, please describe: _____

Accounts Payable Contact: _____ Phone No. _____
Email address: _____

CREDIT AVAILABILITY REQUESTED: $_____

Financial Statements Attached Yes _____ No _____ Financial Statements will be forwarded by _____

CREDIT REFERENCES

BANK'S NAME	ADDRESS	PHONE	ACCT.#	BANK OFFICER
LANDLORD'S NAME		ADDRESS		PHONE
NAME		ADDRESS		PHONE
NAME		ADDRESS		PHONE
NAME		ADDRESS		PHONE

I/We hereby agree to pay to ABC Company at Austin, Texas, all indebtedness now or hereafter owing by I/we, whether individually, partnership, or corporation. I/We hereby certify this information is correct, given for the purpose of obtaining credit, and I/we authorize you to obtain such information as you may require concerning this application, and agree that it shall remain your property whether or not credit is granted. I/We agree to pay finance charges at 18% A.P.R. on all past due accounts. Accounts are due and payable [insert terms, if uniform; if not say pursuant to invoice terms]. In the event it becomes necessary to engage an attorney for purposes of collecting a past due account, I/we understand and agree that reasonable attorney fees will be added to the account for which I/we agree to pay. The information furnished is accurate and complete to the best of our knowledge. ABC Company shall have the authority to run credit checks on the business entity and all principal owners/officers signing this Confidential Credit Application.

[Option – to retain security interest in products sold (must also file necessary UCC's etc. to perfect against third parties): I/we agree that ABC Company retains and I/we grant a purchase money security interest in all equipment sold by ABC Company to applicant, together with all licenses, manuals and general intangibles related thereto, all proceeds thereof, all products and all other goods, wares and merchandise sold by ABC Company to applicant and all after-acquired collateral of the same classification to secure payment of all amounts due to ABC Company . ABC Company may exercise its rights and remedies as a secured party in the event I/we fail to comply with the credit terms set forth herein or as agreed to in writing.]

(X) _____
Signature of Applicant / Date

(X) _____
Signature of Applicant / Date

GUARANTY

In consideration of credit extended to the above applicant, the undersigned does hereby personally and unconditionally jointly and severally guarantee to ABC Company, or its assigns, the payment of such sum or sums of money as is now or may hereafter become due from said applicant to ABC Company, or any affiliated or related company for goods, wares, merchandise and services sold to the applicant. This guaranty shall not be impaired by any extension of time or forbearance granted to the applicant with respect to any credit now outstanding or hereafter extended to the applicant. This guaranty is made without any limitation as to duration or amount and shall be a continuing guaranty covering all purchases and for interest at the maximum rate allowed by law and any other charges from the date hereof and shall remain in full force and effect unless especially revoked by personal notice by each guarantor in writing (letter should be sent certified and registered to ABC Company, Attn: Credit Department, P. O. Box XX, Austin, Texas XXXXX), which revocation shall apply only to indebtedness contracted after date of receipt by ABC Company of such notice of revocation. ABC Company shall have the authority to run an individual credit report on the undersigned.

I agree to pay interest and reasonable attorney's fees as allowed by law if it becomes necessary to enforce this guaranty by suit.

	(A) Name	**(C) Driver's License No.** **(D) Social Security No.**	**(E) Date Of Birth** **(F) Cell Phone No.**	**(G) Home Address**
1	(A)	(C)	(E)	(G)
		(D)	(F)	
2	(A)	(C)	(E)	(G)
		(D)	(F)	
3	(A)	(C)	(E)	(G)
		(D)	(F)	

(Attach additional pages if necessary)

(X)_____
Signature of Guarantor/Date

(X)_____
Signature of Guarantor / Date

(X)_____
Signature of Guarantor / Date

Attachment 2

TEXAS DEBT COLLECTION ACT
(CHAPTER 392 OF THE FINANCE CODE)

§ 392.001. Definitions

In this chapter:

(1) "Consumer" means an individual who has a consumer debt.

(2) "Consumer debt" means an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction.

(3) "Creditor" means a party, other than a consumer, to a transaction or alleged transaction involving one or more consumers.

(4) "Credit bureau" means a person who, for compensation, gathers, records, and disseminates information relating to the creditworthiness, financial responsibility, and paying habits of, and similar information regarding, a person for the purpose of furnishing that information to another person.

(5) "Debt collection" means an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor.

(6) "Debt collector" means a person who directly or indirectly engages in debt collection and includes a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended to be used to collect consumer debts.

(7) "Third-party debt collector" means a debt collector, as defined by 15 U.S.C. Section 1692a(6), but does not include an attorney collecting a debt as an attorney on behalf of and in the name of a client unless the attorney has nonattorney employees who:

(A) are regularly engaged to solicit debts for collection; or

(B) regularly make contact with debtors for the purpose of collection or adjustment of debts.

§ 392.101. Bond Requirement

(a) A third-party debt collector or credit bureau may not engage in debt collection unless the third-party debt collector or credit bureau has obtained a surety bond issued by a surety company authorized to do business in this state as prescribed by this section. A copy of the bond must be filed with the secretary of state.

(b) The bond must be in favor of:

(1) any person who is damaged by a violation of this chapter; and

(2) this state for the benefit of any person who is damaged by a violation of this chapter.

(c) The bond must be in the amount of $10,000.

§ 392.102. Claim Against Bond

A person who claims against a bond for a violation of this chapter may maintain an action against the third-party debt collector or credit bureau and against the surety. The aggregate liability of the surety to all persons damaged by a violation of this chapter may not exceed the amount of the bond.

§ 392.201. Report to Consumer

Not later than the 45th day after the date of the request, a credit bureau shall provide to a person in its registry a copy of all information contained in its files concerning that person.

§ 392.202. Correction of Third-Party Debt Collector's or Credit Bureau's Files

(a) An individual who disputes the accuracy of an item that is in a third-party debt collector's or credit bureau's file on the individual and that relates to a debt being collected by the third-party debt collector may notify in writing the third-party debt collector of the inaccuracy. The third-party debt collector shall make a written record of the dispute. If the third-party debt collector does not report information related to the dispute to a credit bureau, the third-party debt collector shall cease collection efforts until an investigation of the dispute described by Subsections (b) – (e) determines the accurate amount of the debt, if any. If the third-party debt collector reports information related to the dispute to a credit bureau, the reporting third-party debt collector shall initiate an investigation of the dispute described by Subsections (b) – (e) and shall cease collection efforts until the investigation determines the accurate amount of the debt, if any. This section does not affect the application of Chapter 20, Business & Commerce Code, to a third-party debt collector subject to that chapter.

(b) Not later than the 30th day after the date a notice of inaccuracy is received, a third-party debt collector who initiates an investigation shall send a written statement to the individual:

(1) denying the inaccuracy;

(2) admitting the inaccuracy; or

(3) stating that the third-party debt collector has not had sufficient time to complete an investigation of the inaccuracy.

(c) If the third-party debt collector admits that the item is inaccurate under Subsection (b), the third-party debt collector shall:

(1) not later than the fifth business day after the date of the admission, correct the item in the relevant file; and

(2) immediately cease collection efforts related to the portion of the debt that was found to be inaccurate and on correction of the item send, to each person who has previously received a report from the third-party debt collector containing the inaccurate information, notice of the inaccuracy and a copy of an accurate report.

(d) If the third-party debt collector states that there has not been sufficient time to complete an investigation, the third-party debt collector shall immediately:

(1) change the item in the relevant file as requested by the individual;

(2) send to each person who previously received the report containing the information a notice that is equivalent to a notice under Subsection (c) and a copy of the changed report; and

(3) cease collection efforts.

(e) On completion by the third-party debt collector of the investigation, the third-party debt collector shall inform the individual of the determination of whether the item is accurate or inaccurate. If

the third-party debt collector determines that the information was accurate, the third-party debt collector may again report that information and resume collection efforts.

§ 392.301. Threats or Coercion

(a) In debt collection, a debt collector may not use threats, coercion, or attempts to coerce that employ any of the following practices:

(1) using or threatening to use violence or other criminal means to cause harm to a person or property of a person;

(2) accusing falsely or threatening to accuse falsely a person of fraud or any other crime;

(3) representing or threatening to represent to any person other than the consumer that a consumer is wilfully refusing to pay a nondisputed consumer debt when the debt is in dispute and the consumer has notified in writing the debt collector of the dispute;

(4) threatening to sell or assign to another the obligation of the consumer and falsely representing that the result of the sale or assignment would be that the consumer would lose a defense to the consumer debt or would be subject to illegal collection attempts;

(5) threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings;

(6) threatening to file a charge, complaint, or criminal action against a debtor when the debtor has not violated a criminal law;

(7) threatening that nonpayment of a consumer debt will result in the seizure, repossession, or sale of the person's property without proper court proceedings; or

(8) threatening to take an action prohibited by law.

(b) Subsection (a) does not prevent a debt collector from:

(1) informing a debtor that the debtor may be arrested after proper court proceedings if the debtor has violated a criminal law of this state;

(2) threatening to institute civil lawsuits or other judicial proceedings to collect a consumer debt; or

(3) exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale that does not require court proceedings.

§ 392.302. Harassment; Abuse

In debt collection, a debt collector may not oppress, harass, or abuse a person by:

(1) using profane or obscene language or language intended to abuse unreasonably the hearer or reader;

(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;

(3) causing a person to incur a long distance telephone toll, telegram fee, or other charge by a medium of communication without first disclosing the name of the person making the communication; or

(4) causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

§ 392.303. Unfair or Unconscionable Means.

(a) In debt collection, a debt collector may not use unfair or unconscionable means that employ the following practices:

(1) seeking or obtaining a written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life if the obligation was not incurred for those necessaries; or

(2) collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer; or

(3) collecting or attempting to collect an obligation under a check, draft, debit payment, or credit card payment, if:

(A) the check or draft was dishonored or the debit payment or credit card payment was refused because the check or draft was not drawn or the payment was not made by a person authorized to use the applicable account;

(B) the debt collector has received written notice from a person authorized to use the account that the check, draft, or payment was unauthorized; and

(C) the person authorized to use the account has filed a report concerning the unauthorized check, draft, or payment with a law enforcement agency, as defined by Article 59.01, Code of Criminal Procedure, and has provided the debt collector with a copy of the report.

(b) Notwithstanding Subsection (a)(2), a creditor may charge a reasonable reinstatement fee as consideration for renewal of a real property loan or contract of sale, after default, if the additional fee is included in a written contract executed at the time of renewal.

(c) Subsection (a) (3) does not prohibit a debt collector from collecting or attempting to collect an obligation under a check, draft, debit payment, or credit card payment if the debt collector has credible evidence, including a document, video recording, or witness statement, that the report filed with a law enforcement agency, as required by Subsection (a) (3) (C), is fraudulent and that the check, draft, or payment was authorized.

§ 392.304. Fraudulent, Deceptive, or Misleading Representations

(a) Except as otherwise provided by this section, in debt collection or obtaining information concerning a consumer, a debt collector may not use a fraudulent, deceptive, or misleading representation that employs the following practices:

(1) using a name other than the:

(A) true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection; or

(B) name appearing on the face of the credit card while engaged in the collection of a credit card debt;

(2) failing to maintain a list of all business or professional names known to be used or formerly used by persons collecting consumer debts or attempting to collect consumer debts for the debt collector;

(3) 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;

(4) failing to disclose clearly in any communication with the debtor the name of the person to whom the debt has been assigned or is owed when making a demand for money;

(5) in the case of a third-party debt collector, failing to disclose, except in a formal pleading made in connection with a legal action:

(A) that the communication is an attempt to collect a debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication between the third-party debt collector and the debtor; or

(B) that the communication is from a debt collector, if the communication is a subsequent written or oral communication between the third-party debt collector and the debtor;

(6) using a written communication that fails to indicate clearly the name of the debt collector and the debt collector's street address or post office box and telephone number if the written notice refers to a delinquent consumer debt;

(7) using a written communication that demands a response to a place other than the debt collector's or creditor's street address or post office box;

(8) misrepresenting the character, extent or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding;

(9) representing falsely that a debt collector is vouched for, bonded by, or affiliated with, or is an instrumentality, agent, or official of, this state or an agency of federal, state, or local government;

(10) using, distributing, or selling a written communication that simulates or is represented falsely to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other governmental authority or that creates a false impression about the communication's source, authorization, or approval;

(11) using a seal, insignia, or design that simulates that of a governmental agency;

(12) representing that a consumer debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if a written contract or statute does not authorize the additional fees or charges;

(13) representing that a consumer debt will definitely be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if the award of the fees or charges is subject to judicial discretion;

(14) representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business;

(15) using a written communication that violates the United States postal laws and regulations;

(16) using a communication that purports to be from an attorney or law firm if it is not;

(17) representing that a consumer debt is being collected by an attorney if it is not; or

(18) representing that a consumer debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person who is owed the debt; or

(19) using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer.

(b) Subsection (a)(4) does not apply to a person servicing or collecting real property first lien mortgage loans or credit card debts.

(c) Subsection (a)(6) does not require a debt collector to disclose the names and addresses of employees of the debt collector.

(d) Subsection (a)(7) does not require a response to the address of an employee of a debt collector.

(e) Subsection (a)(18) does not prohibit a creditor from owning or operating a bona fide debt collection agency.

§ 392.305. Deceptive Use of Credit Bureau Name

A person may not use "credit bureau," "retail merchants," or "retail merchants association" in the person's business or trade name unless:

(1) the person is engaged in gathering, recording, and disseminating information, both favorable and unfavorable, relating to the creditworthiness, financial responsibility, and paying habits of, and similar information regarding, persons being considered for credit extension so that a prospective creditor can make a sound decision in the extension of credit; or

(2) the person is a nonprofit retail trade association that:

(A) consists of individual members;

(B) qualifies as a bona fide business league as defined by the United States Internal Revenue Service; and

(C) does not engage in the business of debt collection or credit reporting.

§ 392.306. Use of Independent Debt Collector

A creditor may not use an independent debt collector if the creditor has actual knowledge that the independent debt collector repeatedly or continuously engages in acts or practices that are prohibited by this chapter.

§ 392.401. Bona Fide Error

A person does not violate this chapter if the action complained of resulted from a bona fide error that occurred notwithstanding the use of reasonable procedures adopted to avoid the error.

§ 392.402. Criminal Penalty

(a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $500 for each violation.

(c) A misdemeanor charge under this section must be filed not later than the first anniversary of the date of the alleged violation.

§ 392.403. Civil Remedies

(a) A person may sue for:

(1) injunctive relief to prevent or restrain a violation of this chapter; and

(2) actual damages sustained as a result of a violation of this chapter.

(b) A person who successfully maintains an action under Subsection (a) is entitled to attorney's fees reasonably related to the amount of work performed and costs.

(c) On a finding by a court that an action under this section was brought in bad faith or for purposes of harassment, the court shall award the defendant attorney's fees reasonably related to the work performed and costs.

(d) If the attorney general reasonably believes that a person is violating or is about to violate this chapter, the attorney general may bring an action in the name of this state against the person to restrain or enjoin the person from violating this chapter.

(e) A person who successfully maintains an action under this section for violation of Section 392.101, 392.202, or 392.301(a)(3) is entitled to not less than $ 100 for each violation of this chapter.

§ 392.404. Remedies Under Other Law

(a) A violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

(b) This chapter does not affect or alter a remedy at law or in equity otherwise available to a debtor, creditor, governmental entity, or other legal entity.

NO. _____

_____	§	IN THE _____
	§	
VS.	§	
	§	COURT OF
	§	
_____ and	§	
	§	
_____	§	_____ COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

1. Parties. Plaintiff is _____, whose address is _____ _____[option if Plaintiff is an individual: and whose date of birth is _____ and whose social security number ends in __ __ __ and whose driver's license number ends in __ __ __]. Defendant is _____, who may be served by delivering citation to its registered agent, _____, at the registered office at_____; or to its president, _____, at _____. Defendant, _____[guarantor]_____, may be served with process at _____.

[Note: if used in County, County Courts-at-Law or District Courts, will need to include statement of the applicable Discovery Level. *See Tex.R.Civ.Proc. Rule 190, et seq.*]

2. Facts. As shown in the attachments, Plaintiff sold to Defendant _____ goods, services, wares, and merchandise, which said Defendant accepted and thereby became bound to pay to Plaintiff in Travis County the stated price thereof, which was a reasonable and fair, usual and customary price. Under the Guaranty included in said attachments, Defendant _____ personally guaranteed payment of any and all indebtedness or other liability which the Defendant _____ may owe to Plaintiff.

3. Debt. The balance due and owing to Plaintiff on said account is $_____. Although often requested, Defendants have failed and refused to pay the amount due.

[4. Attorney's Fees. The failure of Defendants to pay the account has made it necessary for the Plaintiff to employ the undersigned attorneys to sue on the account. Plaintiff has made a demand on Defendants for the balance due and is entitled to reasonable attorney's fees pursuant to Civil Practice and Remedies Code §38.01 et. seq. [and the agreement of the parties]. A reasonable attorney's fee would be $. **Note - Do not include if non-attorney suing pro se**]

4. Request for Judgment. Plaintiff asks that citation issue and that Plaintiff have judgment against Defendants for the principal sum of the account, interest, [attorney's fees,] costs of court, and for such other relief, both general and special, to which it may show itself to be justly entitled.

Respectfully submitted,

[Signature block]

By_____

_____

Bar No. _____

Attorneys for Plaintiff

[If pro se, include name, address, phone number and fax number, if available.]

THE STATE OF TEXAS §
§
COUNTY OF _____ §

RULE 185 AND BUSINESS RECORDS AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____. I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated:

"I am the custodian of the records of _____ . Attached hereto are _____ pages of records from _____. These said _____ pages of records are kept by _____ in the regular course of business, and it was the regular course of business of _____for an employee or representative of _____, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

"The claim evidenced by the attached documents is within the knowledge of affiant, just and true, it is due and all just and lawful offsets, payments and credits have been allowed."

_____
_____, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME on this the ___ day of _____, 1999, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, STATE OF TEXAS

Attachment 4

NO. _____

_____	§	IN THE _____
	§	
	§	
VS.	§	COURT OF _____
	§	
_____	§	_____ COUNTY, TEXAS

DEFAULT JUDGMENT

Came on to be heard the above styled and numbered cause, and Plaintiff's Motion for Judgment in such cause, and it appearing to the Court that Defendants, though duly cited to appear and answer herein, has wholly failed to appear and answer herein, that appearance day for the Defendants have passed, that Plaintiff's cause of action is based upon a liquidated demand, and that Plaintiff is entitled to judgment by default as prayed for:

It is, accordingly, ORDERED, ADJUDGED and DECREED that Plaintiff(s), _____, have and recover of and from Defendants, _____ and _____, jointly and severally, judgment in the total sum of $_____, which includes Plaintiff's principal claim of $_____, interest of $_____, and attorney's fees of $_____, together with interest thereon from date of judgment at the rate of _____ percent (__%) per annum until paid, and for all costs of court in this behalf expended, for all of which let execution issue.

This judgment finally disposes of all parties and all claims and is appealable.

SIGNED this __ day of _____, _____

_____
JUDGE PRESIDING

DEFAULT JUDGMENT CERTIFICATE

Pursuant to Rule 239a, Texas Rules of Civil Procedure, I certify that the last known mailing address(es) of the party(ies) against whom the judgment is taken is(are): _____

_____.

DATED _____, _____.

Respectfully submitted,

[Signature block]

By_____

_____

Bar No. _____

Attorneys for Plaintiff

[If pro se, include name, address, phone number and fax number, if available.

NON-MILITARY AFFIDAVIT

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Donna Brown, who, being by me duly sworn, on oath stated:

"I am attorney of record for Plaintiff in the above entitled and numbered cause. To my knowledge, based upon a review of the documents furnished by Plaintiff, my work on this case**,** and the attached Military Status Report from the Department of Defense Manpower Data Center, , Defendants, waswere not in military service when this suit was filed, hashave not been in military service at any time since then, and isare not now in any military service of the United States of America."

_____
DONNA BROWN

SIGNED AND SWORN TO before me on this _____ day of _____, _____, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, STATE OF TEXAS

NO. _____

_____	§	IN THE _____
	§	
	§	
VS.	§	COURT OF _____
	§	
_____	§	_____ COUNTY, TEXAS

AFFIDAVIT IN SUPPORT
OF DEFAULT JUDGMENT

BEFORE ME, the undersigned authority, on this day personally appeared DONNA BROWN, who, being by me first duly sworn, did upon oath state:

"I am over the age of twenty-one years, have never been convicted of a criminal offense, and am competent to testify. I have personal knowledge of the facts stated in this affidavit and the facts stated in this affidavit are true and correct. I am a member of the State Bar of Texas and am engaged in the private practice of law. I am a member of the law firm of Donna Brown, P.C. of Austin, Travis County, Texas, and am familiar with the attorney's fees normally and customarily charged in litigation of the type before the Court in the above styled and numbered cause. It is my opinion, taking into account all factors set forth in Texas Rule of Professional Conduct 1.04, that the sum of $_____, as prayed for by Plaintiff in the above styled and numbered cause is a reasonable attorney's fee."

[option]"Based on my review of Plaintiff's records provided to me, the balance owing by Defendant _____ to Plaintiff includes Plaintiff's principal claim of $_____, and interest [option1]as allowed by law[end option] on the principal claim to the date of judgment of $_____. [option2]Plaintiff and Defendant'ss' contract rate of interest is percent (%) per annum.[end option]" [option-add for account clients relying on statutory interest]which is 6% per annum from _____, being 30 days after the last invoice dated _____, became due on _____.

_____
DONNA BROWN

SUBSCRIBED AND SWORN TO BEFORE ME on _____, _____ to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, STATE OF TEXAS