

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against Defendants for violation of the Texas Debt Collection Act, TEX. FIN. CODE ANN. §392.001, *et seq.*(Vernon's 1998), (hereinafter "TDCA" or "Act") and the Texas Deceptive Trade Practices Act, TEX.BUS. & COM. CODE ANN. §17.41, *et. seq.* (Vernon's 2002 and Supp. 2005) (hereinafter "DTPA"). The DTPA grants authority to the Attorney General to seek civil penalties for violations of its provisions. TEX.BUS & COM CODE ANN. §17.47. The Texas Debt Collection Act also grants authority to the Attorney General to seek relief for violations of its provisions. TEX. FIN. CODE ANN. §392.403(d).

DEFENDANTS

3. Defendant **SCAT CORPORATION, INC.** is a Texas corporation who may be served with citation by serving its registered agent as follows:

Danny Lyle Becker, Jr., 511 West Ohio Avenue, Suite 401, Midland, Texas
79701-4338.

4. Defendant **BUSINESS OFFICE SYSTEMS & SOLUTIONS** is a Texas General Partnership with its principal place of business in Midland County, Texas. Service of citation may be had on its president as follows:

Danny Lyle Becker, Jr., 511 West Ohio Avenue, Suite 401, Midland, Texas
79701-4338.

5. Defendant **MAPNAD, INC.** is a Colorado corporation with its principal place of business located at 511 W. Ohio, Midland County, Midland, Texas. Service of the citation may be had on its president as follows:

Danny Lyle Becker, Jr., 511 West Ohio Avenue, Suite 401, Midland, Texas
79701-4338.

6. Defendant **DANNY LYLE BECKER, JR.** is a resident of Midland, Midland County,

Texas and service of the citation may be served upon him as follows:

Danny Lyle Becker, Jr., 511 West Ohio Avenue, Suite 401, Midland, Texas
79701-4338.

7. Defendant **PAMELA KAY BECKER** is a resident of Midland, Midland County, Texas and service of the citation may served upon her as follows:

Pamela Kay Becker, 511 West Ohio Avenue, Suite 401, Midland, Texas 79707.

AUTHORITY

8. The State of Texas sues under authority of §17.47 of the DTPA and pursuant to Tex. Fin. Code Ann. §392.403(d).

VENUE

9. Venue of this suit lies in Midland County, Texas for the following reasons:

- A. Under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(1)(Vernon's 2002), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in the county of suit; and
- B. Under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(2)(Vernon's 2002), venue is proper because the Defendants' residence at the time the cause of action accrued is in the county of suit; and
- C. Under DTPA §17.47(b) venue is proper because Defendants have done business in the county of suit.

PUBLIC INTEREST

10. Plaintiff, **STATE OF TEXAS** has reason to believe that Defendants are engaged in, have engaged in, or are about to engage in the unlawful acts or practices set forth below, that Defendants have by means of these unlawful acts and practices caused damage to and acquired money or property from consumers, and that Defendants' practices adversely affect the lawful

conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes that these proceedings are in the public interest.

TRADE AND COMMERCE

11. Defendants have, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by §17.45(6) of the DTPA.

ACTS OF AGENTS

12. Whenever in this Petition it is alleged that Defendants did any act, it is meant that Defendants performed or participated in the act, or that the officers, agents or employees of Defendants performed or participated in the act on behalf of and under the authority of Defendants.

NOTICE BEFORE SUIT

13. The Consumer Protection and Public Health Division contacted Defendants in writing to inform them in general of the alleged unlawful conduct at least seven days before this suit was filed, as required by §17.47(a) of the DTPA.

NATURE OF DEFENDANTS' OPERATIONS

14. Defendants **SCAT CORPORATION, INC., DANNY LYLE BECKER, JR.** and **PAMELA KAY BECKER** do business under the name of **BUSINESS OFFICE SYSTEMS & SOLUTIONS** and **MAPNAD**. Defendants are engaged in providing collection services, accounts receivable management, eligibility qualifications services and other business office management services which are marketed to retail and commercial businesses, hospitals, clinics, and health care providers. Defendants also regularly collect, or attempt to collect from consumers debts that are due or alleged to be due by using prohibited debt collection methods as set forth more specifically below.

FACTUAL ALLEGATIONS

15. On or about February 28, 2002, Viatel, Inc., a Delaware Corporation, and certain of its subsidiaries, debtors and debtors-in-possession filed their Joint Chapter 11 Bankruptcy in the United States Bankruptcy Court for the District of Delaware, Cause No. 01-1599 (RSB). Viatel, Inc., and its subsidiaries were in the business of providing long distance telephone service to consumers throughout the United States.

16. On or about October 14, 2003, Viatel, Inc. entered into a Debt Sale Agreement with Debt Acquisition, Inc., a New York Corporation, for the sale of receivables, including installment sales contracts, credit agreements, invoices, indebtedness, loans and other obligations.

17. On or about October 15, 2003, Defendants **DANNY LYLE BECKER, JR.** and **PAMELA KAY BECKER** purchased **SCAT CORPORATION** which resulted in these Defendants acquiring total control over Defendant **BUSINESS OFFICE SYSTEMS &**

SOLUTIONS for the purpose of conducting a debt collection service.

18. On or about November 2, 2004, Defendant **BUSINESS OFFICE SYSTEMS & SOLUTIONS**, owned and operated by Defendants **DANNY LYLE BECKER, JR.** and **PAMELA KAY BECKER**, entered into a Collection Service Agreement with Defendant **MAPNAD** a company also owned by Defendants **DANNY LYLE BECKER, JR.** and **PAMELA KAY BECKER**, for the collection of Viatel's debts.

19. On or about November 5, 2004, Debt Acquisition, Inc. sold, assigned or transferred to Defendant **MAPNAD**, Viatel, Inc.'s accounts receivables.

20. Business Office Systems & Solutions, LLC of 511 West Ohio, Suite #501, Midland, Texas had a surety bond filed with the Texas Secretary of State as required from February 13, 2004 to April 2, 2005.

21. Defendant **SCAT CORP DBA BUSINESS OFFICE SYSTEMS & SOLUTIONS**

appear to have a surety bond dated February 20, 2006 but as of the filing of this Petition have not filed it with the Texas Secretary of State as required.

22. Defendants **BUSINESS OFFICE SYSTEMS & SOLUTIONS, SCAT CORPORATION, MAPNAD, DANNY LYLE BECKER, JR. and/or PAMELA KAY BECKER** had no surety bond filed with the Texas Secretary of State as required, for the period from April 3, 2005 to March 13, 2006 which would allow Defendants to operate a debt collection business in The State of Texas.

23. Defendants have collected or attempted to collect interest or a charge, fee, or expense incidental to the obligation without a provision expressly authorized by the agreement creating the obligation or legally chargeable to the consumer.

24. Defendants use threats, coercion, or attempts to coerce by 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 without authority to proceed with a court action.

25. Defendants have continued to telephone consumers after receiving notice that they were not to contact the consumer by telephone.

26. Defendants refuse to speak with consumers regarding the alleged debt by hanging up on them on the telephone and/or refusing to give information about the creditor.

27. Defendants refuse to provide validation of the alleged debt upon request from the consumer.

28. Defendants have reported delinquent debts to credit bureaus, before sending out notice of the alleged debt to the consumer.

29. Defendants send notices of alleged delinquent debts stating that the notice is the "Final Notice," and/or that they have made several attempts to contact the consumer and that the consumer has refused to respond, when in fact, it is the first notice to the consumer of the alleged debt.

TEXAS DEBT COLLECTION ACT VIOLATIONS

30. Defendants as alleged above, have in the course of debt collection failed to secure a surety bond issued by a surety company authorized to do business in The State of Texas in violation of TDCA §392.101.
31. Defendants as alleged above, have in the course of debt collection failed to file a copy of a surety bond with the Secretary of State in violation of TDCA §392.101.
32. Defendants as alleged above, have in the course of debt collection engaged in unfair or unconscionable means by collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation without a provision expressly authorized by the agreement creating the obligation or legally chargeable to the consumer in violation of TDCA §392.303(a)(2).
33. Defendants as alleged above, have in the course of debt collection engaged in the use of threats, coercion, or attempts to coerce by threatening that nonpayment of a consumer debt will result in the seizure, repossession, or sale of the person's property without proper court proceedings in violation of TDCA §392.301(a)(7).
34. Defendants as alleged above, have in the course of debt collection engaged in oppressive, harassing, and/or abusive behavior by using profane or obscene language or language intended to abuse the consumer in violation of TDCA §392.302.
35. Defendants as alleged above, have in the course of debt collection engaged in continued collection efforts of debts after receiving notice of the disputed debts from consumers in violation of TDCA §392.202(a).
36. Defendants as alleged above, have in the course of debt collection engaged in continued collection efforts of debts after receiving notice of the disputed debts from consumers without completing a thorough investigation of the disputed debt in violation of TDCA §392.202(a).
37. Defendants as alleged above, have in the course of debt collection engaged in continued collection efforts of debts after receiving notice of the disputed debts from consumers without

providing the consumer with a written statement either denying the inaccuracy, admitting the inaccuracy or stating Defendants have not had sufficient time to complete the investigation of the inaccuracy within 30 days of receiving notice of the disputed debt from consumers in violation of TDCA §392.202(b).

38. Defendants as alleged above, have in the course of debt collection engaged in continued collection efforts of debts after receiving notice of the disputed debts from consumers, determined the debt to be inaccurate and failed to admit that the debt is inaccurate no later than the 5th business day after the date of the admission, correct the item in the relevant file, cease collection and send notice of the inaccuracy to each person who has previously received a report from the Defendants containing the inaccurate information in violation of TDCA §392.202 (c).

39. Defendants as alleged above, have in the course of debt collection engaged in continued collection efforts of debts after receiving notice of the disputed debts from consumers, determine that the debt is accurate, but attempted to collect an amount over the amount that has been determined accurate by Defendants' investigation in violation of TDCA §392.202(e).

40. Defendants as alleged above, have in the course of debt collection engaged in fraudulent, deceptive, or misleading representation by representing that a consumer debt may be increased by the addition of other charges when the written contract or statute does not authorize the additional charges in violation of TDCA §392.304(a)(12).

41. Defendants as alleged above, have in the course of debt collection engaged in fraudulent, deceptive or misleading representation by using false representation or deceptive means to collect a debt in violation of TDCA §392.304(a)(19).

42. Defendants as alleged above, have in the course of debt collection engaged in fraudulent, deceptive or misleading representation by misrepresenting the character, extent or amount of a consumer debt in violation of TDCA §392.304(a)(8).

43. Defendants as alleged above, have in the course of debt collection engaged in fraudulent,

deceptive, or misleading representation by failing to disclose clearly in communications with the debtor the name of the person to whom the debt is owed when making a demand for money in violation of TDCA §392.304(a)(4).

44. Defendants as alleged above, have in the course of debt collection engaged in fraudulent, deceptive or misleading representation by using threat, coercion, or attempt to coerce by representing or threatening to represent to persons other than the consumer that he or she is willfully refusing to pay a non-disputed consumer debt when the debt is in dispute and the consumer has notified the Defendants of the dispute in violation of TDCA §392.304(a)(3).

45. Defendants as alleged above, have in the course of debt collection engaged in fraudulent, deceptive or misleading representation by threatening to take action prohibited by law in violation of TDCA §392.301(a)(8).

TEXAS DECEPTIVE TRADE PRACTICES ACT

46. Defendants as alleged above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices in violation of DTPA §17.46(a) by engaging in prohibited debt collection practices. Section 392.404 of the Texas Debt Collection Act provides that a violation of the Act is a deceptive trade practice and actionable under the DTPA.

47. Defendants as alleged above, have in the course of trade and commerce engaged in false, misleading or deceptive acts or practices by causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services in violation of DTPA §17.46(b)(2).

48. Defendants as alleged above, have in the course of trade and commerce engaged in false, misleading or deceptive acts or practices by causing confusion or misunderstanding as to affiliation, connection or association with or certification by another in violation of DTPA §17.46(b)(3).

49. Defendants as alleged above, have in the course of trade and commerce engaged in false,

misleading or deceptive acts or practices by causing confusion or misunderstanding by representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which Defendants do not have in violation of DTPA §17.46(b)(5).

50. Defendants as alleged above, have in the course of trade and commerce engaged in false, misleading or deceptive acts or practices by 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 DTPA §17.46(b)(12).

51. Defendants as alleged above, have in the course of trade and commerce engaged in false, misleading or deceptive acts or practices by failing to disclose information concerning goods or services which was known at the time of the transaction and such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of DTPA §17.46(b)(24).

INJURY TO CONSUMERS

52. Defendants have by means of these unlawful acts and practices obtained money or other property from identifiable people to whom such money or property should be restored or who, in the alternative are entitled to an award of damages.

DISGORGEMENT OF DEFENDANTS' ASSETS

53. Plaintiff, **STATE OF TEXAS** seeks this Court to disgorge all monies received by Defendants from their operation of this unlawful debt collection business. While the State may not be able to identify all of the consumers defrauded by the Defendants, they nevertheless should not be allowed to keep any funds made from their deceptive acts.

PRAYER

55. WHEREFORE, **THE STATE OF TEXAS** prays that a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and

attorney and any other persons in active concert or participation with Defendants from:

- A. Operating a debt collection service without a surety bond issued by a surety company authorized to do business in The State of Texas;
- B. Operating a debt collection service without filing a copy of a surety bond with The Secretary of State;
- C. Attempting to collect interest or a charge, fee, or expense incidental to the obligation without a provision expressly authorized by the agreement creating the obligation or legally chargeable to the consumer;
- D. Threatening that nonpayment of a consumer debt will result in the seizure, repossession, or sale of the person's property without proper court proceedings;
- E. Using profane or obscene language or language intended to abuse the consumer;
- F. Continuing debt collection efforts after receiving notice of the disputed debts from consumers;
- G. Continuing debt collection efforts after receiving notice of the disputed debts from consumers without completing a thorough investigation of the disputed debt;
- H. Continuing debt collection efforts after receiving notice of the disputed debts from consumers without providing the consumer with a written statement either denying the inaccuracy, admitting the inaccuracy or stating Defendants have not had sufficient time to complete the investigation of the inaccuracy within 30 days of receiving notice of the disputed debt from consumer;
- I. Continuing debt collection efforts after receiving notice of the disputed debts from consumers and:
 - 1). Determining the debt to be inaccurate;
 - 2). Failing to admit that the debt is inaccurate more than the 5th business day after the date of the admission;

- 3). Failing to correct the item in the relevant file;
- 4). Ceasing collection and sending notice of the inaccuracy to each person who has previously received a report from the Defendants containing the inaccurate information;
- J. Attempting to collect an amount greater than the amount that Defendants determine is accurate;
- K. Representing that a consumer debt may be increased by the addition of other charges when the written contract or statute does not authorized the additional charges;
- L. Using false representation or other deceptive means to collect a debt;
- M. Misrepresenting the character, extent or amount of a consumer debt;
- N. Failing to disclose clearly in communications with the debtor the name of the person to whom the debt is owed when making a demand for money;
- O. Representing or threatening to represent to any person other than the consumer that he/she is willfully refusing to pay a non disputed consumer debt when the debt is in dispute and the consumer has notified the Defendants of the dispute;
- P. Threatening to take action prohibited by law;
- Q. Engaging in false, misleading and deceptive acts and practices in violation of DTPA §17.46(a) by engaging in prohibited debt collection practices; and
- R. Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- S. Causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;
- T. Causing confusion or misunderstanding by representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities

which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which Defendants do not have;

- U. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- V. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;
- W. Concealing, withholding, destroying, mutilating, altering, falsifying or removing from this jurisdiction of this Court any books, records, documents, invoices, receipt or other written material relating to the business of Defendants currently or hereafter in Defendants; possession, custody or control except in response to further orders or subpoenas in this cause.

56. FURTHER, **THE STATE OF TEXAS** prays that the Court:

- A. Adjudge against Defendants civil penalties in favor of Plaintiff in the amount of \$20,000 per violation of the Deceptive Trade Practices Act;
- B. Adjudge against Defendants civil penalties in favor of Plaintiff in the amount of \$250,000 for violations of the Deceptive Trade Practices Act if the consumer was 65 years of age or older;
- C. Adjudge against Defendants civil penalties in favor of Plaintiff in the amount of \$100 per violation of the Texas Debt Collections Act;
- D. Order Defendants to restore all money or other property taken from identifiable people by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses;
- E. Adjudge against Defendants reasonable attorneys' fees, investigative fees and court

costs pursuant to TEX. GOV'T CODE ANN. §402.006(Vernon's 1998) and TEX. FIN. CODE ANN. §392.403(Vernon' 1998);

- F. Adjudge against Defendants prejudgment and post judgment interest at the highest lawful rate;
- G. Order disgorgement of all monies taken by Defendants as a result of their unauthorized debt collection business;
- H. Place an equitable lien on all of Defendants' assets and rescind all fee agreements entered into by and between Defendants and their customers/clients;
- I. Adjudge that all fines, penalties or forfeiture payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. §523(a)(7).

55. FURTHER, Plaintiff, **STATE OF TEXAS**, respectfully prays for all other relief to which Plaintiff may be justly entitled.

Dated this _____ day of _____, 2006.

Respectfully submitted,
GREG ABBOTT
Attorney General of Texas

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VERIFICATION

STATE OF TEXAS §

COUNTY OF LUBBOCK §

BEFORE ME, the undersigned authority, on this day personally appeared affiant G. Robert Chavez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that he executed the same, and after he was duly sworn, upon his oath, he deposed and said that the affiant is a legal assistant for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the factual allegations in the foregoing PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR PERMANENT INJUNCTION and has reason to believe that each and all said factual allegations are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

G. ROBERT CHAVEZ
LEGAL ASSISTANT

SUBSCRIBED AND SWORN TO before me on the ____ day of _____, 2006.

NOTARY PUBLIC IN AND
FOR THE STATE OF TEXAS