

Letot as a purported claim payment over her objections and without her acceptance of or agreement to such payment. At the same time USAA issued those checks – which Letot immediately returned to USAA – USAA sent a report to the Texas Department of Transportation representing that it had paid a total loss settlement claim to Letot. This report, sent without Letot’s knowledge or agreement, caused the State of Texas to render the registration for her vehicle invalid and required her to apply for a salvage title in order to exercise any further ownership rights over the vehicle. To recover the value of her vehicle, the loss of use of her vehicle, the cost of the restoration, and/or return her vehicle to its condition prior to Defendants’ wrongful acts, and to prevent USAA from abusing other vehicle owners and the State of Texas, Plaintiff Letot initiated this litigation on behalf of herself and other similarly situated individuals.

II.
DISCOVERY CONTROL STATEMENT

1. Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiffs intend to conduct level three discovery.

III.
THE PARTIES

A. Plaintiffs.

2. Plaintiff SUNNY LETOT is an individual and a resident of Franklin County, Texas. Upon information and belief, other vehicle owners have suffered similar treatment and damage at the hands of USAA, and Letot seeks to represent that class of similarly situated individuals.

B. Defendants.

3. Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION is, upon information and belief, an association organized and operating under the laws of the State of

Texas, and which has its principal office and does business in the State of Texas. Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION has been served and has made an appearance in this action.

IV.
JURISDICTION AND VENUE

A. Jurisdiction.

4. The Court has personal jurisdiction over Defendant because it conducts sufficient business in Texas to confer jurisdiction, and because the acts and omissions that form the bases of this lawsuit occurred in Dallas County, Texas. The Court has subject matter jurisdiction because the amount in controversy is within the Court's jurisdictional limits.

B. Venue.

5. Venue is proper in Dallas County because the acts and omissions that form the bases of this lawsuit occurred in Dallas County, Texas.

V.
FACTS GIVING RISE TO PLAINTIFFS' CLAIMS

6. Plaintiff Letot spent part of 2008 carefully restoring her vintage 1983 Mercedes Benz 300SD at great personal expense. On January 2, 2009, shortly before completing the restoration, Letot was driving in Dallas County when Evan Crosby negligently caused his motor vehicle to collide with Letot's Mercedes.

7. Defendant USAA insured Crosby's vehicle at the time of the collision in question, and Letot filed a claim with USAA for the repair of her vehicle. Using a computer program named "CCC Valuescope" to assign value to her vehicle, USAA's employee Stewart Mayfield appraised Letot's vehicle and sent this valuation to USAA on or about January 15, 2009. The valuation program determined that the value of Letot's vintage Mercedes was \$2,728 – well

below what Letot knew to be the actual value of the vehicle. Because Mayfield's repair estimate of \$8,859 exceeded its appraisal of the vehicle's value, USAA determined the vehicle to be a "total loss." Mayfield submitted his valuation, along with documents that Letot had provided but Mayfield refused to consider in his valuation, to USAA on January 19, 2009.

8. When Letot first learned of Mayfield's valuation, she immediately disputed it with USAA. Letot again notified USAA that she disagreed with Mayfield's valuation and refused to accept USAA's offer of payment on her claim on January 20, 2009. Nonetheless, USAA identified Letot's vehicle as "forced retained" in its internal documentation, due to its unilateral determination that the vehicle was a total loss. USAA tendered checks to Letot for a total of \$2,738.02 over her objections and without her agreement. After receiving these checks, Letot's counsel returned them to USAA, noting that the payment was insufficient, and demanded that USAA pay Letot \$10,700.00 in damages.

9. Meanwhile, unbeknownst to Letot and without notice or her consent, USAA filed an Owner Retained Report with the Texas Department of Transportation ("DOT") on January 22, 2009 – two days after Letot refused to accept its valuation and only one day after USAA tendered the checks to be delivered to Letot. An Owner Retained Report is used by insurers to notify the DOT that it has paid a claim on a "nonrepairable or salvage motor vehicle" that the owner has retained. The DOT then automatically marks "the motor vehicle record on this vehicle . . . accordingly in order to prevent further transfer of title of the motor vehicle until the owner has applied for the appropriate ownership document" as indicated on the form.

10. On the Owner Retained Report, USAA falsely stated that "a claim was paid to" Letot on January 21, 2009 and indicated that the DOT "should not recognize subsequent transfer of ownership until" a "Salvage Vehicle Title" was issued for Letot's vehicle. USAA knew that

such a statement was false and misleading and that such a report would cause the DOT to mark the motor vehicle record on her vehicle as salvage, preventing the sale or transfer of the vehicle until Letot requested a "salvage title" for the vehicle. Nonetheless, USAA filed the report and the DOT stamped Letot's title "SURRENDERED." Furthermore, USAA caused the DOT to render Letot's vehicle registration invalid, such that she could not "register, operate, or permit operation of the vehicle on public roads." USAA never notified Letot of this filing or its consequences, of which she was unaware until the DOT notified her by letter of USAA's actions on January 30, 2009.

11. Letot immediately demanded that USAA remedy the situation and inform the DOT that her vehicle was not salvage. Despite Letot's demands and USAA's knowledge of their misrepresentations, USAA took no action. In fact, USAA continued to deem Letot's vehicle a "total loss" for almost *two years*. USAA's first attempt to correct this came on December 6, 2010, when USAA (again unilaterally) requested that the original Owner Retained Report be corrected to show that the cost of repairing the Letot's vehicle did not exceed its value in order to remove the "total loss" status in place since January 2009.

12. Due to USAA's actions, Letot has filed, on behalf of herself and other similarly situated individuals, claims against USAA for conversion, injurious falsehood, and slander of title, as more specifically outlined below, in addition to claims on her own behalf for tortious interference with contract, and violations of the Insurance Code, the Deceptive Trade Practices - Consumer Protection Act, and the Texas Penal Code, to recover damages from USAA.

VI.
CLASS ACTION ALLEGATIONS

13. Plaintiff Sunny Letot brings this action as a class action pursuant to Texas Rule of Civil Procedure 42(a) and (b)(3) on her own behalf and as a representative of the following class of persons and entities (the "Class"):

All persons or entities that filed claims under USAA automobile insurance policies, either as first-party or third-party claimants, after which USAA determined the claimant's vehicle to be a "total loss" and filed an Owner Retained Report with the State of Texas stating that USAA made a claim payment to the claimant before the claimant actually accepted payment for the claim and/or was notified that such acceptance would result in the filing of an Owner Retained Report.

14. The Class is individually so numerous that joinder of all members is impracticable. While the exact number of members of the Class is unknown to Plaintiff at this time, information provided by the DOT and/or the Texas Department of Motor Vehicles under a public information request indicates that 1,814 similar Owner Retained Reports were filed by USAA in the two (2) year period preceding the filing of this lawsuit. USAA has undoubtedly filed additional such reports since the inception of this litigation. Plaintiff reasonably believes that there are, at a minimum, a sufficient number of members in the Class to meet the numerosity requirement of Rule 42 and that their identities can be learned from records in the Defendants' possession, custody or control.

15. Each potential class member would have suffered from the same misconduct by USAA, creating questions of both fact and law that are common to all – the unilateral determination by USAA that the member's vehicle was non-repairable or salvage and the filing of a false report that USAA had paid "a total loss settlement." That false report would have then lead to the same consequences and resulted in the same claims being raised by Plaintiff as the class representative, making those claims typical of the class.

16. As class representative, Plaintiff Sunny Letot will fairly and adequately protect the interests of the class and has retained counsel competent and experienced in class action litigation. Plaintiff's interests are coincident with, and not antagonistic to, the interests of the other Class members. Ms. Letot is well versed in the procedures related to the registration process utilized by the State of Texas and has knowledge as to the rights of title-holders whose vehicles could be characterized as non-repairable or salvage, and the options that are available to both those title-holders and to insurance carriers.

17. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members of the Class is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and Defendants, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action would achieve substantial economies of time, effort and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedure fairness. There will be no material difficulty in the management of this action as a class action on behalf of the Class.

VII. **CAUSES OF ACTION**

CONVERSION **(On Behalf of All Plaintiffs and the Class)**

19. Plaintiffs incorporate each and every allegation previously set forth herein as if fully set forth herein.

20. Plaintiffs assert this claim individually, and on behalf of the proposed Class.

21. The Plaintiffs owned or had legal possession of their vehicles' titles and registrations.

22. Defendant USAA unlawfully and without authorization assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with, Plaintiffs' rights as owners. USAA did so by knowingly providing false and misleading information to the Texas Department of Transportation regarding the payment of automobile claims to the Plaintiffs in the form of "Owner Retained Reports." The false information provided to the DOT included a statement by USAA "that a claim was paid," when it had not paid Plaintiffs' claim and/or Plaintiffs had not accepted such payment. That report also included false information generated unilaterally by USAA that the vehicle was non-repairable, that a salvage title should be issued, and that "the Texas Department of Transportation should not recognize subsequent transfer of ownership" until such a salvage title had been issued. USAA provided no notice to the claimants that acceptance of payment would result in the filing of an Owner Retained Report and the resulting consequences.

23. USAA's actions caused the DOT to mark the motor vehicle records of these vehicles as nonrepairable or salvage and render the titles to these vehicles "SURRENDERED." USAA also caused the DOT to render Plaintiffs' vehicle registrations invalid. These actions prevented the registration, sale, and transfer of the titles to Plaintiffs' vehicles until the owner obtained a "salvage title," significantly diminishing the value of their vehicles and prohibiting their use.

24. Plaintiffs were not required to make a demand on USAA for return of their property because that property was not acquired legally by USAA, such a demand would have been useless because USAA had no power to reverse the dominion and control over the property

they had exercised to the exclusion of and inconsistent with Plaintiffs' rights as owner, and USAA's acts amounted to a clear repudiation of the Plaintiffs' rights as owners.

25. Plaintiffs are entitled to recover the value of their property and/or the loss of use as the result of Defendant USAA's conversion of their property.

INJURIOUS FALSEHOOD
(On Behalf of All Plaintiffs and the Class)

26. Plaintiffs incorporates each and every allegation previously set forth herein as if fully set forth herein.

27. Plaintiffs assert this claim individually, and on behalf of the proposed Class.

28. USAA published false and disparaging words about the Plaintiffs' economic interests to the DOT in the form of "Owner Retained Reports." The false information provided to the DOT included a statement by USAA "that a claim was paid," when it had not paid Plaintiffs' claim and/or Plaintiffs had not accepted such payment. That report also included false information generated unilaterally by USAA that the vehicle was non-repairable, that a salvage title should be issued, and that "the Texas Department of Transportation should not recognize subsequent transfer of ownership" until such a salvage title had been issued. USAA provided no notice to the claimants that acceptance of payment would result in the filing of an Owner Retained Report and the resulting consequences.

29. USAA knew that the statements it made to the DOT were false, as USAA had not paid Plaintiffs' claim and/or the Plaintiffs had not accepted payment of their claims. Alternatively, USAA acted with reckless disregard to whether the statement was true by filing the Owner Retained Reports without any reference to whether the claimants received or accepted payment of their claims.

30. USAA's publication caused the DOT to mark the motor vehicle records of these vehicles as nonrepairable or salvage and render the titles to these vehicles "SURRENDERED." USAA also caused the DOT to render Plaintiffs' vehicle registrations invalid. These actions prevented the registration, sale, and transfer of the titles to Plaintiffs' vehicles until the owner obtained a "salvage title," significantly diminishing the value of their vehicles and prohibiting their use.

31. Plaintiffs are entitled to recover the value of their property and/or the loss of use as the result of Defendant USAA's conversion of their property.

SLANDER OF TITLE
(On Behalf of All Plaintiffs and the Class)

32. Plaintiffs incorporates each and every allegation previously set forth herein as if fully set forth herein.

33. Plaintiffs assert this claim individually, and on behalf of the proposed Class.

34. The Plaintiffs owned or had legal possession of their vehicles' titles and registrations.

35. USAA published false and disparaging statements about the title to Plaintiffs' vehicles by knowingly providing false and misleading information to the DOT regarding the payment of automobile claims to the Plaintiffs in the form of "Owner Retained Reports." The false information provided to the DOT included a statement by USAA "that a claim was paid", when it had not paid Plaintiffs' claim and/or Plaintiffs had not yet accepted such payment. That report also included false information generated unilaterally by USAA that the vehicle was non-repairable, that a salvage title should be issued, and that "the Texas Department of Transportation should not recognize subsequent transfer of ownership" until such a salvage title

had been issued. USAA provided no notice to the claimants that acceptance of payment would result in the filing of an Owner Retained Report and the resulting consequences.

36. USAA's conduct was deliberate and without reasonable cause.

37. USAA's publication caused the DOT to mark the motor vehicle records of these vehicles as nonrepairable or salvage and render the titles to these vehicles "SURRENDERED." USAA also caused the DOT to render Plaintiffs' vehicle registrations invalid. These actions prevented the registration, sale, and transfer of the titles to Plaintiffs' vehicles until the owner obtained a "salvage title," significantly diminishing the value of their vehicles and prohibiting their use. This resulted in pecuniary loss to the plaintiffs, including the loss of value and/or loss of use of their vehicles.

38. Plaintiffs are entitled to recover the value of their property and/or the loss of use as the result of Defendant USAA's conversion of their property.

TORTIOUS INTERFERENCE WITH CONTRACTUAL/BUSINESS RELATIONS
(On Behalf of Plaintiff Letot)

39. Plaintiff incorporates each and every allegation previously set forth herein as if fully set forth herein.

40. Plaintiff Letot asserts this claim individually.

41. An action for tortious interference with an existing relationship requires a showing that:

- A. Plaintiff had a valid contract;
- B. Defendant willfully and intentionally interfered with that agreement;
- C. The interference was the proximate cause of Plaintiff's injury; and
- D. Plaintiff incurred actual damage or loss.

By providing false and misleading information to the DOT, USAA interfered with the relationship between Letot and her own insurer, as well as with that state agency, which resulted in her losing rights conferred by the DOT and her ability to utilize the public highways. Letot paid a fee to the State of Texas to register her vehicle. In exchange, the State of Texas agreed to permit Letot to legally drive her vehicle on Texas roads and highways, which agreement constituted a valid contract, either express or implied. USAA willfully and intentionally interfered with that contract when it knowingly falsely reported to the State of Texas that Letot's property damage "claim was paid", when it was not. USAA knew that the filing of that false and deceptive report – without disclosing such a filing to Letot – would result in the DOT invalidating the registration for that vehicle, and would be the proximate cause of injury. USAA also knew that without a valid registration, Letot would be prohibited from registering or operating that vehicle on public roads. As outlined above, USAA also prevented Letot – and upon information and belief others similarly situated – from selling or transferring her/their vehicle until such time as a salvage title was issued, even though Letot contested USAA's characterization that her vehicle was non-repairable or salvage. In addition, Letot – and others similarly situated – could not have her/their vehicle repaired without applying for a title mislabeling that vehicle as non-repairable or salvage. USAA's mischaracterization resulted in actual damage, including loss of use and loss of value. Shortly after the January 2, 2009 incident, Plaintiff Letot contacted Steve Everett and had her vehicle towed to his repair shop, Tri Lakes Garage. Letot had an ongoing relationship with Tri Lakes Garage, as that facility had made previous repairs to her vehicle, but when Letot requested they repair the damage caused by the negligence of USAA's insured, they refused to work on her vehicle without it being properly registered and titled. Another individual, Roy Hunter, who had previously performed some of the

extensive restoration on that vehicle, also refused to work on the car without a valid registration or title.

42. An action for tortious interference with a prospective relationship requires a showing that:

- A. There was a reasonable probability that Plaintiff would have entered into a business relationship with a third party;
- B. Defendant's conduct was independently tortious or unlawful;
- C. The interference was the proximate cause of Plaintiff's injury; and
- D. Plaintiff suffered actual damage or loss.

Letot sought to restore her vehicle at her own expense (as she had previously done with this and other such vintage cars), but was precluded from doing so as the result of USAA's actions. Had she wished to sell her vehicle (as she has done with numerous other such vintage cars) she was precluded from doing so. The very day before the incident, Letot had received an unsolicited offer to purchase that vehicle for \$15,000.00. Shortly before, in December, 2008, Letot had received an offer from Ganeesh Patel, who offered to pay \$16,500.00 for that vehicle, and she had previously been offered \$10,000.00 by Peter Williams. When USAA intentionally and unlawfully filed a false and deceptive report with the DOT, it interfered with Letot's right to enter into such prospective business relationships, and proximately caused her to suffer and continue to suffer damage and loss, which she seeks to recover.

43. As a direct and proximate result of the Defendant USAA's tortious interference with both existing and prospective contractual relations, Plaintiffs have sustained damages including, without limitation, diminished value of property, loss of use, professional fees,

expenses and liabilities, and other damages as outlined herein in an amount in excess of the minimum jurisdictional limits of this Court.

DECEPTIVE TRADE PRACTICES
(On Behalf of Plaintiff Letot)

44. Plaintiff incorporates each and every allegation previously set forth herein as if fully set forth herein.

45. Plaintiff Letot asserts this claim individually.

46. Defendant USAA, as outlined above, has engaged in a deceptive trade practice by engaging in an unconscionable action or course of action. As the result of the negligence of USAA's insured, Letot was forced to acquire services including, but not limited to, towing services and storage. Letot, as the owner of the vehicle involved, had the absolute right to have her vehicle repaired, and sought an honest, fair, and reasonable estimate for such repairs from USAA. Instead, USAA used an artificially deflated valuation and used dis-similar vehicles as "comparable" valuations - apparently even one vehicle which had suffered flood damage during Hurricane Katrina and which instead probably should have been classified as salvage. USAA even refused to recognize the State of Texas's presumptive value, upon which value a subsequent purchaser (had USAA not prevented Letot from selling her vehicle) would be required to calculate the sale tax due on that transfer. As a third-party beneficiary of Defendant Crosby's insurance policy with USAA, Letot involuntarily acquired the service of an unreasonable estimate for the repairs to her vehicle. In addition, Letot is a consumer as defined by the DTPA as she also acquired her own realistic estimate for such repairs, and sought to have her vehicle repaired. Instead, by reporting to the DOT that Letot's vehicle was non-repairable, USAA prevented her from obtaining such repairs, even if she were to pay for such repairs herself. USAA engaged in a false, misleading, or deceptive act regarding the need for

replacement or repair services, and disparaged the goods of Plaintiff Letot by providing false and misleading information to the DOT. In addition, USAA took advantage of a disparity in the relative position between itself and Plaintiff in contacting the DOT without the knowledge or agreement of Plaintiff. Plaintiff seeks the statutory damages available for violation of the DTPA as well as §541.151(2) of the Texas Insurance Code as a person who has sustained actual damages as the result of USAA's violation of §§17.46(b)(8) and (13) of the DTPA. In addition, USAA has further violated §17.50(a)(3) the DTPA by engaging in unconscionable acts and courses of action (as that term is defined in §17.45(5) of the DTPA) by conduct which constitutes fraud as defined by §32.46(1) of the Texas Penal Code (Securing Execution of Document by Deception). USAA knew that the submission of a false report would harm Letot and affect her property and pecuniary interests and it intended for the DOT to issue a communication to Letot which notified her of the loss of her rights. Furthermore, USAA violated § 37.10(1) & (5) of the Texas Penal Code (Tampering With Government Record) by knowingly making a false entry in a government record and making and/or presenting a government record with knowledge of its falsity.

VIII. DAMAGES

47. The foregoing acts and omissions of the Defendants proximately caused Plaintiff Letot and the Class Plaintiffs to incur damages, which include:

- A. Actual damages from the Defendants, for the costs or repair, restoration, or replacement of their vehicles, the cost of which repairs to Plaintiff Letot's vehicle was estimated to be \$8,8842.31, or in the alternative the \$16,500.00 value placed on it by a willing buyer, together with pre- and post-judgment interest at the highest rates allowed by law;

- B. The funds which Plaintiff was required to expend in legal fees, costs and expenses to collect the amounts owed to Plaintiff, which as of the date of this filing totals over \$50,000.00;
- C. The loss of use and/or value of their vehicles, which continues and which USAA calculated to be \$30.00 per day for Plaintiff Letot, which continue to accrue;
- D. The additional obligations incurred by Plaintiff Letot as a result of Defendants' misconduct, including towing charges in the amount of \$720.00 and storage charges in the amount of \$35.00 per day, for a total cost incurred of \$24,360.00;
- E. All such actual damages are subject to being trebled pursuant to both the DTPA and the Insurance Code; and
- F. All damages available pursuant to Texas statute.

IX.
EXEMPLARY DAMAGES

48. Plaintiffs further allege that by reason of the fact that certain of Defendant USAA's actions were intentional, willful, wanton and with malice toward Plaintiff and because of the nature of USAA's acts, practices, conduct, and misrepresentations as herein above described, Defendant's actions constitute conduct for which the law allows the imposition of exemplary damages. Accordingly, in the alternative to the trebling of the actual damages outlined above, Plaintiffs request that exemplary damages be awarded against Defendant USAA by way of punishment and to deter such flagrant disregard for the rights of others which will not be tolerated. Plaintiffs pray that exemplary damages be awarded in an amount to be determined by this Court.

X.
REQUEST FOR RELIEF

49. Plaintiff is entitled to judgment against Defendants and prays for other appropriate relief as follows:

- A. Certification of the Class proposed in this Complaint; and
- B. That judgment in favor of Plaintiff and the Class be entered against Defendants and that Plaintiff and the Class recover actual and/or special damages, as provided by law, that they are determined to have sustained, prejudgment and post-judgment interest at the highest rates allowed by law, all statutory damages available under Texas law, and exemplary damages in an amount to be determined at trial; and
- C. That Plaintiff and the Class recover their costs of this suit, including reasonable attorneys' fees, as provided by law; and
- D. That Plaintiff and the Class be granted such other, further and different relief as the nature of the case may require or as may seem just and proper to this Court.

Respectfully submitted,



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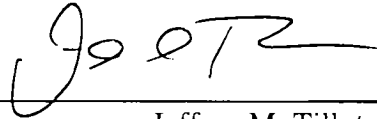
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record as indicated below, on February 6, 2013.

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