

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30736  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

May 26, 2022

Canary Date Sculpting, Inc.  
d/b/a Canary Tree Service  
c/o Justin Hartmann, Registered Agent  
4561 Salisbury Rd., Ste. 400  
Jacksonville, FL 32256

Dear Mr. Hartmann:

This letter gives Canary Date Sculpting, Inc. d/b/a Canary Tree Service notice of intended action in accordance with MCL 445.905(2) and directs you to immediately cease and desist from engaging in the unlawful business practices described below.

As background, this Office is responsible for enforcement of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* Under this Act, the Attorney General may bring injunctive actions to protect the interests of consumers. MCL 445.905. The Attorney General may also conduct formal investigations upon a showing of probable cause to a court through *ex parte* petition. MCL 445.907.

During the past few months, this Office has been assembling evidence in support of an *ex parte* petition for civil investigative subpoenas pursuant to MCL 445.907. To this end, we have six, fully executed affidavits from Michigan consumers with which Canary Tree Service has interacted, and we have a variety of documents from the National Insurance Crime Bureau (NICB) related to Canary Tree Service's invoices to insurance companies based on work performed for Michigan consumers. The assembled proofs show there is probable cause to believe Canary Tree Service is violating the MCPA.

Accordingly, substantial progress had been made last week on the anticipated petition. The recent tornado in Gaylord, however, and your social media posts showing Canary Tree Service has mobilized there, compel us to issue this notice ahead of that court filing.

We understand that Canary Tree Service operates in essentially two different ways with respect to Michigan consumers. In some instances, you have met with Michigan consumers and Canary Tree Service has performed work for them directly. And, in other instances, a different tree company that Canary Tree Service

has partnered with in some way has performed the work for the consumer, but then Canary Tree Service handles the billing and collections efforts. Our evidence shows Canary's role is problematic in both dynamics. The Attorney General has probable cause to believe Canary Tree Service has engaged in a pattern of misleading consumers about the nature of the agreements they are signing, the cost of the services it is providing, the potential for financial responsibility for costs not paid for by insurance, and confusing consumers about their legal rights and obligations. Canary Tree Service also shows a pattern of charging grossly excessive prices for its tree services.

Canary Tree Service has been pursuing payment for work performed by it and other companies in Michigan during the summer of 2021. Whether by Canary or one of the entities for which Canary later billed, the consumers supplying us affidavits were all told their insurance would be billed, and they were not quoted prices for the tree debris removal services. Later, each learned that Canary had submitted absurdly high invoices to their insurance companies ranging from just over \$20,000.00 to as high as \$38,857.50. When the insurance companies refused to pay the demanded amounts, Canary then began either applying pressure on the consumers, or making outright threats of litigation or collections activity against them. The threats were made either by Canary Tree Service directly, or through a collections company.

We pause here to elaborate these concerns and supply you a glimpse of just some of the proofs that will accompany the upcoming petition. Attorney General Nessel's Consumer Protection Team received complaints from two Michigan consumers alleging that Canary Tree Service was engaged in price gouging based on clean-up work done at their homes following severe storms. (Michigan AG compls, **Exhibit 1**.) These complainants are among the six consumers who have supplied us with affidavits.

The troubling manner in which Canary Tree Service has transacted business is further illustrated with reference to two of the affidavits that will be featured in the court filing:

### **Derek W. of Farmington**

On July 7, 2021 a windstorm caused a large tree to fall in Derek's backyard. It fell across a retaining wall and damaged the limbs of another tree as it fell. (Derek W. Aff, ¶¶ 1-2; photos at pp 6-7, **Exhibit 2**).

Because the storm knocked out the power to his home, Derek and his wife and infant son went to stay with family, and Derek did not return to the property until July 12. On that day, you observed the tree lying in Derek's backyard, knocked on his door, and explained you could remove it. You identified yourself as the owner of Canary Tree Service of Jacksonville, Florida. You said that Canary

Tree Service was in town working with a local company, True Cut Tree Care, because of the extensive storm damage. (*Id.*, ¶¶ 1, 3-4).

You told Derek you would accept whatever the insurance company paid as payment in full. You said your interactions would be solely with the insurance provider. You promised Derek he would not be balance billed or obligated for any additional payment over and above what you receive from his insurance provider. (*Id.*, ¶ 4).

You told Derek that Canary could do the tree removal that evening. Although Derek did not regard the removal as an emergency, he was eager to get it done since he had not been able to connect with any other tree company to that point, and he could see Canary was doing work in his neighborhood. Derek agreed to have Canary remove the tree. You then asked Derek to sign your iPad. “The agreement on the iPad was only an assignment of the insurance claim to allow them to pay the claim directly to Canary Tree Service.” You never gave a verbal or written cost estimate, promising again that Derek “would not owe anything beyond what the insurance provider would pay.” (*Id.*, ¶ 5).

You and your crew of five workers then set to work on the tree removal for Derek. The project took approximately 2.5 hours and included use of a crane to lift the large limbs over Derek’s home to the front yard for removal. Some small debris was left that evening, but you and one other worker returned on July 17 to remove it. That additional work took about a half hour. (*Id.*, ¶ 6-7).

Canary then submitted a 115-page invoice packet to Derek’s insurer, complete with photographs of the project. *The total invoice price was \$25,747.50.* This submission was reviewed by Timothy Robbins, a certified arborist with more than twenty years of experience from ARBOMAX TREE. Robbins priced out three distinct methodologies by which the tree removal project at Derek’s home might reasonably have been conducted, averaged the costs of those three methods, and then added on an appropriate billing for the disposal of the resultant debris. Robbins concluded the appropriate average cost for the work performed for Derek would be \$6,155.56. The NICB has supplied to us both your invoice and the comparative analysis.

Next, Derek received a call from Kellie at AAA on August 30, 2021. During that conversation, Derek learned from Kellie that Canary had billed AAA \$25,747.08 for the tree removal at his home. Kellie then explained that AAA had determined the bill was excessive and that it would not pay the full amount, meaning Derek could be personally responsible for the balance. Having never received a bill or other documents from Canary, Derek asked Kellie to send him the invoice AAA had received. (*Id.*, ¶¶ 8-9).

Derek then reviewed the invoice AAA had received from Canary and found the insurance submission included a page of terms and conditions he had never agreed to. As he explains:

After receiving and reviewing the invoice, I noticed that information had been added to what I signed with Justin after the fact. The only information Justin gave me to review on his tablet was the single-page assignment of benefits included as Attachment B of this affidavit. I never reviewed, saw or agreed to anything contained on page 3 of the invoice. The first time I saw this information, which is included as Attachment C, is when the insurance company sent it to me. (*Id.*, at ¶ 10).

The previously unseen page of the invoice to which Derek refers included standardized language purporting to reserve Canary Tree Service’s right to assess late fees and finance charges for unpaid past due balances and disclaimed that any reductions, corrections, invoice adjustments, or changes of any kind by the assignee are not acts of insurance adjusting or advising of any kind. It further provided that any audit or inquiry would be subject to fees billable at a rate of \$125 per hour.

On October 11, 2021, Derek received an email from Keith Chandler at Canary. Through that message, Chandler told Derek to “follow up with me as soon as possible to avoid collections and lien proceedings.” (*Id.*, at ¶ 11; Ex 2, Attachment D.) This threat is in direct conflict with the oral representations you made in initiating the transaction, and the threat against Derek is wholly inconsistent with the assignment of benefits Derek acknowledges signing—which expressly put Canary in position of dealing directly with the insurance company.

Then, in December 2021, Derek received two phone calls and voicemail messages from Thomas at Canary. Derek did not return these calls because he finds the invoice submitted to AAA to be “outrageous.” Derek adds that he never would have authorized the work had he known Canary would try to charge his insurer such an unreasonable price. (*Id.*, ¶ 12).

### **Maria B. of Linden**

August 2021 brought another bad storm to Linden, where a schoolteacher named Maria B. and her husband Andrew live. A tree in their backyard snapped about twenty feet up and fell across their yard and that of their neighbor. It damaged power lines, lawn furniture, and the fence between the properties. (Maria B. Aff, ¶¶ 1-2, **Exhibit 3**).

On August 16, Maria spoke by phone to Alex of Holtslander and Sons, which is a tree service company here in Michigan. During this call, Alex told Maria she and her husband would not have to pay for the removal: “[w]hen I asked him about the cost of the removal, Alex assured me that Holtslander only bills our insurance

company, and that we would not be responsible for any additional costs that the insurance company did not pay.” (*Id.*, ¶ 5).

That afternoon, Alex arrived with four other Holtslander workers, along with a crane and debris hauler. (*Id.*, ¶ 6.) Then,

Alex approached me and asked that I sign a document on his tablet confirming that we hired him for tree removal. I noticed that the document listed Canary Tree Service at the top, not Holtslander, and I asked Alex why this was the case. Alex told me that Canary Tree is their third-party billing service, which is why their name is on the contract, but otherwise not to worry about it. Alex also assured me again, as he had on the phone, that all the billing was done through insurance and that we would not be responsible for any payments. [(*Id.*, ¶ 7)].

That afternoon, Holtslander and Sons cleaned up most of the tree debris—including the portion that had fallen into the neighbor’s yard. A week later, three workers returned and took care of the portion of the tree and stump that had remained. (*Id.*, ¶¶ 8-9).

Canary Tree Service then submitted an invoice for \$20,197.50 to Maria and Andrew’s insurer.

Maria and her husband did not hear from Holtslander or Canary Tree Service regarding payment during 2021. But they did receive information from their insurance company indicating that it had paid just under \$4,000 of a claim of over \$20,000 that had been made. Maria and her husband assumed this was the end of the matter. (*Id.*, ¶ 10).

But in early 2022, Maria’s husband took a phone call from someone they believe to be an attorney for Canary Tree Service seeking payment for the balance of more than \$20,000 not paid by the insurance company. Her husband told this person this was not consistent with what Alex from Holtslander had represented to Maria. Having thus refused to pay, her husband was also sent an email about the collection that same day. (*Id.*, ¶ 11.) The email to Maria’s husband threatened legal action if the sum was not paid, and read as follows:

Subject: Case#JFH97392 Canary Tree Service vs. Andrew [last name redacted] et al.

Andrew,

We are writing concerning the amount of \$20,197.50 which is due our client Canary Tree Service. Despite numerous requests for payment as

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well as providing several different options to satisfy your past due balance, your account remains outstanding. All of my client's attempts to avoid litigation and resolve this matter amicably have been ignored.

If this account is not resolved voluntarily our client reserves the right to commence legal proceedings per Michigan State Law and you may be responsible for any associated legal fees or collection costs if your account is forwarded to local counsel.

If you wish to prevent this, please contact the undersigned as a matter of urgency and settle your account before any further legal actions have commenced.

Sincerely,

James Hughes  
Hughes, Martini & Associates  
Corporate Offices of MHG  
955 NW 17<sup>th</sup> Ave Bldg A  
Delray Beach, Florida 33445

[(*Id.* at pp 4-6)].

Various elements of this message, from the subject line reference to a case number and use of the familiar "vs," and "et al," to the reference to Canary Tree Service as "our client," to the threats of litigation, and the use of a firm name in the signature block that sounds like a law firm's name, have reasonably contributed to Maria and Andrew's impression that they were being threatened by an attorney for Canary Tree Service. A review of the website for Hughes, Martini & Associates, however, suggests this is simply a collections business rather than a law firm.<sup>1</sup>

Maria and her husband have not paid anything to Canary since doing so does not align with what Alex told them, and they find the price to be unreasonable for the work that was done. Indeed, had they known Canary would charge so much, Maria says they would not have accepted Holtslander's services. (*Id.*, ¶¶ 11-12).

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<sup>1</sup> Website for Hughes, Martini & Associates, available at: <http://mhg.bz/> (last accessed: May 19, 2022).

**Other Concerns:**

It was in the context of these experiences that we read with great concern your recent social media post following the tornado that has disrupted the lives of many Gaylord residents. This post stated:

Hard to believe it's been two years since I moved to Sanford Michigan for 10 weeks! Yet, here we are, on the way again. This time we are showing up with three cranes to start with. I'll bring more if we need. Gaylord Michigan, we NEVER charge out of pocket for insured work. If you don't have coverage, and are in true need, we will do it pro bono. Ask a Sanford Michigan resident, they will tell you.

Your representation here about never charging out-of-pocket costs is consistent with what you and others told Michigan consumers in the summer of 2021. But it is wholly inconsistent with the subsequent pressure and threats that have been put upon Derek, Maria, and other consumers supplying affidavits. Thus, we plan to seek subpoenas to obtain documents and testimony to better understand what Canary Tree Service is doing, the work performed and justifications for the prices it is billing, and to assess the knowledge and role of the companies for which it is billing.

In the meantime, though, let this be clear: if Canary Tree Service is going to continue providing tree services in Gaylord, it must be honest with consumers and disclose the nature of the agreements they are being asked to sign and the costs of the services being provided. To the extent Canary Tree Service has already provided services to any residents impacted by the recent tornado upon a representation they would not be charged out-of-pocket costs, it should not (either directly or through a collections company) apply pressure or make threats to such consumers if the insurance company does not pay the amount Canary Tree Service bills. And Canary Tree Service and its affiliates should cease making threats against any consumers for which tree services were performed upon such representations in 2021, including Derek and Maria. If such further threats are made and are shown to be the result of MCPA violations, the Attorney General will seek a civil fine of \$25,000 for each such violation as anticipated by MCL 445.905. The Attorney General will not tolerate any effort by Canary Tree Service to persist in imposing inappropriate economic stress upon the victims of storm damage.

And your reference to the events in Sanford, Michigan has also not gone unnoticed. You refer, of course, to the Midland-area dam that collapsed in 2020. We are aware of the news articles you showed Derek and other consumers in an effort to build trust with them, much like you do now with the residents of Gaylord. You invite us to ask a Sanford resident. As a point of fact, one of our special agents did just that a few weeks ago with a recorded interview with one of the operators of the "Sanford Strong" Facebook group. So, we are well-aware you were kicked out of

that group after its hosts learned you were collecting money for services even while using that platform to promote the free help you were offering.

We also note that responding to natural disasters as a means of revenue is part of Canary Tree Service's business model. An online search of news articles showed us Canary Tree Service's name has shown up in connection with other storms. In 2019, the North Carolina Attorney General sued Canary Tree Service for price gouging consumers in that State after Hurricane Florence.<sup>2</sup> And a 2020 article shows Canary Tree Service was present in Iowa after the Derecho windstorm that garnered national attention.<sup>3</sup>

We obtained from the Better Business Bureau (BBB) a 2020 complaint from a Louisiana resident against Canary Tree Service alleging improper billing arising out of a clean-up following Hurricane Laura. (BBB compl, **Exhibit 4**.) And the Florida Attorney General's Office has supplied this Office with complaints it has received from two consumers alleging that Canary Tree Service was price-gouging in billings it was doing for other companies in Florida and Alabama after 2020's Hurricane Sally. (Florida AG compls, **Exhibit 5**.)

Based on the above, and additional evidence that will be included with the upcoming petition, the Attorney General has probable cause to believe Canary Tree Service has engaged in the following unfair business practices:

- (n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
- (r) Representing that a consumer will receive goods or services free or without charge, or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

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<sup>2</sup> Steelman, Ben, *State Sues Florida Tree Service for Price-Gouging*, StarNews (April 11, 2019), available at:

<https://www.starnewsonline.com/story/news/courts/2019/04/11/tree-service-sued-for-price-gouging-in-wilmington-after-florence/5462559007/>

<sup>3</sup> Stone, Eric, *Scammers Preying on Iowa Derecho Victims*, KDAT, (Aug 14, 2020), available at: [https://kdat.com/scammers-preying-on-iowa-derecho-victims/?utm\\_source=tsmclip&utm\\_medium=referral](https://kdat.com/scammers-preying-on-iowa-derecho-victims/?utm_source=tsmclip&utm_medium=referral)

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(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is. [MCL 445.903(1).]

Under the MCPA, this notice gives rise to an opportunity for Canary Tree Service to provide an assurance of voluntary compliance. Should you wish to explore an assurance agreement, please contact us soon to schedule a meeting to be held on, or before, June 6, 2022. You are welcome and encouraged to consult with, and be accompanied by, an attorney for this discussion.

Absent such an agreement, we will file the petition seeking authorization to proceed with the investigation referenced above.

We look forward to your response.

Sincerely,



Darrin Fowler  
Assistant Attorney General  
Corporate Oversight Division  
(517) 335-7632

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