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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

STATE OF OREGON, *ex rel*, JOHN  
KROGER ATTORNEY GENERAL OF  
OREGON

Plaintiff,

v.

U.S. FIDELIS, INC., fka National  
Auto Warranty Services, Inc., dba  
Dealer Services  
c/o National Registered Agents, Inc.,  
325 13<sup>th</sup> Street, NE  
Suite 501  
Salem, OR 97301

and

DARAIN E. ATKINSON,  
5 Lakeview Court  
Lake Saint Louis, Missouri 63367

and

CORY C. ATKINSON  
302 Atkinson Way  
Wentzville, Missouri 63385

Defendants.

Case No.

COMPLAINT ALLEGING VIOLATIONS OF  
THE UNLAWFUL TRADE PRACTICES ACT  
(ORS 646.605 TO 646.656), REQUEST FOR  
DECLARATORY JUDGMENT INJUNCTIVE  
RELIEF, RESTITUTION AND CIVIL  
PENALTIES

CLAIM NOT SUBJECT TO MANDATORY  
ARBITRATION

**ALLEGATIONS COMMON TO ALL CLAIMS**

**JURISDICTION AND VENUE**

1.

JOHN R. KROGER is the Attorney General for the State of Oregon and sues in his  
official capacity pursuant to ORS 646.632.

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2.

The actions of Defendants, U.S. Fidelis, Inc., Darain Atkinson, and Cory Atkinson (“Defendants”), hereinafter described, have occurred in Marion County and the State of Oregon, and as set forth below are in violation of the Oregon Unlawful Trade Practices Act (UTPA), 646.605 *et seq.* and its substantive rules.

3.

Jurisdiction over the subject matter lies with this Court pursuant to the Oregon Unlawful Trade Practices Act, 646.605 *et seq.* and Oregon’s Telephone Solicitation Act, 646.551 *et seq.*

4.

This Court has personal jurisdiction to hear this case pursuant to ORCP 4(a), in that, upon information and belief, some of the transactions complained of herein, and out of which this action arose, occurred in Marion County, Oregon. Defendants engaged in substantial activities within the State by operating a business that provides goods and services to consumers. All transactions took place in the course of Defendants’ business.

5.

Defendant was given Notice required by ORS 646.632(2) and failed to submit to the Attorney General an acceptable Assurance of Voluntary Compliance.

6.

Defendant’s conduct, as described in this Complaint, was willful within the meaning of ORS 646.605(10).

**DEFENDANTS**

7.

Defendant U.S. Fidelis, Inc., f/k/a National Auto Warranty Services, Inc. and Dealer Services (“US Fidelis”), is a Missouri corporation with its principal place of business located at 100 Mall Parkway, Wentzville, Missouri 63385.

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8.

Defendant US Fidelis conducted business under the name National Auto Warranty Services, Inc., until it changed its name on January 22, 2009.

9.

Defendant Darain Atkinson is an individual and is the President, Treasurer, Director and 50 percent shareholder of U.S. Fidelis.

10.

Defendant Darain Atkinson currently resides, and may be served, at 5 Lakeview Court, Lake Saint Louis, Missouri 63367.

11.

Defendant Cory Atkinson is an individual and is the Vice-President, Secretary, Director and 50 percent shareholder of U.S. Fidelis.

12.

Defendant Cory Atkinson currently resides, and may be served, at 302 Atkinson Way, Wentzville, Missouri 63385.

13.

Defendants Darain Atkinson and Cory Atkinson are being sued in their individual capacity as well as in their capacity as officers and directors of Defendant U.S. Fidelis.

14.

On information and belief, Defendants Darain Atkinson and Cory Atkinson, at all relevant times hereto, operated, dominated, controlled and directed the business activities of Defendant U.S. Fidelis, causing, personally participating in, and/or ratifying the acts and practices of Defendant U.S. Fidelis, as described in this Complaint.

15.

Specifically, Defendants Darain Atkinson and Cory Atkinson participated personally (1) in the design, establishment, and approval of the deceptive advertising, marketing and sales

1 practices described in this Complaint; (2) in the establishment of the refund policies and  
2 practices affecting consumers seeking to cancel their purchases of the goods described in this  
3 Complaint; (3) in the hiring and firing of sales personnel and other representatives of Defendant  
4 U.S. Fidelis whom the Atkinsons directed to, and who did, carry out the advertising, marketing  
5 and deceptive sales practices described in this Complaint; and (4) in the training, direction and  
6 oversight of sales personnel and other representatives of U.S. Fidelis. Accordingly, Defendants  
7 Darain Atkinson and Cory Atkinson are liable for both those acts in which they personally  
8 participated as well as the acts of U.S. Fidelis, its employees and other agents because  
9 Defendants Darain Atkinson and Cory Atkinson controlled and/or directed these acts.

10 16.

11 Defendants are engaged in "trade" and "commerce" as defined in ORS 646.605(8).  
12 Defendants were, at all times relevant herein, engaged in the business of advertising, offering or  
13 distributing goods and services that directly and indirectly affect consumers in Oregon.

14 17.

15 Defendants are "telephone sellers" as that term is defined in the Oregon's Telephone  
16 Solicitation Act, ORS 646.551(1).

17 18.

18 Defendants were engaged in "telephone solicitation" within the meaning specified in  
19 646.605(7). Defendants, upon information and belief, at all times relevant herein, used a  
20 telephone or automatic dialing-announcing device to initiate telephonic contact with a potential  
21 customer within the county of Marion and other counties within the State of Oregon.

22 19.

23 For purposes of this Complaint, the terms "Defendants," unless otherwise specified, shall  
24 refer to all Defendants; and when used in conjunction with allegations of unlawful conduct, shall  
25 mean that each Defendant committed such act and/or is legally accountable for such act.

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**STATEMENT OF FACTS**

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20.

At all times relevant to this action, Defendants advertised, offered for sale, and sold motor vehicle service contracts and vehicle protection products with a limited product warranty (collectively referred to as “service contracts”) to consumers within the State of Oregon, including Marion County.

21.

Defendants engaged in the advertising and sale of vehicle service and vehicle protection product contracts on behalf of Providers who pay repairs covered under the contracts.

22.

Defendants entered into marketing agreements with the Providers to perform the advertising, marketing, and sale of these service contracts.

23.

The parties to the service contracts are the consumers, who are the purchasers, and the Providers, who pay for any covered repairs.

24.

Defendants failed to disclose to consumers that Defendants were selling the service contracts on behalf of the Providers.

25.

Defendants engaged in a pattern and practice of failing to inform consumers during the oral sale transaction that the contracts Defendants sold are not with the Defendants, but are administered by the Providers.

26.

Defendants engaged in a pattern and practice of failing to inform consumers during the oral sale transaction that the consumer’s continued relationship under the service contract would not be with the Defendants.

1 ***SERVICE AND VEHICLE PROTECTION PRODUCT CONTRACTS***

2 27.

3 Defendants created the false and misleading impression that the consumer was  
4 contracting with the Defendants and that the Defendants will pay consumers' repair costs when  
5 such is not the case.

6 28.

7 Defendants provided consumers with inconsistent and inadequate information regarding  
8 the performance, characteristics, uses, and benefits of the service contracts it sold.

9 29.

10 Defendants falsely stated or misrepresented that consumers would receive "bumper-to-  
11 bumper" coverage, "gold" coverage, or coverage of "just about anything mechanical that can go  
12 wrong" with the consumers' motor vehicles.

13 30.

14 Defendants falsely stated or misrepresented that the service contracts Defendants sell can  
15 provide the same terms and coverage as a manufacturer's warranty.

16 31.

17 The vehicle protection product contracts that Defendants offered for sale and sold  
18 covered only certain repairs of the lubricated parts of the engine and/or transmission.

19 32.

20 Defendants do not adequately explain the contract limitations and exclusions to  
21 consumers.

22 33.

23 Despite Defendants' representations regarding coverage, the service contracts they sell  
24 contain material restrictions, limitations and exclusions that significantly limit the value and use  
25 of the contract.

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34.

Defendants failed to disclose the material terms, restrictions, limitations and exclusions of their service and additive contracts in solicitations and marketing contacts with consumers.

35.

The service contracts contained an inconspicuous "Exclusions" section listing numerous components or services not covered by the contracts.

36.

The service contracts containing the "Exclusions" section were only sent to the consumer after the consumer purchased the contract and paid the down payment.

37.

Some consumers did not receive the written service contract for weeks or months and some consumers never received the contracts at all.

38.

Defendants advertised, marketed, and solicited individual consumers to enter into service contracts via the radio, television, direct mail pieces, telemarketing calls, and the U.S. Fidelis website, [www.usfidelis.com](http://www.usfidelis.com).

***DEFENDANTS' DIRECT MAIL MARKETING PRACTICES***

39.

Defendants advertised and misrepresented the nature of the service contracts as "warranties," "factory warranties," or "extended warranties" when in fact the product being sold was not a "warranty," "factory warranty," or "extended warranty."

40.

A "factory warranty" or "extended warranty" can only be offered and sold by an automobile manufacturer as provided in the federal Moss-Magnuson Warranty Act, 15 U.S.C. § 2301 *et. al.*

41.

1 Defendants represented that it was an authorized seller of “extended warranties” through  
2 its solicitations and its name, “National Auto Warranty Services.”

3 42.

4 Defendants failed to disclose that Defendants were really offering to sell a motor vehicle  
5 service contract and/or a vehicle protection product contract and not an extended motor vehicle  
6 warranty.

7 43.

8 Defendants represented that their purported “extended warranty” offers were affiliated  
9 with an automobile manufacturer. See Exhibit 1.

10 44.

11 Defendants represented that their “extended warranty” offers were associated with a  
12 motor vehicle dealership from which the consumer purchased their motor vehicle by referencing  
13 the make and model of the consumer’s vehicle and urging the consumer to “extend your  
14 vehicle’s original coverage.”

15 45.

16 Defendants mailed direct mail solicitations under the name “Dealer Services” rather than  
17 its corporate name, *i.e.* U.S. Fidelis, in a further attempt to create the impression that Defendants  
18 were selling extended warranties offered by the manufacturer or dealer. See Exhibit 2.

19 46.

20 Defendants’ direct mail solicitations often referenced the manufacturer of the consumer’s  
21 motor vehicle, such as adding “Mazda Notification,” for example, which further misleads and  
22 confuses the consumer into believing that Defendants are affiliated or associated with the  
23 manufacturer of the consumer’s motor vehicle. See Exhibit 2.

24 47.

25 Defendants failed to disclose that Defendants are not affiliated and have no relationship  
26 with the manufacturers who produced the consumers’ motor vehicles.



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48.

Defendants failed to disclose that Defendants are not affiliated and have no relationship with the dealers who sold the consumers their motor vehicles.

49.

Defendants represented that consumers' motor vehicle warranties were expired, were expiring, or were about to expire. See Exhibit 2.

50.

Contrary to Defendants' representations, many consumers who received Defendants' direct mail solicitations report that their auto warranties were not expired or about to expire.

51.

Defendants represented that consumers' motor vehicles may be unsafe or subject to a recall.

52.

Contrary to Defendants' representations, many consumers who received Defendants' direct mail solicitations report that their vehicles were not found to be unsafe and were not subject to recall.

53.

Defendants represented that consumers had a limited time to contact Defendants to purchase the "extended warranties" for their motor vehicles, when in fact the offer was actually available for a longer period of time.

54.

Defendants represented that their offer was "exclusive" and not made to the general public when in fact identical or nearly identical offers were made to consumers across the country.

55.

Defendants represented that they had a preexisting relationship with the consumer.

1 56.

2 Contrary to Defendants' representations, many consumers report no previous relationship  
3 with Defendants existed.

4 ***DEFENDANTS' TELEMARKETING PRACTICES***

5 57.

6 Defendants conducted sales through inbound telemarketing calls in which consumers call  
7 US Fidelis sales representatives after receiving direct mail solicitations from the Defendants,  
8 after consumers hear and/or see a radio or television advertisement for Defendants, or after  
9 consumers view the U.S. Fidelis website, [www.usfidelis.com](http://www.usfidelis.com).

10 58.

11 Defendants also conducted sales through the use of outbound telemarketing, including the  
12 use of an automatic dialing and announcing device ("ADAD"), in which Defendants offered to  
13 sell their service and additive contracts through pre-recorded telemarketing calls, often referred  
14 to as "robo-calls."

15 59.

16 Defendants' pre-recorded telemarketing calls do not promptly (within 30 seconds) and  
17 clearly identify that the call is being made on behalf of Defendant U.S. Fidelis in order to make a  
18 sale to the consumer.

19 60.

20 Defendants' pre-recorded telemarketing calls purport to give consumers the option to  
21 speak with a sales representative, but consumers attempting to select this option for the purpose  
22 of asking to be placed on Defendants' internal do-not-call list have been disconnected or hung up  
23 on by Defendants, or, if connected, Defendants' sales representatives hang up on the caller.

24 61.

25

26

1 Defendants' pre-recorded telemarketing calls purport to give consumers the option to put  
2 themselves on the Defendants' internal do-not-call list by pressing a certain number, but the  
3 internal do-not-call list did not in fact result in no further calls to consumers.

4 62.

5 In some instances, Defendants told consumers to call a different number to be placed on  
6 Defendants' internal do-not-call list, but consumers exercising this option discovered that the  
7 telephone number provided was not in service.

8 63.

9 Defendants' telemarketing practices impaired consumers' efforts to notify Defendants  
10 and their agents that the consumers do not wish to receive solicitation calls by or on behalf of the  
11 Defendants.

12 64.

13 Consumers continued to receive telemarketing calls from Defendants and their agents  
14 after the consumers have asked not be called again and/or to have their names placed on  
15 Defendants' internal do-not-call list.

16 65.

17 Defendants and their agents placed telemarketing calls in connection with their marketing  
18 of service contracts to telephone numbers in Oregon, including, upon information and belief,  
19 Marion County, which are listed with the National Do Not Call Registry maintained by the  
20 Federal Trade Commission, and/or the Oregon State Do Not Call registration maintained  
21 pursuant to ORS 646.572 and 646.574.

22 66.

23 Consumers who registered with the National Do Not Call Registry continued to receive  
24 Defendants' telemarketing calls after they had advised Defendants' sales representatives that  
25 they were registered on the National and/or Oregon Do Not Call Registries and that they wanted  
26 the calls stopped.

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67.

Defendants and their agents did not have prior express invitation or permission to make the telemarketing calls to the consumers who were registered with the National and/or Oregon Do Not Call Registries.

68.

Defendants and their agents placed telemarketing calls in connection with their marketing of service contracts to cell phone numbers, emergency lines and hospitals.

69.

Defendants and their agents placed telemarketing calls in connection with their marketing of service contracts and failed to transmit caller identification information. Specifically, defendants and their agents, within 30 seconds after beginning the conversation, failed to provide identification of both the person and whom the person represents; explained the purpose of the call; provide a commonly understood description of the services offered for sale; or inquired whether the person being solicited was interested in listening to a sales presentation, and immediately discontinued the solicitation if the person being solicited gave a negative response.

70.

Defendants and their agents placed telemarketing calls in connection with their marketing of service contracts and failed to check that the numbers Defendants were calling were not on the National or Oregon Do Not Call Registries.

71.

Defendants and their agents placed telemarketing calls in connection with their marketing of service contracts and engaged in "spoofing" by blocking, disguising, or falsifying the identity of Defendants and failed to transmit or display the originator's telephone number or the telephone number of Defendants that consumers may call during regular business hours to be placed on a do-not-call list.

72.

1 Defendants and their agents placed telemarketing calls in connection with their marketing  
2 of service contracts and failed to register as a telemarketer in Oregon.

3 73.

4 Defendants and their agents placed telemarketing calls in connection with their marketing  
5 of service contracts and failed or refused to place consumers on internal do-not-call lists upon  
6 request by the consumer.

7 74.

8 Defendants and their agents placed telemarketing calls in connection with their marketing  
9 of service contracts and provided false or misleading caller identification information, including  
10 preventing the display of caller identification, using methods that bypass, circumvent, or disable  
11 caller identification, or using methods that mislead the caller as to the identification of the caller  
12 or the caller's phone number.

13 75.

14 During the telemarketing calls, Defendants secure the agreement and a down payment  
15 over the phone. Following receipt of the down payment, Defendants mail the actual service  
16 contract to the consumer. This is the first opportunity the consumers have to review the contract  
17 and see its actual terms.

18 ***DEFENDANTS' GENERAL MISLEADING AND DECEPTIVE BUSINESS PRACTICES***

19 76.

20 Defendants represented an offer to be Defendants' "final" offer to a consumer, when in  
21 fact Defendants had never made any previous attempts to contact the consumer.

22 77.

23 Defendants represented that their offers of the "extended warranty" plans were the  
24 consumer's final chance to purchase such plans, when in fact the same offer or a substantially  
25 similar offer would still be available in the future.

26 /////

1 78.

2 By representing that their offers were only valid for a limited time or were the  
3 consumers' final chance to purchase a purported "extended warranty," Defendants created a false  
4 sense of urgency that an offer would expire when no actual expiration date for the offer existed.

5 79.

6 Defendants represented an affiliation, connection, sponsorship, or association with, or  
7 certification by, a third party, such as a manufacturer, dealer, or other entity, when in fact  
8 Defendants had no such relationships with the referenced third party.

9 80.

10 The representations made by Defendants' direct mail solicitations and during the course  
11 of Defendants' telemarketing calls have caused consumers to believe that the service contracts  
12 they are purchasing will provide comprehensive, top-quality coverage for their motor vehicles  
13 and will be easy to use, when such is not the case.

14 81.

15 Defendants sold or offered for sale service and additive contracts without having been  
16 licensed and/or registered as required under state law.

17 ***DEFENDANTS' REFUND PRACTICES***

18 82.

19 During their sales presentations, Defendants informed consumers that they could obtain  
20 full refunds of the purchase price of the service or vehicle protection product contract within  
21 thirty days of purchase and obtain a pro rata refund thereafter.

22 83.

23 When consumers asked to obtain a copy of the service contract prior to purchase,  
24 Defendants informed consumers that they could not send out the contract, but assured the  
25 consumers that they could cancel the contract during the first thirty days and receive a full  
26 refund.

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84.

Defendants failed to disclose the difficulty consumers will face if they attempt to cancel the contract.

85.

Defendants make it difficult for consumers to cancel their contracts by not accepting certified letters from consumers which contain the consumers' written requests for cancellation, by leading consumers to believe that a telephone call will result in cancellation, and by hanging up on consumers who call Defendants to attempt to cancel.

86.

In those instances where consumers succeed in canceling the vehicle protection product contract, Defendants refused to refund any money if any portion of the vehicle protection product was used.

87.

In those instances where consumers succeed in canceling the service contract, Defendants frequently refunded less than the amount owed to the consumer or provided no refund at all.

88.

In some instances, Defendants paid only part of the refund due to consumers, including for example, paying only sixty percent of the refund due the consumer and keeping the other forty percent.

89.

Defendants deducted a fee from the refund, referred to as a "processing fee" even though this fee was neither authorized by the contracts nor disclosed to the consumers at the time of the sale.

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**CLAIMS FOR RELIEF**  
**UNLAWFUL TRADE PRACTICES**

**FIRST CLAIM FOR RELIEF**  
**ORS 646.608**

**COUNT I**

90.

The State realleges and incorporates each and every allegation contained in the preceding paragraphs as set forth herein.

91.

Defendants have committed unfair or deceptive acts or practices in violation of the ORS 646.608(1)(a) by willfully passing off real estate, goods or services as those of another including, but not limited to, representing that their purported extended warranty plans are those of the automobile manufacturers and/or the motor vehicle dealerships from which the consumers purchased their motor vehicles. Each instance where Defendants passed off its service contracts as those of the automobile manufacturer and/or the consumers' motor vehicle dealerships, as described in this and preceding paragraphs, is a separate and distinct violation of ORS 646.608(1)(a).

**COUNT II**

92.

The State realleges and incorporates each and every allegation contained in the preceding paragraphs as set forth herein.

93.

Defendants have committed unfair or deceptive acts or practices in violation of the ORS 646.608(1)(b) by willfully causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of real estate, goods, or services including, but not limited to, advertising or soliciting that their purported extended warranty plans are sponsored or approved by the automobile manufacturers and/or the motor vehicle dealerships from which the



1 consumers purchased their motor vehicles. Each time Defendants advertised or solicited in such  
2 a confusing or misleading manner, as described in this and preceding paragraphs, is a separate  
3 and distinct violation of ORS 646.608(1)(b).

4 **COUNT III**

5 94.

6 The State realleges and incorporates each and every allegation contained in the preceding  
7 paragraphs as set forth herein.

8 95.

9 Defendants have committed unfair or deceptive acts or practices in violation of the ORS  
10 646.608(1)(c) by willfully causing likelihood of confusion or of misunderstanding as to the  
11 affiliation, connection, or association with, or certification by, real estate, goods, or services  
12 including, but not limited to, advertising or soliciting that their purported extended warranty  
13 plans are affiliated with the automobile manufacturers and/or the motor vehicle dealerships from  
14 which the consumers purchased their motor vehicles. Each time Defendants advertised or  
15 solicited in such a confusing or misleading manner, as described in this and preceding  
16 paragraphs, is a separate and distinct violation of ORS 646.608(1)(c).

17 **COUNT IV**

18 96.

19 The State realleges and incorporates each and every allegation contained in the preceding  
20 paragraphs as set forth herein.

21 97.

22 Defendants have committed unlawful acts or practices in violation of the ORS  
23 646.608(1)(e), by willfully representing that their service contracts and additive contracts have  
24 characteristics, uses, or benefits that they do not have, including, but not limited to, representing  
25 that their purported extended warranty plans provides warranties as described in the preceding  
26 paragraphs. Each time Defendants misrepresented their service contracts' characteristics, uses,

1 or benefits, as described in this and preceding paragraphs, is a separate and distinct violation of  
2 ORS 646.608(1)(e).

3 **COUNT V**

4 98.

5 The State realleges and incorporates each and every allegation contained in the preceding  
6 paragraphs as set forth herein.

7 99.

8 Defendants have committed unlawful acts or practices in violation of the ORS  
9 646.608(1)(i), by willfully advertising real estate, goods or services with intent not to provide  
10 them as advertised. Each time Defendants advertised their service contracts with intent not to  
11 fully provide services, is a separate and distinct violation of ORS 646.608(1)(i).

12 **COUNT VI**

13 100.

14 The State realleges and incorporates each and every allegation contained in the preceding  
15 paragraphs as set forth herein.

16 101.

17 Defendants have committed unlawful acts or practices in violation of the ORS  
18 646.608(1)(m), by willfully soliciting potential customer by telephone as a seller without  
19 providing information required ORS 646.611. Each solicitation in violation of ORS 646.611(1),  
20 is a separate and distinct violation of ORS 646.608(1)(m).

21 **SECOND CLAIM FOR RELIEF**

22 **ORS 646.607**

23 **COUNT I**

24 102.

25 The State realleges and incorporates each and every allegation contained in the preceding  
26 paragraphs as set forth herein.

1 103.

2 Defendants have committed unfair or deceptive acts or practices in violation of the ORS  
3 646.607(1), by employing unconscionable tactics in connection with sale or disposition of real  
4 estate, goods, and services, as described in this and preceding paragraphs. Each employment of  
5 unconscionable tactics is a separate and distinct violation of ORS 646.607(1).

6 **COUNT II**

7 104.

8 The State realleges and incorporates each and every allegation contained in the preceding  
9 paragraphs as set forth herein.

10 105.

11 Defendants have committed unfair or deceptive acts or practices in violation of the ORS  
12 646.607(2), by accepting payments from consumers for service contracts and additive contracts,  
13 failing to refund all or any portion of the goods and/or services as promised, and upon request of  
14 the customer, failing to refund any money that was received from the customer that was not  
15 retained by defendants pursuant to any right, claim or defense asserted in good faith, as described  
16 in this and preceding paragraphs. Each failure to honor a customer-demanded refund pursuant to  
17 646.607(2) is a separate and distinct violation of ORS 646.607(2).

18 **THIRD CLAIM FOR RELIEF**

19 **TELEPHONE SOLICITATIONS**

20 **ORS 646.553**

21 **COUNT I**

22 106.

23 The State realleges and incorporates each and every allegation contained in the preceding  
24 paragraphs as set forth herein.

25 107.

26 Defendants willfully and unlawfully conducted business as a telephonic seller in Oregon

1 without having registered with the Department of Justice at least 10 days prior to the conduct of  
2 such business, as required to pursuant to ORS 646.551(D), as the seller was a person other than  
3 the actual seller, and 646.551(E), as the extended warranties for sale or rent were manufactured  
4 or supplied by a person other than the actual manufacturer or supplies. Each telephone call made  
5 by defendants is a separate and distinct violation of ORS 646.553(1).

6 **ORS 646.563**

7 **COUNT II**

8 108.

9 The State realleges and incorporates each and every allegation contained in the preceding  
10 paragraphs as set forth herein.

11 109.

12 Defendants willfully and unlawful called parties who had stated a desire not to be called  
13 again, and defendants made telephone solicitations by making subsequent telephone solicitations  
14 of the same parties at the same number, in violation of ORS 646.563. Each telephone call made  
15 by defendants is a separate and distinct violation of ORS 646.563.

16 **ORS 646.569**

17 **COUNT III**

18 The State realleges and incorporates each and every allegation contained in the preceding  
19 paragraphs as set forth herein.

20 110.

21 Defendants willfully and unlawful violated ORS 646.569(1) by engaging in telephone  
22 solicitations of parties included on a current list published by the administrator of the telephone  
23 solicitation program established under ORS 646.572 and 646.574, the Oregon Do Not Call  
24 Registry. Defendant's conduct is further prohibited by 47 U.S.C. 227 and 47 C.F.R.  
25 64.1200(c)(2). Each telephone call made by defendants is a separate and distinct violation of  
26 ORS 646.569(1).

1 **COUNT IV**

2 The State realleges and incorporates each and every allegation contained in the preceding  
3 paragraphs as set forth herein.

4 111.

5 Defendants willfully and unlawful violated ORS 646.569(2) by engaging in telephone  
6 solicitations of parties included on a current list maintained as part of the Federal Do Not Call  
7 Registry, designated under ORS 646.572. Defendant's conduct is further prohibited by 47  
8 U.S.C. 227 and 47 C.F.R. 64.1200(c)(2). Each telephone call made by defendants is a separate  
9 and distinct violation of ORS 646.569(2).

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff respectfully prays that this Court:

- 12 A) ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in  
13 Plaintiff's Complaint violates the Oregon Unlawful Trade Practices Act in the manner set  
14 forth in this Complaint.
- 15 B) ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in  
16 Plaintiff's Complaint violates ORS 646.569 in the manner set forth in the Complaint.
- 17 C) ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in  
18 Paragraphs 114, 117, 120, and 123-124 of Plaintiff's Complaint violates the Oregon  
19 Telephone Solicitation Sales Act. 646.551 et seq., in the manner set forth in the  
20 Complaint.
- 21 D) ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to ORS 646.636, enjoining  
22 Defendants under their own name or any other business name, their principals, officers,  
23 directors, agents, representatives, salespersons, employees, independent contractors,  
24 successors and assigns, and all persons acting on behalf of Defendants directly or  
25 indirectly, through any corporate or private device, partnerships or association, jointly  
26 and severally, from engaging in the acts or practices of which Plaintiff complains and

1 from further violating the Oregon Unlawful Trade Practices Act, 646.605 *et seq.*, ORS  
2 646.569 and Oregon's Telephone Solicitation Act, ORS 646.551 *et seq.*

3 E) ORDER Defendants, pursuant to ORS 646.636, to pay restitution to all consumers who  
4 suffered injury due to Defendants' unlawful acts or practices

5 F) ASSESS, FINE AND IMPOSE upon Defendants a civil penalty of Twenty-five  
6 Thousand Dollars (\$25,000.00) for each separate and appropriate violation described  
7 herein, pursuant to ORS 646.636.

8 G) ORDER Defendants, as a means of insuring compliance with this Court's Order and with  
9 the consumer protection laws of Oregon, to maintain in their possession and control for a  
10 period of five (5) years, and in a manner designed to secure the privacy of all consumers'  
11 personal information, all business records relating to Defendants' advertisement and  
12 marketing of motor vehicle extended service contracts and automobile additives with a  
13 limited product warranty.

14 H) ORDER Defendants to cooperate with the Oregon Attorney General or his representative  
15 by providing the Attorney General, upon his request and upon reasonable twenty-four  
16 (24) hour notice, copies of any and all records necessary to establish compliance with the  
17 law and any court order granted herein, or to permit the Oregon Attorney General or his  
18 representative to inspect and/or copy any and all such records.

19 I) GRANT the Oregon Attorney General his costs in bringing this action.

20 J) ORDER Defendants to pay all court costs.

21 K) ORDER Defendants to pay all reasonable attorney fees pursuant to 646.632(8).

22 /////

23 /////

24 /////

25 /////

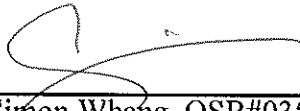
26 /////

1 L) GRANT such other relief as the Court deems to be just, equitable and appropriate.

2 Dated this 27<sup>th</sup> day of May, 2010.

3 Respectfully submitted,

4 JOHN KROGER  
5 Attorney General

6   
7 Simon Whang, OSB#035282  
8 Assistant Attorney General  
9 Oregon Department of Justice  
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