IN THE ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
CIRCUIT JUDGE DIVISION

STATE OF MISSOURI, ex rel.	)	
CHRIS KOSTER,	)	
Attorney General**, and**	)	
JOHN HUFF, Director of the Department of Insurance,	)	
Financial Institutions and Professional Registration	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 0811-CV02002
	)	
US FIDELIS, INC. f/k/a	)	
NATIONAL AUTO WARRANTY SERVICES, INC.,	)	
d/b/a DEALER SERVICES,	)	
	)	
DARAIN ATKINSON,	)	
	)	
and	)	
	)	
CORY ATKINSON,	)	
	)	
Defendants.	)	

SECOND AMENDED PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS, RESTITUTION, CIVIL PENALTIES, AND OTHER COURT ORDERS

The State of Missouri, by its Attorney General Chris Koster and its Director of the Department of Insurance, Financial Institutions and Professional Registration John Huff, and by and through Assistant Attorney General Andrew M. Hartnett and Special Assistant Attorney General Andy Heitmann, for its Second Amended Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties, and Other Court Orders, against Defendant US Fidelis, Inc. f/k/a National Auto Warranty Services, Inc., Darain Atkinson, and Cory Atkinson, states as follows:

PARTIES

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the

State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo 2009.[1]

2. John Huff is the duly qualified, appointed, and acting Director of the Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department") and brings this action in his official capacity pursuant to Chapters 374, 375 and 385, RSMo.

3. Defendant US Fidelis, Inc. f/k/a National Auto Warranty Services, Inc. ("US Fidelis") is a Missouri corporation that transacts business in St. Charles County and throughout Missouri. Upon information and belief, Defendant US Fidelis maintains an office at 100 Mall Parkway, Wentzville, MO 63385. US Fidelis did business under the name of National Auto Warranty Services, Inc. until January 22, 2009, when it changed its name. The company's registered agent is National Registered Agents, Inc., which may be served with process on its behalf at 300-B East High Street, Jefferson City, MO 65101.

4. Defendant Darain Atkinson is an individual and is the president, treasurer, director, and 50% shareholder of Defendant US Fidelis. Darain Atkinson also owns 50% of US Fidelis Administration Services, Inc., f/k/a US Fidelis Insurance Administration Services, Inc., f/k/a US Fidelis Insurance Company Administration Services, Inc. ("USFAS"), a Missouri corporation, that acted as an administrator and a provider of certain contracts sold by Defendants. Through other entities, Darain Atkinson owns and, through other entities, controls 50% of US Fidelis Insurance Company Risk Retention Group, Inc. ("USFICRRG"), a risk retention group formed under the laws of Montana, which insured the contracts issued by USFAS. Upon information and belief, Darain Atkinson also controls 50% of Crescent Manufacturing LLC, a

[1] All references are to Missouri Revised Statutes 2009 Cumulative Supplement, unless otherwise noted.

Missouri limited liability company, that acts as the obligor on certain contracts sold by Defendants. Upon information and belief, Darain Atkinson may be served at 100 Mall Parkway, Wentzville, MO 63385.

5. Defendant Cory Atkinson is an individual and is the vice-president, secretary, director, and 50% shareholder of Defendant US Fidelis. Cory Atkinson owns 50% of USFAS and, through other entities, controls 50% of USFICRRG. Upon information and belief, Cory Atkinson also controls 50% of Crescent Manufacturing LLC. Upon information and belief, Cory Atkinson may be served at 100 Mall Parkway, Wentzville, MO 63385.

6. Defendants have done and do business within the State of Missouri by advertising, marketing, offering for sale, and selling motor vehicle extended service contracts and motor vehicle additives with limited product warranties to Missouri residents and to out-of-state consumers from the State of Missouri. Defendant US Fidelis claims that it stopped selling these contracts in December 2009.[2] Defendant US Fidelis continues to provide customer service on the contracts it has sold that are active and to perform collections activities when consumers stop paying on their contracts.

7. Any acts of Defendants US Fidelis, Darain Atkinson, and Cory Atkinson alleged in this Second Amended Petition include the acts of these Defendants' employees, agents, or other representatives acting under these Defendants' direction, control, or authority.

8. Defendants Darain Atkinson and Cory Atkinson are being sued in their individual capacity as well in their capacity as officers and principals of Defendant US Fidelis. Plaintiff believes Defendants Darain Atkinson and Cory Atkinson directed (1) the design, establishment,

[2] Plaintiff continues to use the present tense throughout this Second Amended Petition because the acts alleged herein were ongoing at the time Plaintiff filed its Petition and First Amended Petition. Defendant US Fidelis' has announced that it stopped selling Contracts at the end of 2009.

and approval of the sales practices described in this Second Amended Petition; (2) the hiring and firing of sales personnel and other representatives of US Fidelis whom the Atkinsons directed to, and who did, carry out the sales practices described in this Second Amended Petition; (3) the establishment of the refund policies and practices affecting consumers seeking to cancel their purchases of the merchandise described in this Second Amended Petition; (4) the training, direction, and oversight of sales personnel and other representatives of US Fidelis; and (5) the establishment of contractual relationships by which Defendants sold vehicle additives with a limited product warranty and service contracts that failed to comply with the service contract law. Accordingly, Defendants Darain Atkinson and Cory Atkinson are liable for both those acts in which they personally participated as well as the acts of Defendant US Fidelis, its employees, and other agents because they controlled and/or directed these acts.

9. Defendants Darain Atkinson and Cory Atkinson are also being sued in their individual capacity as well in their capacity as officers and principals of USFAS because, upon information and belief, they controlled USFAS and created, approved, and implemented its strategy.

JURISDICTION

10. Jurisdiction is properly vested with this Court under Art. V, § 14 Mo. Const.

11. This Court has subject matter and personal jurisdiction over the Defendants under Art. V, § 14 Mo. Const.

12. This Court has authority over this action pursuant to § 407.100 of the Merchandising Practices Act, which allows the Attorney General to seek injunctive relief, restitution and penalties in circuit court for violations of § 407.020(1), and which provides:

> Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any method, act, use, practice or solicitation,

> or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

13. This Court also has authority over this action pursuant to § 374.048.1, which allows the Director to seek injunctive relief, restitution, penalties and other relief in circuit court against persons who violate or materially aid others in violating §§ 375.144, 375.310 and 385.200 to 385.220.

VENUE

14. Venue is proper in this Court pursuant to § 407.100.7, which provides that "[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business."

15. Venue is also proper in this Court pursuant to § 374.048.1, which provides that "the director may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the act, practice, omission, or course of business and to enforce compliance with the laws of this state relating to insurance or a rule adopted or order issued by the director."

16. Defendant US Fidelis has its principal place of business in St. Charles County, Missouri and all Defendants have engaged in the acts, practices, methods, uses, solicitations, and conduct described below that violate §§ 407.020, 407.1073, 407.1076, 375.014, 375.076, 375.144, 375.161, 375.310, 385.202, and 385.206 in and from St. Charles County, Missouri, among other places.

SUMMARY OF ALLEGATIONS

17. Defendants sold contracts in which a company promised to provide coverage against breakdown of some parts of consumers' automobiles in exchange for a fee.

18. Defendants used misleading and deceptive marketing to get consumers to call them and also made outbound calls, some of which violated the "No Call" laws, to sell contracts to consumers.

19. Once Defendants had consumers on the phone, they described the coverage provided by these contracts in glowing terms, suggesting that they offered bumper-to-bumper coverage, although that was not true.

20. Defendants also did not tell consumers that they were merely selling the contracts and that some other undisclosed company was the actual obligor.

21. Defendants also made it very difficult to cancel these contracts and frequently failed to pay consumers' the appropriate refund.

22. Many of these contracts were insurance contracts, which Defendants were not licensed to sell.

ALLEGATIONS OF FACT RELEVANT TO ALL COUNTS

23. Defendants advertise, offer to sell, and sell motor vehicle extended service contracts ("service contracts") and automobile additives with a limited product warranty ("additive contracts") to Missouri residents and to out-of-state consumers from the State of Missouri. When referring to the contracts Defendants sell without distinguishing between service contracts and additive contracts, Plaintiff uses "Contract" and "Contracts" throughout this Second Amended Petition.

24. Defendants engage in the advertising and sale of the Contracts on behalf of providers who are supposed to pay repairs covered under the Contracts. Defendants perform the advertising and sale of these Contracts under marketing agreements that they have entered into with the providers.

25. Defendants conduct most of their sales through inbound telemarketing calls in which consumers call Defendants' sales representatives after receiving direct-mail marketing from the Defendants, after consumers see Defendants' television advertisements, or after consumers view Defendant US Fidelis' website.

26. Defendants have also initiated sales efforts through the use of outbound telemarketing, including the use of an automatic dialing and announcing device ("ADAD").

27. During these telemarketing calls, when a consumer agrees to purchase a Contract, Defendants secure a down payment. Following receipt of this down payment Defendants usually cause to be mailed to the consumer the actual Contract, which is the first time consumers have the opportunity to see its actual terms.

28. Defendants have sold Contracts on behalf of providers and other obligors including, though not limited to, Ultimate Warranty Corp., Mercury Insurance Group, Royal Administration Services, Inc., Amtrust/Vemeco, Inc./Warrantech, Mechanical Breakdown Protection, Inc., American Guardian Warranty Services, Heritage Administration Services, Warranty America, LLC, Dealers Assurance, AmeriGard Advantage Corp, Administration Plus USA, Inc., Choice Manufacturing Company, Tier One Warranty, Consumer Direct Warranty Services, SafeData Management Services, Inc., and US Fidelis Administration Services, among others.

Defendants' Direct-Mail Marketing Practices

29. Defendants misrepresent that the Contracts it is offering for sale are extended warranty plans. Copies of some of Defendants' marketing materials are attached as Exhibit 1 and are incorporated herein by reference.

30. Defendants misrepresent that the purported extended warranty plans they are offering are affiliated with the automobile manufacturers or the motor vehicle dealership from which the consumers purchased their motor vehicles by noting the make and model of the consumer's car and urging the consumer to "extend your vehicle's original coverage." See Exhibit 1.

31. Defendants' direct mail advertising solicitations are often mailed under the name "Dealer Services" rather than the name US Fidelis in a further attempt to create the impression that the products it is selling are extended warranties offered by a dealer or manufacturer. See Exhibit 1.

32. Defendants' solicitations often reference the manufacturer of the consumer's vehicle, by adding "Toyota Notification," for example, which further misleads consumers into believing that Defendants are associated with the manufacturer of the consumers' vehicle.

33. Defendants' marketing materials fail to inform consumers that Defendants are neither affiliated with the dealers who sold the consumers their motor vehicles nor with the manufacturers of those vehicles.

34. Defendants' direct mail solicitations often assert that the offer is available for a limited time only, when the offer is actually available for a longer period of time.

35. Defendants' advertising materials often represent to consumers that Defendants' offers of extended warranty plans are the consumers' final chance to purchase such plans, when in fact the offer or a substantially similar offer will still be available in the future.

36. The short response period asserted in Defendants' solicitations and the representations that those offers are the consumers' final chance to purchase a purported extended warranty are designed to instill a sense of urgency in the consumers and are not related to the actual time during which the consumers are able to purchase Contracts for their motor vehicles from the Defendants or from others.

37. Defendants' direct mail solicitations often represent that the consumers' current auto warranties are either expired or about to expire.

38. Many consumers who receive Defendants' direct mail solicitations have auto warranties that are not expired or about to expire. However, Defendants' solicitation practices cause many consumers to believe that their motor vehicle warranties are expired or are about to expire, and this belief is a material factor in their decision to purchase a purported extended warranty from Defendants.

39. Defendants' marketing materials fail to inform consumers that Defendants are really offering to sell either a service contract or an additive contract and not an extended warranty.

40. Defendants' marketing materials fail to inform consumers that the Contracts they sell are administered and fulfilled by third parties so that the consumers' on-going relationship under the Contract will not be with the Defendants.

Defendants' Outbound Telemarketing Practices

41. Defendants and others acting on the Defendants' behalf, offer to sell service contracts and additive contracts to consumers through the use of pre-recorded telemarketing calls placed through the use of ADAD equipment, often referred to as "robo-calls."

42. Defendants and their agents have made upwards of one billion robo-calls nationwide. Defendants and their agents have made so many calls, and with such frequency, that consumers have been annoyed by and felt harassed by the repeated telemarketing calls from the Defendants and their agents. For example, consumers have reported:

a. calls six days a week, two to three times a day;

b. calls for two years;

c. calls on the consumers' cell and home phone up to five times a day; and

d. thirty calls within the span of five months.

43. Defendants' and their agents' pre-recorded telemarketing calls do not promptly and clearly identify that the call is being made on behalf of Defendant US Fidelis in order to make a sale to the consumer.

44. Defendants' and their agents' pre-recorded telemarketing calls purport to give consumers the option to speak with a sales representative, but consumers attempting to select this option for the purpose of asking to be placed on Defendants' internal no-call list have been disconnected or hung-up on by Defendants and their agents.

45. Alternatively, consumers have been told to call a different telephone number, whereupon the consumers have discovered that the telephone number is not in service.

46. Defendants' and their agents' pre-recorded telemarketing calls purport to give consumers the option to put themselves on the internal do-not-call list by pressing a certain

number, but pressing the appropriate number does not in fact put them on the internal do-not-call list.

47. These practices have interfered with the consumers' efforts to notify Defendants and their agents that they do not wish to receive solicitation calls by or on behalf of the Defendants.

48. Consumers have continued to receive telemarketing calls from Defendants and their agents after the consumers have asked not to be called again or to have their names placed on Defendants' and their agents' internal no-call list.

49. The above-described pre-recorded telemarketing calls were also made to Missouri consumers who had already registered their residential phone numbers with Missouri's No Call List ("No Call") at the time of the call.

50. The Missouri consumers who were registered with No Call continued to receive Defendants' telemarketing calls even after they advised Defendants or their agents that they were registered with No Call and that they wanted such calls stopped.

51. At least one such consumer was told that the Missouri No Call List did not apply to Defendants.

Defendants' Inbound Telemarketing Practices

52. Defendants also engage in "inbound" telemarketing whereby consumers called Defendants after receiving direct-mail marketing from them, after consumers have seen Defendants' television advertisements, or after consumers have viewed Defendant US Fidelis' website.

53. Defendants have used several tactics designed to cause consumers to believe that they were merely extending their motor vehicle's factory warranty:

a. Defendants' sales representatives answer the phone "Warranty Division";

b. Defendants' sales representatives refer to the Contracts as warranties;

c. Defendants' sales representatives tell consumers that Defendants' coverage is the same coverage that dealerships sell; and

d. Defendants' sales representatives tell consumers that dealers "give factory coverage, we do the extended warranty."

54. Defendants' sales representatives often tell the consumers they are requesting a manager's approval for something when they are either not requesting a manager's approval or when the approval is a foregone conclusion. For example, when a consumer calls beyond the 72-hour response deadline stated in the direct-mail solicitation, the sales representative often puts the customer on hold and asks his manager if he or she can still offer coverage to the consumer even though no approval is necessary to offer the coverage.

55. Defendants' sales representatives also sometimes request manager approval if the consumer's car has more than a certain number of miles, or they request permission to lower the price if the consumer says he or she cannot afford the Contract.

56. After putting the consumer on hold, and whether a manager was consulted or not, Defendants' sales representatives often tell consumers that the salesperson's manager has allowed him or her to make an exception for the consumer and to offer a better rate than the rate for which the consumer qualifies.

57. The rates being offered to consumers are not better than those for which the consumer qualifies.

58. Defendants often tell consumers that the offer being made was not an offer to the general public when in fact identical or nearly identical offers have been and are being made to consumers across the country.

59. Defendants tell consumers that if they call back later Defendants will be unable to make the same offer to them. Upon information and belief, the same or an even better offer is available to consumers if they call back.

60. Indeed, Defendants have established a special sales force to try to sell Contracts to consumers who call but do not purchase a Contract.

61. Defendants also often tell consumers they are getting a discount that does not in fact exist and that consumers are not in fact getting, such as a military discount, a fifteen-percent discount, or a discount for the elderly.

62. Defendants falsely represent to consumers that they are receiving "bumper-to-bumper" coverage, "gold" coverage, or coverage of "just about anything mechanical that can go wrong" with their motor vehicles.

63. Defendants also falsely assert that the coverage offers "security and peace of mind" for far less than a new car.

64. The representations made by Defendants' direct mail advertising solicitations and during the course of their telemarketing sales calls have caused and will continue to cause consumers to believe that the Contracts they are purchasing will provide comprehensive, top-quality coverage for their motor vehicle and will be easy to use; these representations are false.

65. Defendants have debited consumers' bank accounts and/or charged consumers' credit cards without the consumers' permission.

66. Defendants have told consumers that they will put the transaction on hold but have instead immediately processed the down payment.

67. Prior to closing the sale, Defendants fail to inform the consumers about the Contract's significant limitations of liability, about numerous exclusions from coverage, about substantial restrictions on cancellation, and about the conditions on obtaining a refund, as more fully set out below.

68. Defendants' advertising creates the false and misleading impression that Defendants will pay consumers' repairs costs. This impression is created by numerous statements and representations made by Defendants' sales representatives, by Defendants' direct mail solicitations and other advertising, and by Defendants' failure to meaningfully and adequately explain the actual relationship between Defendants and the providers.

69. Defendants do not disclose the risk that providers may be difficult to reach or communicate with, may become insolvent, or may fail to fulfill the contractual obligations of the service contract sold by Defendants and the resulting risk that consumers may not receive the benefits represented to them during Defendants' sales call or provided by the terms of the service contract.

Defendants' Service Contracts

70. Defendants offer for sale and sell service contracts. The parties to these contracts are the consumers, who are the purchasers, and the providers, who are to fulfill the service contracts by paying for any covered repairs.

71. Consumers who purchase a service contract will interact with an administrator, who processes and administers the claims procedure, among other things. The administrator may be the provider or may be an independent company.

72. Defendants fail to inform consumers of the identity of those providers or even that these providers, and not US Fidelis, are the ones who will be accepting or denying claims.

73. Defendants sell service contracts for providers who were not registered with the Director as required by § 385.202.2, RSMo. Some of these providers include, but are not limited to, USFAS, Mechanical Breakdown Protection, Inc., and Warranty America, LLC.

74. The contracts the Defendants sell are often not written in clear understandable language and do not conspicuously disclose all of the requirements as set forth by Missouri law.

75. Some of the contracts sold by the Defendants do not conspicuously state the name and address of the insurer.

76. Some of the contracts sold by Defendants do not indicate that if the obligor fails to pay or provide services on a claim the contract holder may make a claim directly against the insurer.

77. Many of the contracts sold by Defendants do not conspicuously identify the provider obligated to perform service under the contract, the seller of the contract, or the administrator of the contract.

78. Most of the contracts sold by Defendants fail to include the correct statutory free-look period in that they fail to inform the consumer that they may return the contract within twenty business days of the date it was mailed to them and receive a full refund.

79. Most of the contracts sold by Defendants fail to inform the consumer that if a refund is not made within 30 days of when a contract is returned under the free-look provision, a ten percent penalty per month shall be added to the refund.

80. Despite Defendants' representations about "bumper-to-bumper" coverage and "complete peace of mind," the service contracts they sell contain material restrictions and

exclusions that significantly limit the value and ease of use of the contract, including, among others, the following limitations or substantially similar limitations:

a. The service contracts sold by Defendants do not cover diagnostic costs.

b. The service contracts sold by Defendants limit the value of any repair to the actual cash value of the car at the time of the repair. This restriction is especially important to the many consumers who are purchasing Defendants' service contracts for the purpose of extending the life of older cars because such cars are more likely to have repairs that cost more than this liability limitation.

c. The service contracts sold by Defendants also limit the sum of the value of all repairs under the contract to the amount the consumer paid for the vehicle.

d. The service contracts sold by Defendants also do not cover the extent or scope of repairs that consumers understand them to cover at the time they purchase the service contracts.

81. Defendants fail to disclose these substantial limitations to consumers in their marketing and at the time of sale.

82. The service contracts Defendants sold usually contained an "Exclusions" section listing numerous components or services not covered by the service contract.

83. Defendants fail to inform consumers about these substantial exclusions and limitations in their marketing and at the time of sale.

84. These substantial exclusions and limitations are only disclosed as inconspicuous provisions among many other clauses in the service contract. The service contract is only sent to the consumer after he has purchased it and made a down payment.

85. Some consumers do not receive the service contract for weeks or months, and some never receive it at all.

86. These restrictions and limitations are contrary to the impressions and understandings formed by consumers as a result of Defendants' representations of "bumper-to-bumper" coverage, "peace of mind," and other assurances of complete coverage and ease of use made during the Defendants' telemarketing sales calls.

Defendants' Additive Contracts

87. Defendants have sold additive contracts issued by Consumer Direct Warranty Services ("CDWS"), SafeData Management Services Inc., The Choice Manufacturing Company Inc., Crescent Manufacturing LLC, USFAS, Tier One Warranty Services, LLC, and another company that issues an AutoLifeRX additive.

88. The CDWS additive contracts involved the shipment of a Vehicle Protection Kit. A sample CDWS contract is attached as Exhibit 2.

89. The CDWS contract notes that a Vehicle Protection Kit will be sent to the consumer, but does not describe what the kit contains and does not indicate that failure to install the products in the kit will result in coverage being denied. The CDWS website indicates that the additive in the Vehicle Protection Kit "is scientifically formulated to increase the performance and longevity of your vehicle. Installation instructions are included with the product additive. It is recommended that you install the product additive into your vehicle for the best protection."

90. Upon information and belief, consumers' claims were denied if they failed to install the products in the kit.

91. The CDWS contract provides the following coverage, subject to certain exclusions:

> **Engine and Water Pump:** The following components of gasoline or diesel engines: pistons, piston rings, piston pins, crankshaft and main bearings, connecting rods and rod bearings, camshaft and camshaft bearings, timing chain and timing gears, intake and exhaust valves, valve springs, oil pump, push rods, rocker arms, hydraulic lifters, rocker arm shafts and water pump. The engine block and cylinder heads are covered only if damaged by a Covered Component.
> **Transmission:** The following components of manual or automatic transmissions: torque converter, oil pump, governor, bands, drums, planetaries, sun gear and shell, sprag(s), shaft(s), bearings, shift rail, forks, and synchronizers.
> **Drive Axle Assembly:** Drive shaft, ring & pinion gears, pinion bearings, side carrier bearings, carrier assembly, axle & axle bearings (wheel hub bearings not included), universal & CV joints except if boot is damaged or missing. Drive axle housing is covered if damaged by a broken Covered Component.
> **4x4 Transfer Case:** All internal Components of the transfer case that require lubrication for operation.
> **Air Conditioner:** Compressor, condenser, evaporator, and orifice tube.
> **Electrical:** Alternator, voltage regulator, power window motor, heater fan, and starter motor. No other electrical components are covered by this product warranty.
> **Seals & Gaskets:** Seals and gaskets are replaced only as part of repair or replacement of the above Covered Components. Leaking gaskets or seals are not covered.

92. Defendants also have sold additive contracts under the AutoLifeRX brand. These contracts do not name the issuer.

93. These contracts avoid naming the issuer by saying things like "Call the Claims Administrator at 1-877-212-5246" and by offering a post office box address without a company name. A sample AutoLifeRX contract is attached as Exhibit 3.

94. The AutoLifeRX contract requires the consumer to place the additive in his or her car's radiator as a condition for coverage under the contract.

95. The AutoLifeRX contract provides the following coverage, subject to certain exclusions:

> ENGINE and WATER PUMP – All internally lubricated parts of engine, including pistons, piston rings, piston pins, crankshaft and main bearings, connecting rods and rod bearings, camshaft and camshaft bearings, timing chain and timing gears, intake and

exhaust valves, valve springs, oil pump, push rods, rocker arms, hydraulic lifters, rocker arm shafts and water pump. The Engine Block and Cylinder Heads are also covered if the above-listed parts caused a mechanical failure.
TRANSMISSION – Internally lubricated parts of manual or automatic transmissions, including torque converter case if damaged by the failure of an internally lubricated covered part, oil pump, drums, planetaries, sun gear and shell, shaft(s), bearings, shift rail, forks, and synchronizers.
TRANSFER CASE – up to $1500.00 towards the repair or replacement of internally lubricated parts.

96. The additive associated with the contracts issued by SafeData Management Services Inc. is called SafeChoice/CoolPoint. A sample CoolPoint contract is attached as Exhibit 4.

97. The SafeChoice contract requires the consumer to have a commercial lubrication service facility install the additive. Although the contract does not indicate where the additive is installed, the SafeChoice website, available at http://www.ultimatemotoring.net/safechoicewarranty.htm, describes CoolPoint as "a radiator additive that reduces Engine Temperature place the additive in his or her car's radiator. . . ."

98. The SafeChoice contract provides the following coverage, subject to certain exclusions:

Engine and Water Pump: The following parts of gasoline and diesel engines: pistons, piston rings, piston pins, crankshaft and main bearings, connecting rods and rod bearings, camshaft and camshaft bearings, timing chain and timing gears, intake and exhaust valves, valve springs, oil pump, push rods, rocker arms, hydraulic lifters, rocker arm shafts and recommended replacement intervals are not covered under this treatment program.
Transmission: The following parts of manual or automatic transmissions: torque converter, oil pump, governor, bands, drums, planetaries, sun gear and shell, sprag(s), shaft(s), bearings, shift rail, forks, and synchronizers, parts that are not listed are not covered.
4X4 Transfer Case: Internally lubricated parts of the 4X4 Transfer Case.
Seals & Gaskets: Seals and gaskets are replaced only as part of repair or replacement of the above covered components. Leaking gaskets or seals are not covered.

99. The additive associated with the additive contracts issued by The Choice Manufacturing Company Inc. is called CarGuard. A sample Choice contract is attached as Exhibit 5.

100. The Choice contract requires the consumer to properly install the additive as a condition of coverage under the contract. The contract also requires the consumer to request a new additive if the Choice is drained from the radiator.

101. The Choice contract provides the following coverage, subject to certain exclusions:

> ENGINE and WATER PUMP - All internally lubricated parts of engine, including pistons, piston rings, piston pins, crankshaft and main bearings, connecting rods and rod bearings, camshaft and camshaft bearings, timing chain and timing gears, intake and exhaust valves, valve springs, oil pump, push rods, rocker arms, hydraulic lifters, rocker arm shafts and water pump. The Engine Block and Cylinder Heads are also covered if the above-listed parts caused a mechanical failure.
>
> TRANSMISSION - Internally lubricated parts of manual or automatic transmissions, including torque converter case if damaged by the failure of an internally lubricated covered part, oil pump, drums, planetaries, sun gear and shell, shaft(s), bearings, shift rail, forks, and synchronizers.
>
> TRANSFER CASE - Repair or replacement of internally lubricated parts
>
> AIR CONDITIONER/ELECTRICAL - Up to $1,500 towards the repair or replacement of the AC compressor, AC condensor, AC evaporator, AC orifice tube, alternator, voltage regulator, power window motor, heater motor, heater fan, and starter motor.
>
> SEALS & GASKETS - Seals and Gaskets are replaced only as part of repair or replacement of the above covered components. Leaking gaskets or seals are not covered.

102. The additive associated with the contracts issued by Crescent Manufacturing LLC is called AutoLifeXtend. Crescent Manufacturing is owned by Defendants Darain Atkinson and Cory Atkinson. A sample Crescent Manufacturing contract is attached as Exhibit 6.

103. The Crescent contract requires the consumer to properly install the AutoLifeXtend additives as a condition of coverage under the contract.

104. The Crescent contract provides the following coverage, subject to certain exclusions:

> **ENGINE and WATER PUMP** – All internally lubricated parts of engine, including pistons, piston rings, piston pins, crankshaft and main bearings, connecting rods and rod bearings, camshaft and camshaft bearings, timing chain and timing gear, intake and exhaust valves, valve springs, oil pump, push rods, rocker arms, hydraulic lifters, rocker arm shafts and water pump. The engine block and cylinder heads are only covered if damaged by the failure of any of the above-listed parts.
> Turbocharger and Superchargers are covered with a surcharge, See Section 4.
> **TRANSMISSION** – Internally lubricated parts of manual or automatic transmissions, including torque converter case if damaged by the failure of an internally lubricated **Covered Part**, [sic] oil pump, drums, planetaries, sun gear and shell shaft(s), bearings, shift rail, forks, and synchronizers.
> **TRANSFER CASE** – All internally lubricated parts.
> **ELECTRICAL** – Starter Motor, alternator, voltage regulator, power window motors, heater fan, front and rear wiper motor.
> **AIR CONDITIONING** – Compressor Motor, condenser and evaporator, compressor clutch, coil. Pulley and hoses are not covered.

105. The additive contracts issued by USFAS includes an additive called Carmor. A sample Carmor contract is attached as Exhibit 7.

106. The Carmor contract requires the consumer to properly install the additives in the engine and transmission as a condition of coverage under the contract.

107. The Carmor contract provides the following coverage, subject to certain exclusions:

> ENGINE and WATER PUMP – All internally lubricated parts of engine, including pistons, piston rings, piston pins, crankshaft and main bearings, connecting rods and rod bearings, camshaft and camshaft bearings, timing chain and timing gears, intake and exhaust valves, valve springs, oil pump, push rods, rocker arms, hydraulic lifters, rocker arm shafts and water pump. The Engine Block and Cylinder Heads are also covered if the above-listed parts caused a mechanical failure.
> TRANSMISSION – Internally lubricated parts of manual or automatic transmissions, including torque converter case if damaged by the failure of an internally lubricated covered part, oil pump, drums, planetaries, sun gear and shell, shaft(s), bearings, shift rail, forks, and synchronizers.
> TRANSFER CASE – up to $1500.00 towards the repair or replacement of internally lubricated parts.

108. Defendants also have sold Carmor additive contracts issued by Tier One Warranty Services, LLC. A sample of the Tier One Carmor contract is attached as Exhibit 8.

109. The Tier One contract requires the consumer to properly install the additive as a condition of coverage under the contract.

110. The Tier One contract provides the following coverage, subject to certain exclusions:

> **ENGINE and WATER PUMP** – All internally lubricated parts of engine, including pistons, piston rings, piston pins, crankshaft and main bearings, connecting rods and rod bearings, camshaft and camshaft bearings, timing chain and timing gears, intake and exhaust valves, valve springs, oil pump, push rods, rocker arms, hydraulic lifters, rocker arm shafts and water pump. The engine block and cylinder heads are only covered if damaged by the failure of any of the above-listed parts. Turbocharger and Superchargers are covered with a surcharge, See Section 4.
> **TRANSMISSION** – Internally lubricated parts of manual or automatic transmissions, including torque converter case if damaged by the failure of an internally lubricated **Covered Part**, [sic] oil pump, drums, planetaries, sun gear and shell, shaft(s), bearings, shift rail, forks, and synchronizers.
> **TRANSFER CASE** – All internally lubricated parts.
> **ELECTRICAL** – Starter Motor, alternator, voltage regulator, power window motors, heater fan and front and rear wiper motor.
> **AIR CONDITIONING** – Compressor Motor, condenser and evaporator, compressor clutch, coil. Pulley and hoses are not covered.

111. At no time did consumers of any of the above-named companies offer to purchase an additive from the above-named companies.

112. Defendants did not tell consumers that they were purchasing an additive that had to be installed in the car in order to qualify for coverage.

113. Defendants did not mention that installation of the additive in the car would void most other warranties.

114. Defendants did not mention that a consumer's rights under an additive contract, particularly in regards to coverage and cancellation, were dramatically different than under a service contract.

115. Defendants did not tell consumers that since the additive contracts only cover certain internally lubricated parts, determining if a problem is covered could incur major diagnostic costs not covered by the contract.

116. Defendants simply described the additive as if it were an extended warranty or service contract despite major differences.

117. Indeed, consumers were often unaware that an additive had been sold to them until they received it in the mail.

118. The delivery of the additive often either surprised the consumers or the consumers believed it was a bonus or gift in the purchase of the contract.

119. After creating the mistaken impressions regarding a connection with the manufacturer or dealer and regarding what repairs the product will cover, Defendants fail to explain to consumers:

a. that they are buying neither a warranty nor a service contract;

b. that the product warranty will only cover up to certain amounts for repairs and only to certain parts;

c. that if the part is covered, coverage is limited to the car's trade-in value;

d. that, since the additive contracts only cover certain internal repairs of the engine and transmission, merely diagnosing the problem will incur costs that the contract does not cover;

e. that the policy cannot be cancelled as soon as the additive has been used, if cancellation is available at all; and

f. that no coverage is available under the additive contract if the additive has not been used.

Defendants' Substitution of Contracts

120. Over the time period covered by this lawsuit, the Contracts sold by Defendants and the providers on whose behalf they sell Contracts have changed.

121. In order to determine which Contract to sell a consumer, Defendants' sales representatives input certain information about the car, including make, model, state of residence, and mileage, at which point a software program Defendants have designed displays the Contracts for which the consumer qualifies.

122. The software Defendants designed has often allowed Defendants' sales representatives to sell Contracts to consumers when those consumers do not qualify for the Contract.

123. Consumers may not qualify for a certain Contract because their mileage is too high or because the provider offering that Contract is not licensed to provide contracts in the consumers' state, among other reasons.

124. Defendants often realized that they had sold a Contract that a provider would not accept before sending the Contract to the provider.

125. Defendants instructed their employees to change the Contract to a different Contract for which the consumer did qualify and expressly instructed their employees not to tell consumers about this switch.

126. Defendants' employees did change the Contract and did fail to notify the consumers.

127. Changing a consumer's Contract often results in the consumer getting less coverage than the Contract sold to him or her.

Defendants' Refund Practices

128. During their sales calls, Defendants' sales representatives sometimes inform consumers that they can obtain full refunds of the purchase price of the Contract within thirty days of purchase and a pro rata refund thereafter.

129. When consumers ask if they can see the Contract ahead of time, Defendants tell them that they cannot send it out, but reassure the consumers that they can cancel the Contract during the first thirty days and receive a full refund.

130. Defendants do not disclose the difficulty consumers face canceling the Contract.

131. Defendants make it difficult for consumers to cancel Contracts by not accepting certified letters from consumers, which contain the consumers' written requests for cancellation, and by hanging up on consumers who call Defendants to attempt to cancel, among other things.

132. Defendants also have two divisions to which a consumer must speak before he or she can cancel the Contract.

133. First, a consumer reaches the "saves" department, which attempts to convince the consumer not to cancel the Contract.

134. Defendants' employees within the saves department were trained to convince the consumer to keep the contract.

135. Such strategies usually involved frightening consumers with tales of painfully high repair costs compared to the relatively moderate monthly payments in the contract and of "painting a picture" for a mother of being stranded on the highway with no roadside assistance.

136. Defendants' employees in the saves department would frequently use many such arguments until a consumer was either irate or was convinced to keep the contract.

137. Only after the consumer has managed to be transferred from the saves department can he or she speak to someone who can actually cancel the Contract.

138. Even when consumers succeed in canceling an additive contract, Defendants refuse to refund any money if the additive was put into the car.

139. Even when consumers succeed in canceling a service contract or an additive contract before using the additive, Defendants frequently refund less than is owed to the consumer or provide no refund whatsoever.

140. Defendants have instructed their employees not to give refunds to consumers unless the consumers have called repeatedly or have actually hired an attorney.

141. Defendants have at times paid only sixty percent of the refund due the consumer, keeping the other forty percent for themselves.

142. Defendants have also deducted a fee from the refund, which they have called a "processing fee," even though this fee is neither authorized by the Contract nor disclosed to the consumers at the time of sale.

THE MISSOURI MERCHANDISING PRACTICES ACT

143. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

> 1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice…. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

144. Section 407.010(4) defines "Merchandise" as "any objects, wares, goods, commodities, intangibles, real estate, or services."

145. Defendants have advertised, marketed, and sold merchandise within the meaning of § 407.010.

146. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in §§ 407.010 to 407.145 of the Merchandising Practices Act. Said Rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to the Merchandising Practices Act allegations herein include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

MISSOURI TELEMARKETING PRACTICES LAW

147. Section 407.1073.1 requires that a telemarketer promptly make the following disclosures, among others:

> (1) That the purpose of the telephone call is to make a sale;
>
> (2) The telemarketer's identifiable name and the seller on whose behalf the solicitation is being made;
>
> (3) The nature of the merchandise or investment opportunity being sold; [and]
>
> …
>
> (5) If the telephone call is made by any recorded, computer-generated, electronically generated or other voice communication of any kind. When engaged in telemarketing, such voice communication shall, promptly at the beginning of the telephone call, inform the consumer that the call is being made by a recorded, computer-generated, electronically generated or other type of voice communication, as the case may be.

148. Section 407.1073.2 requires that a telemarketer make the following disclosures, among others, before a consumer pays for the merchandise:

> (1) The seller or telemarketer's identifiable name and the address or telephone number where the seller or telemarketer can be reached;
>
> . . .

(3) Any material restriction, limitation or condition to purchase, receive or use the merchandise that is the subject of a telemarketing sales call;

(4) Any material aspect of the nature or terms of the refund, cancellation, exchange or repurchase policies, including the absence of such policies[.]

149. Section 407.1073.4 requires that a telemarketer "not misrepresent any material aspect of the performance, quality, efficacy, nature or basic characteristics of merchandise that is the subject of a telemarketing sales call."

150. Section 407.1076 prohibits both sellers and telemarketers from engaging in the following conduct, among other prohibitions:

(1) Misrepresent[ing] any material fact required pursuant to section 407.1073…;

(2) Threaten[ing], intimidate[ing] or us[ing] profane or obscene language;

(3) Caus[ing] the telephone to ring or engage any consumer in telephone conversation repeatedly or continuously in a manner a reasonable consumer would deem to be annoying, abusive or harassing; [and]

(4) Knowingly and willfully initiat[ing] a telemarketing call to a consumer, or transfer[ring] or mak[ing] available to others for telemarketing purposes a consumer's telephone number when that consumer has stated previously that he or she does not wish to receive solicitation calls by or on behalf of the seller unless such request has been rescinded[.]

151. Pursuant to § 407.1082, violations of §§ 407.1073 and 407.1076 are prohibited by § 407.020.

152. Section 407.1070(11) defines a seller as "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide merchandise to the consumer in exchange for consideration."

153. Section 407.1070(12) defines a telemarketer as:

[A]ny person, or any recorded, computer-generated, electronically generated or other voice communication of any kind, who, in connection with telemarketing,

initiates or receives telephone calls to or from a consumer. A telemarketer includes, but is not limited to, any such person that is an owner, operator, officer, director or partner to the management activities of a business[.]

MISSOURI NO CALL LAW

154. Section 407.1098 provides, in pertinent part:

No person or entity shall make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the attorney general, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's objection to receiving telephone solicitations.

155. Section 407.1104 provides:

1. Any person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this state shall, at the beginning of such call, state clearly the identity of the person or entity initiating the call.

156. A "telephone solicitation" is defined as "any voice communication over a telephone line from a live operator, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services...." § 407.1095(3).

157. ADAD equipment, also known as an "automatic dialing and announcing device," is "any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purposes of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed." 15 CSR 60-13.010(2)(A) (2001)[3].

[3] The Attorney General is statutorily empowered to promulgate rules and regulations governing the establishment of the No-Call database as he deems necessary and appropriate to fully implement the provisions of §§ 407.1095 to 407.1110. § 407.1101.2.

MOTOR VEHICLE EXTENDED SERVICE CONTRACT LAW

158. Missouri first enacted motor vehicle service contract statutes in 2006, and these statutes came into effect on January 1, 2007 and were codified in Chapter 407. Later in 2007, those statutes were revised and codified in 2008.

159. With regard to acts alleged herein to have occurred between January 1, 2007, to December 31, 2007, the statutes applicable to such action are §§ 407.1200 to 407.1227, RSMo. (Supp. 2007).

160. With regard to acts alleged herein to have occurred on or after January 1, 2008, the statutes applicable to such action are §§ 385.200 to 385.220, RSMo (Supp. 2008).

161. "Administrator" was defined by § 407.1200(1) as "the person who is responsible for the administration of the service contracts plan and who is responsible for any filings required by sections 407.1200 to 407.1227[.]"

162. "Motor vehicle extended service contract" or "service contract" is defined in § 407.1200(7) as:

> [A] contract or agreement for a separately stated consideration or for a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements[.]

163. "Person" is defined by § 407.1200(9) as "an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert[.]"

164. "Provider" is defined by § 407.1200(11) as "a person who administers, issues, makes, provides, sells, or offers to sell a motor vehicle extended service contract, or who is

contractually obligated to provide service under a motor vehicle extended service contract such as sellers, administrators, and other intermediaries[.]"

165. Section 407.1203.1 provided that "[s]ervice contracts shall not be issued, sold, or offered for sale in this state unless the administrator or its designee has:

> (a) Provided a receipt for the purchase of the service contract to the contract holder at the date of purchase;
>
> (b) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and
>
> (c) Complied with the provisions of sections 407.1200 to 407.1227.

166. Section 407.1203.2 provided that "[a]ll administrators of service contracts sold in this state shall file a registration with the director on a form, at a fee and at a frequency prescribed by the director."

167. Section 407.1203.3 provided that "[i]n order to assure the faithful performance of a provider's obligations to its contract holders, each provider who is contractually obligated to provide service under a service contract shall:

> (1) Insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state; or
>
> (2) (a) Maintain a funded reserve account for its obligation under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the director; and
>
> (b) Place in trust with the director a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:
>
> a. A surety bond issued by an authorized surety;
>
> b. Securities of the type eligible for deposit by authorized insurers in this state;

c. Cash;

d. A letter of credit issued by a qualified financial institution; or

e. Another form of security prescribed by regulations issued by the director; or

(3) (a) Maintain a net worth of one hundred million dollars; and

(b) Upon request, provide the director with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least one hundred million dollars. If the provider's parent company's Form 10-K or audited financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to service contracts sold by the provider in this state.

168. Section 407.1203.5 provided that "[e]xcept for the registration requirement in subsection 2 of this section, persons marketing, selling, or offering to sell service contracts for providers that comply with sections 407.1200 to 407.1227 are exempt from this state's licensing requirements."

169. Section 407.1203.6 provided that "[p]roviders complying with the provisions of sections 407.1200 to 407.1227 are not required to comply with other provisions of chapter 374 or 375, or any other provisions governing insurance companies, except as specifically provided."

170. Section 407.1209 provided:

1. Service contracts issued, sold, or offered for sale in this state shall be written in clear, understandable language and the entire contract shall be printed or typed in easy to read ten-point type or larger and conspicuously disclose the requirements in this section, as applicable.

2. Service contracts insured under a reimbursement insurance policy pursuant to subsection 3 of section 407.1203 shall contain a statement in substantially the following form: "Obligations of the provider under this service

contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide ser-vice on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company.". A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the insurer.

3. Service contracts not insured under a reimbursement insurance policy pursuant to subsection 3 of section 407.1203 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy.". A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the provider.

4. Service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

5. Service contracts shall conspicuously state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

6. If prior approval of repair work is required, the service contracts shall conspicuously state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

7. Service contracts shall conspicuously state the existence of any deductible amount.

8. Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, and exclusions.

9. Service contracts shall state the conditions upon which the use of non-original manufacturer's parts, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.

10. Service contracts shall state any terms, restrictions, or conditions governing the transferability of the service contract.

11. Service contracts shall state the terms, restrictions, or conditions

> governing termination of the service contract by the service contract holder. The provider of the service contract shall mail a written notice to the contract holder within fifteen days of the date of termination.
>
> 12. Service contracts shall require every provider to permit the service contract holder to return the contract within at least twenty business days of the date of mailing of the service contract or within at least ten days if the service contract is delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract, the contract is void and the provider shall refund to the contract holder the full purchase price of the contract. A ten percent penalty per month shall be added to a refund that is not paid within thirty days of return of the contract to the provider. The applicable free-look time periods on service contracts shall only apply to the original service contract purchaser.
>
> 13. Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and the requirement for certain service and maintenance.
>
> 14. Service contracts shall clearly state whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

171. Section 407.1224.7 provided that "[t]he director may bring an action in the circuit court of Cole County for an injunction or other appropriate relief to enjoin threatened or existing violations of sections 407.1200 to 407.1227 or of the director's orders or regulations. An action filed pursuant to this section may also seek restitution on behalf of persons aggrieved by a violation of sections 407.1200 to 407.1227 or orders or regulations of the director."

172. Section 407.1224.6 provided that "[a] person in violation of sections 407.1200 to 407.1227 or orders or regulations of the director may be assessed a civil penalty not to exceed one thousand dollars per violation."

173. "Administrator" is defined by § 385.200(1) as "the person other than a provider who is responsible for the administration of the service contracts or the service contracts plan or for any filings required by sections 385.200 to 385.220[.]"

174. "Consumer" is defined by § 385.200(2) as "a natural person who buys other than

for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes[.]"

175. "Motor vehicle extended service contract" or "service contract" is defined in § 385.200(8) as:

> [A] contract or agreement for a separately stated consideration and for a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements[.]

176. "Person" is defined by § 385.200(10) as "an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert[.]"

177. "Provider" is defined by § 385.200(12) as "a person who is contractually obligated to the service contract holder under the terms of a motor vehicle extended service contract[.]"

178. "Service contract holder" or "contract holder" is defined by § 385.200(15) as "a person who is the purchaser or holder of a motor vehicle extended service contract[.]"

179. "Warranty" is defined by § 385.200(16) as:

> [A] warranty made solely by the manufacturer, importer, or seller of property or services without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services[.]

180. Section 385.202 provides in pertinent part that

1. Motor vehicle extended service contracts shall not be issued, sold, or offered for sale in this state unless the provider or its designee has:

(1) Provided a receipt for the purchase of the motor vehicle extended service contract to the contract holder at the date of purchase;

(2) Provided a copy of the motor vehicle extended service contract to the service contract holder within a reasonable period of time from the date of purchase; and

(3) Complied with the provisions of sections 385.200 to 385.220.

2. All providers of motor vehicle extended service contracts sold in this state shall file a registration with the director on a form, at a fee and at a frequency prescribed by the director.

3. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider who is contractually obligated to provide service under a motor vehicle extended service contract shall:

(1) Insure all motor vehicle extended service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state; or

(2) (a) Maintain a funded reserve account for its obligation under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent of gross consideration received, less claims paid, on the sale of the motor vehicle extended service contract for all in-force contracts. The reserve account shall be subject to examination and review by the director; and

(b) Place in trust with the director a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the motor vehicle extended service contract for all motor vehicle extended service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:

a. A surety bond issued by an authorized surety;

b. Securities of the type eligible for deposit by authorized insurers in this state;

c. Cash;

d. A letter of credit issued by a qualified financial institution; or

e. Another form of security prescribed by regulations issued by the director; or

(3) (a) Maintain a net worth of one hundred million dollars; and

(b) Upon request, provide the director with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least one hundred million dollars. If the provider's parent company's Form 10-K or audited financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to motor vehicle extended service contracts sold by the provider in this state.

…

5. Except for the registration requirement in subsection 2 of this section, persons marketing, selling, or offering to sell motor vehicle extended service contracts for providers that comply with sections 385.200 to 385.220 are exempt from this state's licensing requirements.

6. Providers complying with the provisions of sections 385.200 to 385.220 are not required to comply with other provisions of chapter 374 or 375, RSMo, or any other provisions governing insurance companies, except as specifically provided.

181. Section 385.206 of the Motor Vehicle Extended Service Contract Law provides in pertinent part:

1. No person shall directly sell, offer for sale, or solicit the sale of a motor vehicle extended service contract to a consumer, other than the following:

…

(5) An administrator, provider, manufacturer, or person working in concert with an administrator, provider, or manufacturer marketing or selling a motor vehicle extended service contract demonstrating financial responsibility as set forth in section 385.202.

…

3. Motor vehicle extended service contracts issued, sold, or offered for sale in this state shall be written in clear, understandable language, and the entire contract shall be printed or typed in easy-to-read type and conspicuously disclose the requirements in this section, as applicable.

4. Motor vehicle extended service contracts insured under a reimbursement insurance policy under subsection 3 of section 385.202 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract

reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." A claim against the provider also shall include a claim for return of the unearned provider fee. The motor vehicle extended service contract also shall state conspicuously the name and address of the insurer.

5. Motor vehicle extended service contracts not insured under a reimbursement insurance policy pursuant to subsection 3 of section 385.202 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy." A claim against the provider also shall include a claim for return of the unearned provider fee. The motor vehicle extended service contract also shall state conspicuously the name and address of the provider.

6. Motor vehicle extended service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the motor vehicle extended service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

7. Motor vehicle extended service contracts shall state conspicuously the total purchase price and the terms under which the motor vehicle extended service contract is sold. The purchase price is not required to be preprinted on the motor vehicle extended service contract and may be negotiated at the time of sale with the service contract holder.

8. If prior approval of repair work is required, the motor vehicle extended service contracts shall state conspicuously the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

9. Motor vehicle extended service contracts shall state conspicuously the existence of any deductible amount.

10. Motor vehicle extended service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, and exclusions.

11. Motor vehicle extended service contracts shall state the conditions upon which the use of nonoriginal manufacturer's parts, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.

12. Motor vehicle extended service contracts shall state any terms, restrictions, or conditions governing the transferability of the motor vehicle extended service contract.

13. Motor vehicle extended service contracts shall state the terms, restrictions, or conditions governing termination of the service contract by the service contract holder. The provider of the motor vehicle extended service contract shall mail a written notice to the contract holder within fifteen days of the date of termination.

14. Motor vehicle extended service contracts shall require every provider to permit the service contract holder to return the contract within at least twenty business days of mailing date of the motor vehicle extended service contract or within at least ten days if the service contract is delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract, the contract is void and the provider shall refund to the contract holder the full purchase price of the contract. A ten percent penalty per month shall be added to a refund that is not paid within thirty days of return of the contract to the provider. The applicable free-look time periods on service contracts shall apply only to the original service contract purchaser.

15. Motor vehicle extended service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and the requirement for certain service and maintenance.

16. Motor vehicle extended service contracts shall state clearly whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

INSURANCE LAW

182. Section 375.144 of Missouri's insurance laws provides in pertinent part that "[i]t is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:"

(1) Employ any deception, device, scheme, or artifice to defraud;

(2) As to any material fact, make or use any misrepresentation, concealment, or suppression;

(3) Engage in any pattern or practice of making any false statement of material fact; or

(4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

183. Section 375.310 of Missouri's insurance laws provides in pertinent part:

1. It is unlawful for any person, association of individuals, or any corporation to transact in this state any insurance business unless the person, association, or corporation is duly authorized by the director under a certificate of authority or appropriate licensure, or is an insurance company exempt from certification under section 375.786.

…

3. If the director believes that a person has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of this section or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo.

184. Section 374.048 of Missouri's insurance laws provides in pertinent part:

1. If the director believes that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has or is engaging in an act, practice, omission, or course of business that materially aids a violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the act, practice, omission, or course of business and to enforce compliance with the laws of this state relating to insurance or a rule adopted or order issued by the director.

2. In an action under this section and on a proper showing, the court may:

(1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) Order other appropriate or ancillary relief, which may include:

(a) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, which may be the director, for the defendant or the defendant's assets;

(b) Ordering the director to take charge and control of a defendant's property, including accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(c) Imposing a civil penalty or forfeiture as provided in section

374.049;

(d) Upon showing financial loss, injury, or harm to identifiable consumers, imposing an order of restitution or disgorgement directed to a person who has engaged in an act, practice, omission, or course of business in violation of the laws or rules relating to insurance;

(e) Ordering the payment of prejudgment and post-judgment interest;

(f) Ordering reasonable costs of investigation and prosecution; and

(g) Ordering the payment to the insurance dedicated fund an additional amount equal to ten percent of the total restitution or disgorgement ordered, or such other amount as awarded by the court, which shall be appropriated to an insurance consumer education program administered by the director; or

(3) Order such other relief as the court considers necessary or appropriate.

COUNT I

Unfair and Deceptive Practices § 407.020

185. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

186. Defendants have violated § 407.020 in connection with the advertisement, offer, and sale of motor vehicle service contracts and additive contracts to consumers nationwide by:

a. Using deception by misleading consumers into believing that they are purchasing extended warranties on their motor vehicles by previously using the word "Warranties" in Defendants' name, by using the terms "extended warranty" and "warranty" in marketing materials and phone calls, and by urging consumers to "extend your coverage" when in fact, US Fidelis is only selling a service contract or an additive contract;

b. Using deception by misleading consumers into believing that they will be

unable to purchase extended coverage for their vehicles at a later time if they refuse to purchase such coverage from US Fidelis;

c. Using deception by misleading consumers into believing Defendants are associated with the dealer or dealership of the consumers' vehicle by using the name "Dealer Services" in Defendant US Fidelis' marketing materials;

d. Concealing, suppressing, and omitting the material fact that US Fidelis is not affiliated with the dealer who sold the consumer their motor vehicles;

e. Concealing, suppressing, and omitting the material fact that US Fidelis is not affiliated with the manufacturer who produced the consumer's motor vehicles;

f. Concealing, suppressing, and omitting the material fact that US Fidelis is selling service contracts and additive contracts on behalf of other companies;

g. Using deception and misrepresenting that consumers' auto warranties are expired or about to expire when Defendants are without sufficient information to actually know, and in fact, many of the manufacturer warranties remain effective for a significant time;

h. Using deception and misrepresenting that consumer auto warranties are expired or about to expire when Defendants are without sufficient information to actually know, and in fact, many of the manufacturer warranties had expired a long time ago, or the consumer never had an auto warranty;

i. Using deception and misrepresenting that consumers are receiving a discount that they are not in fact receiving;

j. Using deception and misrepresenting that the salesperson requires special approval from a manager even to make an offer to the consumer;

k. Using deception and misrepresenting that the salesperson requires special approval from a manager to make a specific offer to the consumer and misrepresenting that this offer is better than the offer for which the consumer qualifies;

l. Engaging in the unfair practice of continuing to make telemarketing calls to consumers after they have requested that their names be included on Defendant's internal do not call list;

m. Engaging in the unfair practice of pressuring consumers into immediately purchasing Contracts by misrepresenting that they will never again have the opportunity to purchase an extended warranty from Defendant US Fidelis;

n. Engaging in the unfair practice of making it very difficult to cancel a Contract by hanging up on consumers who want to cancel, by transferring consumers to disconnected numbers when they want to cancel, and by transferring consumers to multiple representatives before allowing them to cancel;

o. Concealing, suppressing, and omitting prior to closing the sale with consumers material facts about the service contract, including limitations of liability, exclusions from coverage, restrictions on cancellation, and conditions on obtaining refunds;

p. Concealing, suppressing, and omitting prior to closing the sale with consumers material facts about the additive contract, including limitations of liability, exclusions from coverage, restrictions on cancellation, and conditions on obtaining refunds;

q. Engaging in the unfair practice of seeking to form a contract with consumers without confirming consumer understanding and agreement on material terms,

including limitations of liability, exclusions from coverage, restrictions on cancellation, and conditions on obtaining refunds;

r. Engaging in the unfair and deceptive practice of making a bait offer, in that Defendants have made alluring but insincere offers to sell auto warranties, which the Defendants did not intend to sell at all;

s. Engaging in the unfair and deceptive practice of employing a bait and switch scheme, in that Defendants have made alluring but insincere offers to sell auto warranties, which the Defendants did not intend to sell because they intended to switch the consumers to buying a service contract or an additive contract;

t. Engaging in the unfair practice of making unauthorized transactions by debiting consumers' bank accounts or charging consumers' credit card accounts without their permission;

u. Engaging in the unfair practice of making unauthorized transactions by debiting consumers' bank accounts or charging consumers' credit card accounts when they have told the consumer they will put the transaction on hold pending the consumers' later approval;

v. Engaging in the unfair and deceptive practice of changing consumers' Contracts without notifying them and without giving them an opportunity to decline the change and to receive a refund;

w. Engaging in the unfair practice of selling a service contract that has minimal value because it contains numerous exclusions, limitations, and conditions, because providers routinely fail to effectuate prompt, fair, or equitable settlement of claims when liability is reasonably clear, and because providers deny claims for the cost

of repairs without a reasonable investigation;

x. Engaging in the unfair practice of selling an additive contract that has minimal value because it contains numerous exclusions, limitations, and conditions, because providers routinely fail to effectuate prompt, fair, or equitable settlement of claims when liability is reasonably clear, and because providers deny claims for the cost of repairs without a reasonable investigation;

y. Misrepresenting to consumers that the "auto warranty" was cancelable at any time and any funds paid were refundable;

z. Engaging in the unfair practice of refusing to cancel consumers' Contracts when they try to cancel their Contracts;

aa. Engaging in the unfair practice of not refunding consumers' funds at all when they try to cancel their Contracts;

bb. Engaging in the unfair practice of not refunding the full amount due to consumers, but only providing consumers with a partial refund; and

cc. Engaging in the unfair practice of delaying the mailing of service contracts to many of the consumers for at least 21 days after closing the sale and in some cases failing to mail the service contract to consumers at all.

187. The unfair practices engaged in by defendant have presented a risk of, and/or have caused, substantial injury to consumers.

COUNT II

Telemarketing Deception in the Sale of Contracts § 407.1073

188. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

189. Defendants have violated § 407.1073 in connection with the advertisement, offer, and sale of motor vehicle service contracts and additive contracts to consumers nationwide by:

a. Committing the series of misrepresentations, deceptions, and omissions of material fact detailed in Count I;

b. Failing to promptly disclose to consumers during outbound telemarketing calls that the purpose of the phone call is to make a sale;

c. Failing to promptly disclose to consumers during outbound telemarketing calls that the call is made on behalf of Defendant US Fidelis;

d. Failing to promptly disclose to consumers during outbound telemarketing calls that the call involves a recorded voice communication; and

e. Failing to disclose to consumers that once they put the additive in their car, the consumers would be unable to cancel the additive contract.

COUNT III
Telemarketing Abuse in the Sale of Contracts § 407.1076

190. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

191. Defendants have violated § 407.1076 in connection with the advertisement, offer, and sale of motor vehicle service contracts and additive contracts to consumers nationwide by:

a. Committing the series of misrepresentations, deceptions, and omissions of material fact detailed in Count I;

b. Deceiving consumers into believing that they could block future telemarketing calls by calling a specified phone number and requesting to have their names placed on Defendants' internal no-call list, when in fact the number they were given was disconnected;

c. Continuing to make telemarketing calls to consumers after they requested to have their names included on Defendants' internal no-call list;

d. Engaging in the unfair practice of hanging up on consumers when they asked to be placed on Defendants' internal no-call list;

e. Engaging in the unfair practice of making an unconscionable number of calls to the same consumer to pressure and intimidate him or her into purchasing a Contract;

f. Calling Missouri residents who were previously registered with Missouri's No Call list after they asked the Defendants to stop making such calls; and

g. Misrepresenting to Missouri residents who informed Defendants that they were on Missouri's No Call List that the Defendants could continue to call the Missouri residents because the Missouri No Call list did not apply to the Defendants, when in fact said list did apply to the Defendants.

192. The unfair practices engaged in by Defendants have presented a risk of, and/or have caused, substantial injury to consumers.

COUNT IV
No-Call Violations §§ 407.1098 and 407.1104

193. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

194. Defendants have violated §§ 407.1098 and 407.1104 in connection with the advertisement, offer, and sale of motor vehicle service contracts and additive contracts to consumers nationwide by:

a. Making, directly or through their agents, telemarketing calls to Missouri residents who were previously registered with Missouri's No Call List; and

b. Failing to clearly disclose the entity making the call and that the call is made on behalf of Defendant US Fidelis.

COUNT V

Unreasonable Delay in Delivery of Service Contracts § 385.202

195. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

196. Defendants have violated § 385.202.1(2) in connection with the issuance, sale or offer for sale of a motor vehicle service contract to consumers nationwide by failing to provide a copy of the motor vehicle service contract in a reasonable amount of time in that:

a. Defendant routinely delayed mailing service contracts to many of the consumers after closing a sale; and

b. Defendants in some cases failed to ever send consumers a copy of the written service contract.

197. Defendants knowingly committed these violations of § 385.202.1(2) in conscious disregard of the law.

COUNT VI

Unreasonable Delay in Delivery of Service Contracts § 407.1203, RSMo (Supp. 2007)

198. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

199. Defendants have violated § 407.1203.1(b), RSMo (Supp. 2007) in connection with the issuance, sale or offer for sale of a motor vehicle service contract to consumers nationwide by failing to provide a copy of the motor vehicle service contract in a reasonable amount of time in that:

a. Defendant routinely delayed mailing service contracts to many of the consumers after closing a sale; and

b. Defendants in some cases failed to ever send consumers a copy of the written service contract.

200. Defendants knowingly committed these violations of § 407.1203.1(b), RSMo (Supp. 2007) in conscious disregard of the law.

COUNT VII

Sale of Contracts on Behalf of Unregistered Providers § 385.202

201. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

202. Defendants have violated § 385.202.2 in connection with the issuance, sale or offer for sale of a motor vehicle service contract to consumers nationwide by selling contracts on behalf of providers who were not registered with the Director as required by statute.

203. Defendants knowingly committed these violations of § 385.202.2 in conscious disregard of the law.

COUNT VIII

Sale of Contracts on Behalf of Unregistered Administrators § 407.1203, RSMo (Supp. 2007)

204. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

205. USFAS acted as an administrator on the contracts on which it was a provider.

206. Defendants have violated § 407.1203.2, RSMo (Supp. 2007) in connection with the issuance, sale or offer for sale of a motor vehicle service contract to consumers nationwide by selling contracts issued by USFAS and on which USFAS acted as an administrator, despite USFAS's failure to register with the Director as required by statute.

207. Defendants knowingly committed these violations of § 407.1203.2, RSMo (Supp. 2007) in conscious disregard of the law.

COUNT IX
Failure to Register § 385.202

208. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

209. USFAS issued service contracts in 2008 in the state of Missouri without registering with the Director as a provider.

210. Upon information and belief, Defendants Darain Atkinson and Cory Atkinson controlled USFAS and directed, approved, and implemented the strategy by which USFAS issued service contracts in 2008 in Missouri without registering with the Department as a provider.

211. Defendants Darain Atkinson and Cory Atkinson violated § 385.202.2 through their control of USFAS and implementation of USFAS's strategy to issue service contracts in Missouri in 2008 without first registering with the Department as an administrator.

212. Upon information and belief, Defendants Darain Atkinson and Cory Atkinson knowingly committed these violations of § 385.202.2 in conscious disregard of the law.

COUNT X
Failure to Register § 407.1203, RSMo (Supp. 2007)

213. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

214. USFAS issued service contracts in 2007 in the state of Missouri without registering with the Director as an administrator.

215. Upon information and belief, Defendants Darain Atkinson and Cory Atkinson controlled USFAS and directed, approved, and implemented the strategy by which USFAS issued service contracts in 2007 in Missouri without registering with the Department as an administrator.

216. Defendants Darain Atkinson and Cory Atkinson violated § 407.1203.2, RSMo (Supp. 2007) through their control of USFAS and implementation of USFAS's strategy to issue service contracts in 2007 without first registering with the Department as an administrator.

217. Upon information and belief, Defendants Darain Atkinson and Cory Atkinson knowingly committed these violations of § 407.1203.2, RSMo (Supp. 2007) in conscious disregard of the law.

COUNT XI
Assurance of Faithful Performance § 385.202

218. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

219. All of the service contracts USFAS issued to consumers nationwide in 2008 were backed by USFICRRG and by no other insurer, backer or guarantor.

220. USFICRRG was never an insurance company authorized to transact insurance in this state as required by § 385.202.3.

221. USFAS also did not maintain a funded reserve account for its obligations under the contracts.

222. USFAS thus violated § 385.202.3 because the contracts it issued were neither backed by a reimbursement insurance policy issued by an authorized insurer nor were they backed by a funded reserve account.

223. Defendants Darain Atkinson and Cory Atkinson are liable for USFAS's violation of § 385.202.3 because, upon information and belief, they controlled USFAS and directed, approved, and implemented the strategy by which USFAS issued these defective service contracts.

224. Upon information and belief, Defendants Darain Atkinson and Cory Atkinson knowingly committed these violations of § 385.202.3 in conscious disregard of the law.

COUNT XII

Assurance of Faithful Performance § 407.1203, RSMo (Supp. 2007)

225. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

226. All of the service contracts USFAS issued to consumers nationwide in 2007 were backed by USFICRRG and by no other insurer, backer or guarantor.

227. USFICRRG was never an insurance company authorized to transact insurance in this state as required by § 407.1203.3 RSMo (Supp. 2007).

228. USFAS also did not maintain a funded reserve account for its obligations under the contracts.

229. USFAS thus violated § 407.1203.3, RSMo (Supp. 2007) because the contracts it issued were neither backed by a reimbursement insurance policy issued by an authorized insurer nor were they backed by a funded reserve account.

230. Defendants Darain Atkinson and Cory Atkinson are liable for USFAS's violation of § 385.202.3 because, upon information and belief, they controlled USFAS and directed, approved, and implemented the strategy by which USFAS issued these defective service contracts.

231. Upon information and belief, Defendants Darain Atkinson and Cory Atkinson knowingly committed these violations of § 407.1203.3, RSMo (Supp. 2007) in conscious disregard of the law.

COUNT XIII
Unlawful Service Contracts § 385.206

232. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

233. Defendants have violated § 385.206 in connection with the issuance, sale or offer for sale of a motor vehicle service contract by selling contracts to consumers nationwide that contained provisions that failed to clearly and conspicuously disclose in easy-to-read type the following:

a. The identity and role of the provider or obligor;

b. The consumers' rights under state law to a "free-look" period and the necessary procedures for effectuating those rights;

c. The consumers' duty to maintain the vehicle and keep all receipts;

d. The procedure for a consumer to cancel the contract;

e. The name, address and telephone number of the provider or obligor;

f. The name, address and telephone number of the administrator;

g. The service contract was not issued by or associated with the dealers who sold the consumers their vehicles or the manufacturers who produced the consumer's vehicles;

h. The consumers' duty to maintain receipts from service and maintenance done on the vehicle; and

i. Whether or not consequential damages or pre-existing conditions are excluded.

234. Defendants knowingly committed these violations of § 385.206 in conscious disregard of the law.

COUNT XIV

Unlawful Service Contracts § 407.1209, RSMo (Supp. 2007)

235. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

236. Defendants have violated § 407.1209, RSMo (Supp. 2007) in connection with the issuance, sale or offer for sale of a motor vehicle service contract by selling contracts to consumers nationwide that contained provisions that failed to clearly and conspicuously disclose in easy-to-read type the following:

a. The identity and role of the provider or obligor;

b. The consumers' rights under state law to a "free-look" period and the necessary procedures for effectuating those rights;

c. The consumers' duty to maintain the vehicle and keep all receipts;

d. The procedure for a consumer to cancel the contract;

e. The name, address and telephone number of the provider or obligor;

f. The name, address and telephone number of the administrator;

g. The service contract was not issued by or associated with the dealers who sold the consumers their vehicles or the manufacturers who produced the consumer's vehicles;

h. The consumers' duty to maintain receipts from service and maintenance done on the vehicle; and

i. Whether or not consequential damages or pre-existing conditions are excluded.

237. Defendants knowingly committed these violations of § 407.1209, RSMo (Supp. 2007) in conscious disregard of the law.

COUNT XV

Unauthorized Business of Insurance in the Sale of Additive Contracts § 375.310

238. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

239. Defendant US Fidelis transacted the business of insurance in the offers for sale, sales and solicitations for sale of additive contracts.

240. The additive contracts offered for sale and sold by Defendant US Fidelis to consumers nationwide are contracts by which Consumer Direct Warranty Services, SafeData Management Services Inc., The Choice Manufacturing Company Inc., Crescent Manufacturing LLC, USFAS, Tier One Warranty Services, LLC, the company that issued the AutoLifeRX additive, and perhaps other yet-unidentified companies, promise, upon consideration paid by the consumers, to compensate or reimburse the consumer if the consumer suffers loss or damage from a failure of a covered vehicle part.

241. Consumer Direct Warranty Services is transacting the business of insurance in the issuance of its additive contracts.

242. Consumer Direct Warranty Services has never been authorized by the Director to transact any insurance business.

243. The company issuing the AutoLifeRX additive, which does not disclose its name in its contract, is transacting the business of insurance in the issuance of its additive contracts.

244. Upon information and belief, the company issuing the AutoLifeRX additive has

never been authorized by the Director to transact any insurance business.

245. SafeData Management Services Inc. is transacting the business of insurance in the issuance of its additive contracts.

246. SafeData Management Services Inc. has never been authorized by the Director to transact any insurance business.

247. The Choice Manufacturing Company is transacting the business of insurance in the issuance of its additive contracts.

248. The Choice Manufacturing Company has never been authorized by the Director to transact any insurance business.

249. Crescent Manufacturing LLC is transacting the business of insurance in the issuance of its additive contracts.

250. Crescent Manufacturing LLC has never been authorized by the Director to transact any insurance business.

251. US Fidelis Administration Services is transacting the business of insurance in the issuance of its additive contracts.

252. US Fidelis Administration Services has never been authorized by the Director to transact any insurance business.

253. Tier One Warranty Services, LLC is transacting the business of insurance in the issuance of its additive contracts.

254. Tier One Warranty Services, LLC has never been authorized by the Director to transact any insurance business.

255. Purported coverage for failure of the covered vehicle parts under the additive contracts is not limited to coverage for a defect in or failure of the additives associated with the

additive contracts.

256. The additive contracts do not purport to guarantee indemnity for defective additive or for failure of the additive.

257. The additive contracts indemnify against loss or damage resulting from perils outside of and unrelated to any defect in or failure of the additives that are associated with the contracts.

258. The contracts transfer risk of fortuitous loss or damage to covered vehicle parts from the customer to the provider, in exchange for a fee.

259. Defendant US Fidelis unlawfully transacts the business of insurance in the offer for sale, solicitation for sale and sale of additive contracts.

260. Defendant US Fidelis has never held an insurance producer license issued by the Director.

261. Defendants knowingly committed these violations of § 375.310 in conscious disregard of the law.

COUNT XVI

Unauthorized Business of Insurance in the Sale of Service Contracts § 375.310

262. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

263. Defendant US Fidelis transacts the business of insurance in the offers for sale, sales, and solicitations for sale of certain service contracts.

264. The purported service contracts offered for sale and sold by US Fidelis to consumers nationwide promise, upon consideration paid by the consumers, to compensate or reimburse the consumer if the consumer suffers loss or damage from a failure of a covered vehicle part.

265. As more fully set out in Counts V and XIII, many of these purported service contracts fail to satisfy the requirements of §§ 385.200 through 385.220.

266. Among the service contracts US Fidelis has offered for sale and sold are service contracts issued by USFAS, Warranty America, LLC, and Mechanical Breakdown Protection, Inc.

267. Warranty America, LLC is transacting the business of insurance in the issuance of its purported service contracts.

268. Warranty America, LLC has never been authorized by the Director to transact any insurance business.

269. Mechanical Breakdown Protection, Inc. is transacting the business of insurance in the issuance of its service contracts.

270. Mechanical Breakdown Protection, Inc. has never been authorized by the Director to transact any insurance business.

271. The contracts transfer risk of fortuitous loss or damage to covered vehicle parts from the customer to the provider, in exchange for a fee.

272. Pursuant to § 385.202.5, these purported service contracts issued by USFAS, Warranty America, and MBPI are insurance contracts and are subject to the Missouri insurance laws because of the provider's failure to register.

273. Defendant US Fidelis unlawfully transacted the business of insurance in the offer for sale, solicitation for sale and sale of service contracts issued by USFAS, Warranty America, and MBPI.

274. Pursuant to § 385.202.5, other purported service contracts sold by US Fidelis to consumers nationwide anytime after December 31, 2007 constitute insurance contracts because

of their failure to comply with the provisions of §§ 385.200 – 385.220, as more fully set out in Paragraphs 70 and 86 and Counts V and XIII.

275. Defendants knowingly committed these violations of § 375.310 in conscious disregard of the law.

COUNT XVII

Unauthorized Business of Insurance in the Sale of Service Contracts § 375.310

276. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

277. As more fully set out in Counts VI and XIV, Defendants sold purported service contracts to consumers nationwide that failed to satisfy the requirements of §§ 407.1200, RSMo (Supp. 2007) through 407.1227, RSMo (Supp. 2007).

278. The contracts transfer risk of fortuitous loss or damage to covered vehicle parts from the customer to the provider, in exchange for a fee.

279. Pursuant to § 407.1203.5, RSMo (Supp. 2007), other purported service contracts sold by US Fidelis between Jan. 1, 2007 and Dec. 31, 2007 constitute insurance contracts because of their failure to comply with §§ 407.1200, RSMo (Supp. 2007) through 407.1227, RSMo (Supp. 2007), as more fully set out in Paragraphs 70 and 86 and Counts VI and XIV.

280. Defendants knowingly committed these violations of § 375.310 in conscious disregard of the law.

COUNT XVIII

Unauthorized Business of Insurance in the Sale of USFAS Contracts § 375.310

281. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

282. US Fidelis Administration Services is transacting the business of insurance in the

issuance of its additive contracts (the "USFAS Additive Contracts").

283. US Fidelis Administration Services has never been authorized by the Director to transact any insurance business.

284. Purported coverage for failure of the covered vehicle parts under the USFAS Additive Contracts is not limited to coverage for a defect in or failure of the additives associated with the additive contracts.

285. The USFAS Additive Contracts do not purport to guarantee indemnity for defective additive or for failure of the additive.

286. The USFAS Additive Contracts indemnify against loss or damage resulting from perils outside of and unrelated to any defect in or failure of the additives that are associated with the contracts.

287. The USFAS Additive Contracts transfer risk of fortuitous loss or damage to covered vehicle parts from the customer to the provider, in exchange for a fee.

288. Upon information and belief, Defendants Darain Atkinson and Cory Atkinson controlled USFAS and directed, approved, and implemented the strategy by which it issued insurance contracts without registering with the Department.

289. Defendants Darain Atkinson and Cory Atkinson knowingly committed these violations of § 375.310 in conscious disregard of the law.

COUNT XIX

Unauthorized Business of Insurance in the Sale of Crescent Manufacturing Contracts § 375.310

290. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

291. Crescent Manufacturing LLC is transacting the business of insurance in the issuance of its additive contracts (the "Crescent Additive Contracts").

292. Crescent Manufacturing LLC has never been authorized by the Director to transact any insurance business.

293. Purported coverage for failure of the covered vehicle parts under the Crescent Additive Contracts is not limited to coverage for a defect in or failure of the additives associated with the additive contracts.

294. The Crescent Additive Contracts do not purport to guarantee indemnity for defective additive or for failure of the additive.

295. The Crescent Additive Contracts indemnify against loss or damage resulting from perils outside of and unrelated to any defect in or failure of the additives that are associated with the contracts.

296. The Crescent Additive Contracts transfer risk of fortuitous loss or damage to covered vehicle parts from the customer to the provider, in exchange for a fee.

297. Upon information and belief, Defendants Darain Atkinson and Cory Atkinson controlled Crescent Manufacturing LLC and directed, approved, and implemented the strategy by which it issued insurance contracts without registering with the Department.

298. Defendants Darain Atkinson and Cory Atkinson knowingly committed these violations of § 375.310 in conscious disregard of the law.

COUNT XX

Unauthorized Business of Insurance in the Sale of Service Contracts § 375.310

299. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

300. Prior to the effective date of §§ 407.1200 through 407.1227, service contracts did not benefit from a statutory exception from the insurance laws.

301. These purported service contracts transfer risk of fortuitous loss or damage to

covered vehicle parts from the customer to the provider, in exchange for a fee.

302. The sale of these purported service contracts prior to January 1, 2007 constituted the sale of an insurance contract.

303. US Fidelis has never held an insurance producer license issued by the Director.

304. The sale of these purported service contracts violated § 375.310 because they were sales of an insurance contract by an unlicensed company.

305. Defendants knowingly committed these violations of § 375.310 in conscious disregard of the law.

COUNT XXI

Transaction of the Business of Insurance without a Certificate of Authority § 375.161

306. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

307. As more fully detailed in Counts XVIII, Defendants Darain Atkinson and Cory Atkinson violated § 375.161 by directing USFAS to transact the business of insurance without first procuring from the Director a certificate authorizing it to do so.

308. As more fully detailed in Counts XIX, Defendants Darain Atkinson and Cory Atkinson violated § 375.161 by directing Crescent Manufacturing LLC to transact the business of insurance without first procuring from the Director a certificate authorizing it to do so.

309. Defendants knowingly committed these violations of § 375.161 in conscious disregard of the law.

COUNT XXII

Unauthorized Sale of Insurance § 375.014

310. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

311. As more fully detailed in Counts XVI, XVII, and XXI, Defendants sold insurance contracts without being licensed as insurance producers by the Director.

312. Defendants knowingly committed these violations of § 375.014 in conscious disregard of the law.

COUNT XXIII

Unauthorized Receipt of Insurance Commissions § 375.076

313. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

314. Defendant US Fidelis received a sales commission in exchange for selling insurance contracts on behalf of Consumer Direct Warranty Services, SafeData Management Services Inc., The Choice Manufacturing Company Inc., Crescent Manufacturing LLC, USFAS, Tier One Warranty Services, LLC, the company that issued the AutoLifeRX additive, Warranty America, LLC, and Mechanical Breakdown Protection, Inc., and other providers whose contracts violated §§ 385.200 through 385.220 (collectively, the "Insurance Contracts").

315. Defendant US Fidelis has never held an insurance producer license issued by the Director.

316. Defendant US Fidelis violated § 375.076 each time it accepted a sales commission or other payment from a provider as compensation for the sale of an Insurance Contract.

317. Defendants Darain Atkinson and Cory Atkinson are liable for Defendant US Fidelis' violations of § 375.076 because they controlled Defendant US Fidelis and directed, approved, and implemented the strategy by which it sold insurance contracts without an insurance producer license issued by the Director.

318. Defendants knowingly committed these violations of § 375.076 in conscious

disregard of the law.

COUNT XXIV
Insurance Fraud § 375.144

319. Plaintiff incorporates herein all of the allegations contained in the above paragraphs.

320. Defendants have violated § 375.144 in connection with the advertisement, offer, and sale of additive contracts and other contracts to consumers nationwide by

a. employing the deceptions, devices, schemes, and artifices to defraud Committing the series of misrepresentations, deceptions, and omissions of material fact detailed in Count I;

b. Making use of the misrepresentations, concealments, and suppression of material facts detailed in Count I;

c. Engaging in the pattern and practice of making the false statements of material fact detailed in Count I; and

d. Engaging in acts, practices, and courses of business that operate as a fraud or deceit upon consumers throughout the country detailed in Count I.

321. Defendants knowingly committed these violations of § 375.144 in conscious disregard of the law.

RELIEF

WHEREFORE, Plaintiff prays this Court enter judgment:

322. Finding that Defendants have violated the provisions of § 407.020.

323. Finding that Defendants have violated the provisions of § 407.1073.

324. Finding that Defendants have violated the provisions of § 407.1076

325. Finding that Defendants have violated the provisions of § 407.1098.

326. Finding that Defendants have violated the provisions of § 407.1104.

327. Finding that Defendants have violated the provisions of § 407.1203, RSMo (Supp. 2007).

328. Finding that Defendants have violated the provisions of § 407.1209, RSMo (Supp. 2007).

329. Finding that Defendants have violated the provisions of § 375.014.

330. Finding that Defendants have violated the provisions of § 375.076.

331. Finding that Defendants have violated the provisions of § 375.144.

332. Finding that Defendants have violated the provisions of § 375.161.

333. Finding that Defendants have violated the provisions of § 375.310.

334. Finding that Defendants have violated the provisions of § 385.202.

335. Finding that Defendants have violated the provisions of § 385.206.

336. Issuing Preliminary and Permanent Injunctions pursuant to §§ 374.048, 407.100, and 407.1107 prohibiting and enjoining Defendants and their agents, servants, employees, representatives, and other individuals acting at their direction or on their behalf from violating §§ 375.144, 375.310, 385.202, 375.206, 407.020, 407.1073, 407.1076, 407.1098, and 407.1104 through the use of any of the unlawful, unfair, and deceptive acts and practices alleged herein.

337. Requiring Defendants pursuant to §§ 374.048, 407.100 and 407.1224, RSMo (Supp. 2007) to provide full restitution to all consumers from whom Defendants have received monies who have been aggrieved by the use of any of the unlawful, unfair, and deceptive acts and practices alleged herein.

338. Requiring Defendants pursuant to § 407.100 to pay the State of Missouri a civil penalty for each violation of § 407.020 under Counts I, II, and III that the Court finds to have

occurred.

339. Requiring Defendants pursuant to § 407.1107 to pay the State of Missouri a civil penalty for each violation of §§ 407.1098 and 407.1104 under Count IV that the Court finds to have occurred.

340. Requiring Defendants pursuant to § 374.048 to pay the State of Missouri a civil penalty for each violation of §§ 375.144, 375.310, 385.202, and 385.206 under Counts V, VII, IX, XI, XIII, and XV through XVIII that the Court finds to have occurred.

341. Requiring Defendants pursuant to § 407.1224 to pay the State of Missouri a civil penalty for each violation of §§ 407.1203, RSMo (Supp. 2007) and 407.1209, RSMo (Supp. 2007) under Counts VI, VIII, X, XII, and XIV that the Court finds to have occurred.

342. Requiring Defendants pursuant to § 407.140.3 to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against said Defendants, or such other amount as the Court deems fair and equitable.

343. Requiring Defendants pursuant to §§ 374.048 and 407.130 to pay all court, investigative, and prosecution costs of this case.

344. Granting any further relief that this Court deems proper.

Respectfully submitted,

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