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5 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
6 FOR MULTNOMAH COUNTY

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8 **CHRIS HARRIS**, individually and on
9 behalf of all other similarly situated
10 persons,

11 Plaintiff,

12 vs.

13 **MT. HOOD MEADOWS OREG., LLC.**,
14 an Oregon limited liability company,

15 Defendant.

Case No.

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Oregon Unlawful Trade Practices Act
ORS 646.608

Class action claims not subject to
mandatory arbitration

Filing fee authority: ORS 21.135

Filing fee: \$252

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19 **Ad displayed on google:**

20 **Mt. Hood Meadows Value Pass - \$379**

21 **Ad** www.skihood.com/ ▼

22 Best days of the **season** without the peak day crowds. More **mountain le...**

23 Loyalty Rewards Program · 100 Day Guarantee · 5 Days at Mt. Baker · U...

You visited skihood.com earlier today.

24 **10 Time and 5 Time Passes**

Direct to lift convenience reduced
price with your multi-time pass

Select Passes

Value, Night, Progression Passes
Affordable priced for your schedule

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28 **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

– Page 1 of 11

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3 **PRELIMINARY STATEMENT**

4 In a classic **bait and switch**, Mt. Hood Meadows Oreg., LLC (defendant)
5 advertises its value passes for \$379 on Google ads, but fails to discount its value
6 passes to the advertised price upon checkout. Defendant's value pass promotion is
7 misleading because Chris Harris (plaintiff) and others were ultimately charged up
8 to \$499 for a value pass that should have been discounted at checkout to \$379.
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11 Plaintiff alleges that within the past year, he and many other Oregon
12 consumers have suffered ascertainable economic losses as a result of defendant's
13 **bait and switch** promotion. Fortunately for plaintiff and other Oregon consumers
14 like him, the Oregon Unlawful Trade Practices Act ORS 646.608 *et seq.* (UTPA)
15 prohibits false and misleading representations like defendant's value pass
16 promotion.
17

18 Plaintiff brings this UTPA action on behalf of himself and other similarly
19 situated Oregon consumers. He currently seeks only equitable relief, including an
20 injunction. Should defendant fail to make things right and fail to comply with ORCP
21 32 I, plaintiff intends to amend his complaint to add claims for damages.
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23 2.

24 **THE PARTIES**

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26 Defendant is an Oregon limited liability company that regularly sells its value
27 passes for profit in Oregon including online sales using Google ads.
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3 Plaintiff is a resident of the State of Oregon. He shops online through Google,
4 and purchased defendant's \$379 value pass promotion through defendant's Google
5 ad in November 2016.
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8 **JURISDICTION AND VENUE**

9 Defendant conducts regular and sustained business across Oregon, including
10 in Multnomah County. This court has jurisdiction over claims arising under Oregon's
11 UTPA.
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13 5.

14 **CLASS ALLEGATIONS**

15 The class consists of all Oregon consumers who, within one year before the
16 date of the filing of this complaint, bought defendant's \$379 value pass promotion
17 and were ultimately charged more for their value pass upon checkout than the
18 advertised price. The price and quantity of defendant's value passes (as advertised
19 and as sold) can be determined based on defendant's pricing sheets, sales records,
20 Google ads, Google traffic, and other customer data. Excluded from the class are all
21 attorneys for the class, officers and directors of defendant, including officers and
22 directors of any entity with an ownership interest in defendant; any judge who sits
23 on the case; and all jurors and alternate jurors who sit on the case.
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3 Defendant represents to its customers that its value passes are sold at \$379
4 through defendant's Google ads account. Customers are essentially told that they
5 can save money by purchasing a value pass directly from defendant's advertised link,
6 instead of shopping around for cheaper prices on the Internet.
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8 7.

9 For instance, in November 2016, on Google ads, defendant advertised its value
10 pass as \$379 to plaintiff. Defendant knew its ad would be among the first results
11 plaintiff saw in his Google search results. Defendant maliciously intended its **bait**
12 **and switch** to appear near the top of plaintiff's search results. Plaintiff saw
13 defendant's Google ad and clicked the link. Plaintiff followed the link to defendant's
14 website to purchase its value pass as advertised. But defendant failed to discount its
15 value pass to the advertised price and ultimately charged plaintiff \$499 upon
16 checkout. Defendant's **bait and switch** caused plaintiff an actual ascertainable
17 economic loss of the difference between defendant's advertised value pass price and
18 the price defendant actually charged plaintiff upon checkout for its least expensive
19 value pass.
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23 8.

24 Defendant's **bait and switch** value pass promotion violated ORS
25 646.608(1)(s), giving rise to class claims under the UTPA. These UTPA claims are
26 common to the class.
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3 The class is so numerous that joinder is impracticable. The size of the class
4 and the classes' ascertainable monetary losses can be calculated based on
5 defendant's pricing sheets, sales records, Google ads, Google traffic, and other
6 customer data.
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10 There are questions of fact and law common to the class because each member
11 suffered ascertainable monetary loss as a result of defendant's UTPA violation
12 alleged above. Common questions of fact and law predominate over any questions
13 affecting only individual class members. Common questions include whether
14 defendant may advertise its value pass as \$379 when defendant did not intend to
15 discount its value passes to the advertised price upon checkout, whether under these
16 facts, plaintiff and the class must prove reliance as to defendant's alleged violation,
17 if so, whether reliance may be proved on a class-wide basis, whether plaintiff and
18 class members are entitled to equitable and injunctive relief, whether an injunction
19 to prevent future harm is appropriate, whether defendant acted willfully, recklessly,
20 or intentionally under ORS 646.638(1), whether plaintiff and class members are
21 entitled to recover actual damages and \$200 statutory damages from defendant, and
22 whether plaintiff and the class are entitled to recover attorney fees and costs for
23 defendant's alleged UTPA violation.
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3 Plaintiff's claim is typical of the claims of the class because each were charged
4 more for a value pass upon checkout than the advertised price, the injuries suffered
5 by plaintiff and the class members differ only in the amounts of economic losses and
6 number of transactions per class member, and plaintiff's claim for relief is based
7 upon the same legal theory as are the claims of the class members.
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10 12.

11 Plaintiff will fairly and adequately protect and represent the interests of the
12 class because his claims are typical of the claims of the class, he is represented by
13 attorneys who have experience handling class action litigation and consumer
14 protection cases who are qualified and competent, and who will vigorously prosecute
15 this litigation, and their interests are not antagonistic or in conflict with the
16 interests of the class.
17

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19 13.

20 A class action is superior to other available methods for fair and efficient
21 adjudication of this case because commons questions of law and fact predominate
22 over other factors affecting only individual members, as far as plaintiff knows, no
23 class action that purports to include Oregon consumers suffering the same injury
24 has been commenced, individual class members have little interest in controlling the
25 litigation, due to the high cost of individual actions, the relatively small amounts of
26 damages suffered, and because plaintiff and his attorneys will vigorously pursue the
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2 claims. The forum is desirable because defendant does business in Multnomah
3 County. A class action will be an efficient method of adjudicating the claims of the
4 class members who have suffered relatively small monetary damages, as a result of
5 the same conduct by defendant. In the aggregate, class members have claims for
6 relief that are significant in scope relative to the expense of litigation. Injunctive
7 relief will prevent further ongoing harm to plaintiff and the class, and the
8 availability of defendant's pricing sheets, sales records, Google ads, Google traffic,
9 and other customer data will facilitate proof of class claims, processing class claims,
10 and distributions of any recoveries. To the extent customers who made purchases
11 under defendant's value pass promotion cannot be located, their monies may be
12 distributed through a *cy pres* process.
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16 14.

17 Defendant's **bait and switch** value pass promotion as described above
18 violates ORS 646.608(1)(s) because it makes a misleading representation of fact
19 concerning the offering price and ultimate cost upon checkout of its value passes (i.e.,
20 misleading its customers into believing that they can purchase a value pass for \$379
21 when defendant offers no value passes for that price at the time the offer is made
22 and fails to discount its value pass to the advertised price upon checkout).
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3 Defendant knew or should have known its value pass promotion was false and
4 misleading because it intentionally ran ads with a higher advertised price than the
5 lowest price defendant offered to the public at the time it chose to run the ad and
6 defendant chose not to discount its value pass to the advertised price upon checkout.
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10 **CLAIM FOR RELIEF – VIOLATION OF ORS 646.608**

11 Defendant willfully, recklessly, and/or intentionally violated ORS 646.608(1)
12 (s) as alleged above. Defendant’s violation caused plaintiff and class members
13 ascertainable economic losses (i.e., the amount ultimately charged upon checkout for
14 a value pass in excess of what should have been charged based on the advertised
15 price).
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17 17.

18 Defendant continues its unlawful **bait and switch** value pass promotion
19 throughout Oregon to this day. Plaintiff and the proposed class seek an injunction
20 under ORS 646.636 to stop defendant’s unlawful trade practices.
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22 18.

23 Plaintiff and the class are also entitled to equitable relief in the form of an
24 accounting, restitution, and unless agreed upon by defendant, an order to preserve
25 data including pricing sheets, sales records, Google ads, Google traffic, and customer
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2 data that relates to this claim under ORS 646.638(1). Plaintiff and the class are also
3 entitled to recover interest and attorney fees and costs under ORS 646.638(3).

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5 19.

6 Upon discovery of information that defendant's UTPA violation alleged in this
7 complaint was malicious, plaintiff and the class may intend to amend this complaint
8 to include claims for punitive damages.

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11 Unless defendant complies with ORCP 32 I, plaintiff will amend this
12 complaint to add claims for actual and statutory damages.

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3 **WHEREFORE**, plaintiff seeks judgment and the following relief:

- 4 **A.** Unless otherwise agreed to by defendant, an order directing it to preserve
5 pricing sheets, sales records, Google ads, Google traffic, and other customer
6 data, and an order certifying this matter as a class action under ORCP 32;
7
8 **B.** An injunction prohibiting defendant from continuing its **bait and switch**
9 value pass promotion in violation of the UTPA, and equitable relief in the form
10 of an order requiring an accounting, restitution, interest, and attorney fees
11 and costs, and
12
13 **C.** Other relief the court deems necessary.
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16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands trial by jury as to each issue to which he and the class are
18 entitled to a jury trial.

19 DATED: November 27, 2016
20

21
22 /s/ Michael Fuller
23 **Michael Fuller, OSB No. 09357**
24 Lead Trial Attorney for Plaintiff
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(additional counsel for plaintiff on next page)

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PROOF OF MAILING

Under ORS 646.638(2), I declare and certify that on the date below I caused a copy of this complaint to be mailed to the Oregon Attorney General at the following address:

Ellen Rosenblum
Oregon Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

DATED: November 27, 2016

/s/ Michael Fuller
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