

## Week 5 – UTPA (cont.)

- 5:30 Today's agenda
  - Course review results
  - UTPA Fee shifting
  - UTPA Damages
- 6:00 Break
  - UTPA Statute of limitations
  - Punitive damages
  - ORS 646.608
  - Common UTPA violations
- 6:45 Break
  - Speaker: Pilar French

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# Course Review Results

Group Discussions	2 Less	11 Same	6 More
Use of Multiple Choice Quizzes	1 Less	12 Same	5 More
Guest Speakers	1 Less	16 Same	2 More
Personal War Stories	0 Less	7 Same	13 More
Class Breaks	2 Less	17 Same	1 More
Substantive Case Law Readings	2 Less	16 Same	0 More
Use of Video News Stories from Local Cases	0 Less	12 Same	7 More
Use of Profanity	0 Less	10 Same	9 More
Liberal-Leaning Plaintiff-Lawyer Agenda	1 Less	10 Same	8 More

## Suggestions:

7 Thanks for pizza

5 Class is great as-is

1 Less breaks if it means getting out of class early

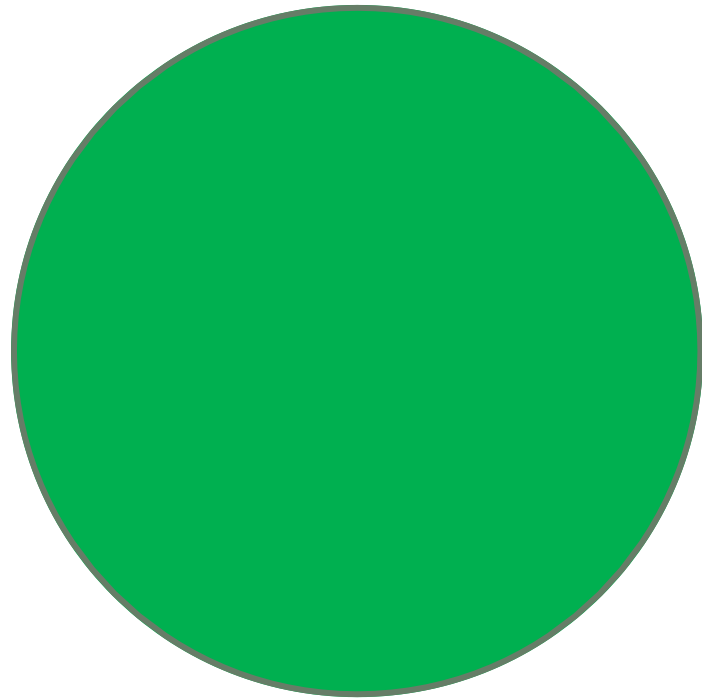
1 Great guest speakers

1 Will want more substantive review before final

1 More guidance on what to focus on in the reading

1 More strategies for winning litigation or gaining leverage in settlement

Class Break  
Over



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# UTPA Elements

To prevail on a claim under the UTPA, a plaintiff must prove (1) an unlawful trade practice, (2) causation, and (3) ascertainable loss.

*Gomez v. Bank of Am., N.A.*, 2012 U.S. Dist. LEXIS 36564, \*26, (D. Or. Mar. 19, 2012)



# Unlawful Trade Practices Act

“The court may award **reasonable attorney fees and costs** at trial and on appeal to a **prevailing plaintiff** in an action under this section. The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing defendant only if the court finds that an objectively reasonable basis for bringing the action or asserting the ground for appeal did not exist.”

ORS 646.638(3)

# Fee Shifting Chart

CONSUMER LAW	STATUTORY AUTHORITY	AMERICAN RULE	PREVAILING PLAINTIFF	PREVAILING PARTY
UTPA	ORS 646.638(3)		✓	
FCRA	15 U.S.C. § 1681o(a)(2)		✓	
FDCPA	15 U.S.C. § 1692k(a)(3)		✓	
TCPA	47 U.S.C. § 227(b)(3)	✓		
ORLTA	ORS 90.255			✓

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# Damages Chart

CONSUMER LAW	STATUTORY AUTHORITY	EMOTIONAL HARM	ECONOMIC LOSS	STATUTORY DAMAGES	PUNITIVE DAMAGES
UTPA	ORS 646.638		✓	✓	✓
FCRA	15 U.S.C. § 1681n	✓	✓	✓	✓
FDCPA	15 U.S.C. § 1692k	✓	✓	✓	
TCPA	47 U.S.C. § 227(b)(3)		✓	✓	
ORTLA	ORS 90 et seq.		✓		

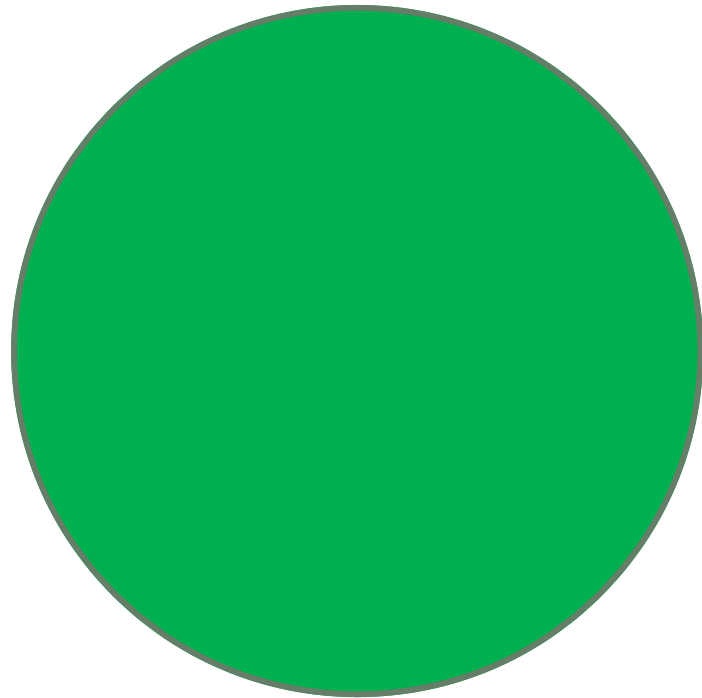
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# Statute of Limitations Chart

CONSUMER LAW	STATUTORY AUTHORITY	ONE YEAR	TWO YEARS	THREE YEARS	FOUR YEARS
UTPA	ORS 646.638	✓			
FCRA	15 U.S.C. § 1681n		✓		
FDCPA	15 U.S.C. § 1692k	✓			
TCPA	28 U.S.C. § 1658				✓
ORLTA	ORS 90 et seq.	✓			

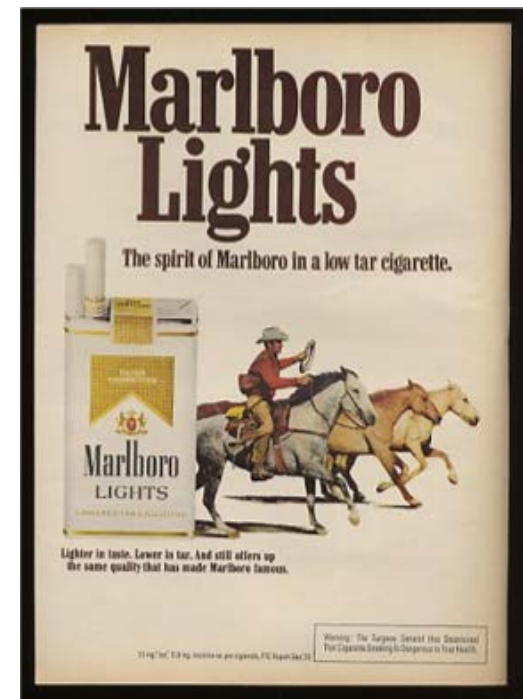
# Statute of Limitations under the UTPA

“Actions brought under this section must be commenced **within one year after the discovery** of the unlawful method, act or practice.”

ORS 646.638(6)

## *Pearson v. Philip Morris, Inc.*

- ✓ In 1971, a consumer bought a pack of Marlboro Lights. The pack falsely claimed light cigarettes were lower in tar than regular cigarettes.
- ✓ In 1980, she read a public report warning about tar levels in light cigarettes.
- ✓ In 1990, she read a warning on a pack of Marlboro Lights that tar delivery may vary.
- ✓ In 2002, she learned of a class action UTPA lawsuit against Marlboro based on tar levels.





When did the **statute of limitations**  
begin to run?

## When did the statute of limitations begin to run?



# UTPA Statute of Limitations

“As we have already described, ... a private UTPA action must be brought within one year from the discovery of the unlawful trade practice on which it is based. Because the limitation period is tied to the plaintiff's "discovery" of the unlawful conduct, it runs in this case **from when ... the plaintiff class either actually knew or should have known that the representation that Marlboro Lights were lower in tar and nicotine was not true.**”

*Pearson v. Philip Morris, Inc.*, 358 Or. 88, 137 (2015)



Caution  
As of: January 28, 2018 8:58 PM Z

### Parrott v. Carr Chevrolet, Inc.

Supreme Court of Oregon

September 8, 1999, Argued and Submitted; January 11, 2001, Filed  
SC 543916, 543917 (Cases Consolidated For Argument And Decision)

Reporter  
331 Ore. 537 \*, 17 P.3d 473 \*\*, 2001 Ore. LEXIS 1 \*\*\*

MARK PARROTT, Petitioner on Review, and CHARLES FORSHEY, Plaintiff, v. CARR CHEVROLET, INC., an Oregon corporation, Respondent on Review. MARK PARROTT, Respondent on Review, and CHARLES FORSHEY, Plaintiff, v. CARR CHEVROLET, INC., an Oregon corporation, Petitioner on Review.

Subsequent History: Reconsideration denied by Parrott v. Carr Chevrolet, Inc., 2001 Ore. LEXIS 223 (Or. Mar. 27, 2001).

Related proceeding at Carr Chevrolet, Inc. v. Am Hardware Mut Ins Co., 2003 U.S. Dist. LEXIS 25631 (D. Or. May 19, 2003).

Prior History: [\*\*\*1] CC C93-0873CV; CA A88512. On review from the Court of Appeals.

Parrott v. Carr Chevrolet, Inc., 158 Or. App. 257, 963 P.2d 440, 1998 Or. App. LEXIS 1560 (1998).

Disposition: The decision of the Court of Appeals is affirmed in part and reversed in part. The judgment of the circuit court is affirmed in part and reversed in part, and the case is remanded to the circuit court with instructions to reinstate the jury's \$ 1 million punitive damages award.

### Core Terms

award of punitive damages, punitive damages, jury's, rational jury, trial court, judicial review, post-verdict, odometer, grossly, requirements, reviewing court, factors, notice, misconduct, guideposts, provides, new trial, discrepancy, re-examined, defendants conduct, no evidence, reprehensibility, inspection, disclose, damages, missing, ratio, motion for a new trial, federal constitution, emission control

\* Appeal from Washington County Circuit Court, Michael J. McElhinney, Judge, 158 Or. App. 257, 963 P.2d 440 (1998).

Michael Fuller

### Case Summary

#### Procedural Posture

In an action brought by plaintiff against defendant in which plaintiff alleged defendant violated the Unlawful Trade Practices Act, both parties appealed a judgment of the Oregon Court of Appeals reversing trial court's reduction of \$ 1 million punitive damages award and remanding with instructions to enter judgment allowing defendant's motion for new trial unless plaintiff filed a remittitur of punitive damages in the amount of \$ 300,000.

#### Overview

This case arose from defendant's sale of a used motor vehicle to plaintiff. The jury returned a verdict for plaintiff and awarded \$ 11,496 in compensatory damages and \$ 1 million in punitive damages. The trial court reduced the punitive damages award to \$ 50,000, but the appellate court directed the trial court to grant defendant's motion for new trial unless plaintiff filed a remittitur of punitive damages in the amount of \$ 300,000. Defendant challenged the jury's \$ 1 million punitive damages award as excessive. The primary issue on review was the appropriate standard for post-verdict judicial review of a punitive damages award. The Oregon Supreme Court held that the jury's \$ 1 million award of punitive damages was within the range that a rational juror would have been entitled to award, it concluded that plaintiff established that defendant's misconduct was part of its day-to-day business dealings and was not limited to the sale of the vehicle to plaintiff and that defendant's conduct was highly reprehensible. The jury's punitive damages award was not grossly excessive in violation of the Due Process Clause of U.S. Const. amend. XIV.

#### Outcome

Judgment affirmed in part and reversed in part, and the case was remanded to the trial court with instructions to reinstate jury's \$ 1 million punitive damages award. Jury's punitive damages award was not grossly excessive, as the award was within the range that a rational juror would have been

331 Ore. 537, \*543; 17 P.3d 473, \*\*478; 2001 Ore. LEXIS 1, \*\*\*8

Page 9 of 18

pointed out that that statement was inconsistent with the missing air cleaner, defendant gave him a "we owe" statement for that missing piece of equipment. The Buyer's Order, in contrast, included a typewritten section stating that the dealership had not inspected the vehicle and had no knowledge of the vehicle's condition, the accuracy of the odometer, or Department of Environmental Quality (DEQ) certification. After he had completed all the paperwork, plaintiff drove the Suburban home.

Shortly thereafter, plaintiff discovered multiple problems with the Suburban, including several missing pieces of emission control equipment, not only the air cleaner. <sup>6</sup> Through his own investigation, plaintiff also discovered that it was [\*\*\*9] impossible to bring the Suburban into DEQ compliance because of the missing equipment and a difference in age between the Suburban and its engine. Plaintiff noticed that the Vehicle Identification Number (VIN) located on the door, which should have matched with the VIN in the glove box, had been removed. He also noticed that there were white lines between the numbers on the odometer. Plaintiff conducted his own title search and learned through the Department of Transportation, Driver and Motor Vehicle Services (DMV), that the Suburban previously had been damaged in California and that it had a "title brand," which meant that the Suburban's title had a notation indicating that it had been damaged severely, totaled, or stolen. Once plaintiff's insurer learned about the branded title, it no [\*\*\*44] longer would provide comprehensive insurance for the Suburban.

[\*\*\*10] When plaintiff complained to defendant, defendant's employees told plaintiff that repair was his problem because he had purchased the Suburban "as is." They also told him that the Suburban's engine did not require DEQ equipment and that, regardless of that fact, he should not worry about DEQ compliance, because the registration was valid for another two years. At one point, a salesperson told plaintiff that defendant would replace the engine, but with junkyard parts. Ultimately, negotiations between plaintiff and defendant for a replacement vehicle failed when one of defendant's salespeople yelled at plaintiff, telling him that the Suburban was "unfixable" and that he would have to "learn to live with it" unless he agreed to a refund of \$ 3,100 --an amount equivalent to his down payment but that did not include reimbursement for the value of his trade-in or his loan and insurance fees. Negotiations between plaintiff and defendant's attorney for rescission of the transaction also failed.

<sup>6</sup> One of plaintiff's expert witnesses testified that the emission control equipment missing from the Suburban included an air cleaner, an exhaust gas recirculation system, and an air pump.

Michael Fuller

As a result, plaintiff filed this action against defendant, alleging, among other things, that defendant had violated the UTPA by willfully selling the Suburban:

- \*1) Falsely claiming it [\*\*\*11] was equipped with proper emission controls;
- \*2) Falsely representing it had been driven 100,608 miles;
- \*3) With defaced or missing VIN numbers in violation of Oregon law;
- \*4) Without disclosing that the emission control equipment had been removed; and
- \*5) Selling the vehicle without disclosing it had previous out of state damage."

At trial, plaintiff proved that defendant had known about the condition of the Suburban when defendant sold it to plaintiff. When defendant had acquired the Suburban as a trade-in from Myers, Myers had provided defendant with a temporary registration form as proof of ownership. It was clear from examining Myers's temporary registration form [\*\*\*48] that someone had altered it in [\*\*\*479] an attempt to conceal that it had expired. Plaintiff's experts testified that no used car dealership would accept the expired document as proof of ownership without confirmation from DMV. The Monday after Myers had brought the Suburban to defendant, someone had requested and received a Basic Vehicle Information sheet from a DMV field office. That document confirmed that Myers was the registered owner of the Suburban, that the Suburban had an odometer discrepancy, and that the Suburban [\*\*\*12] had received "out-of-state damage - CA."

Preble, co-owner and chairman of the board of Carr Chevrolet, acknowledged at trial that, as proof of ownership, Myers's temporary registration form was a "flimsy document" and that, consequently, defendant had asked Myers to sign a "Secure Power of Attorney." A Secure Power of Attorney is a DMV form that dealers use when the owner of a vehicle has lost a title or the title is in the possession of a security interest holder. The form authorized defendant to transfer title from Myers to the new owner, in this case, plaintiff. One purpose of the form is to protect customers, like plaintiff, from an odometer discrepancy. Although Myers had filled out Part A of the Secure Power of Attorney, defendant never completed Parts B and C. Had defendant completed the Secure Power of Attorney when it sold the Suburban to plaintiff, plaintiff would have learned about the odometer discrepancy before completing the transaction.

In addition to the Secure Power of Attorney, Myers also had filled out, albeit incompletely, a "Secure Odometer Disclosure/Reassignment" form for his trade-in vehicles. Plaintiff's expert testified that the only reason that a



In *Parrott*, **which consumer law** provided for punitive damages?

## In Parrott, which consumer law provided for punitive damages?





In *Parrott*, **how did the defendant** violate the UTPA?

## In Parrott, how did the defendant violate the UTPA?

All of the below

lying about the Suburban's  
mileage

failing to disclose the  
Suburban's prior damage

lying about the Suburban's  
emission controls



In *Parrott*, what was the jury verdict?

## In Parrott, what was the jury verdict?

\$11,496 actual  
damages, \$1 million  
punitive damages

\$11,496 actual  
damages, \$50,000  
punitive damages

\$11,496 actual  
damages, \$300,000  
punitive damages



In *Parrott*, **what Constitutional authority** did defendant rely on?



## In Parrott, what Constitutional authority did defendant rely on?

5th  
amendment

9th  
amendment

10th  
amendment

14th  
amendment

# Punitive Damages

“Perhaps the most important indicium of the reasonableness of a punitive damages award is the **degree of reprehensibility of the defendant's conduct.**”

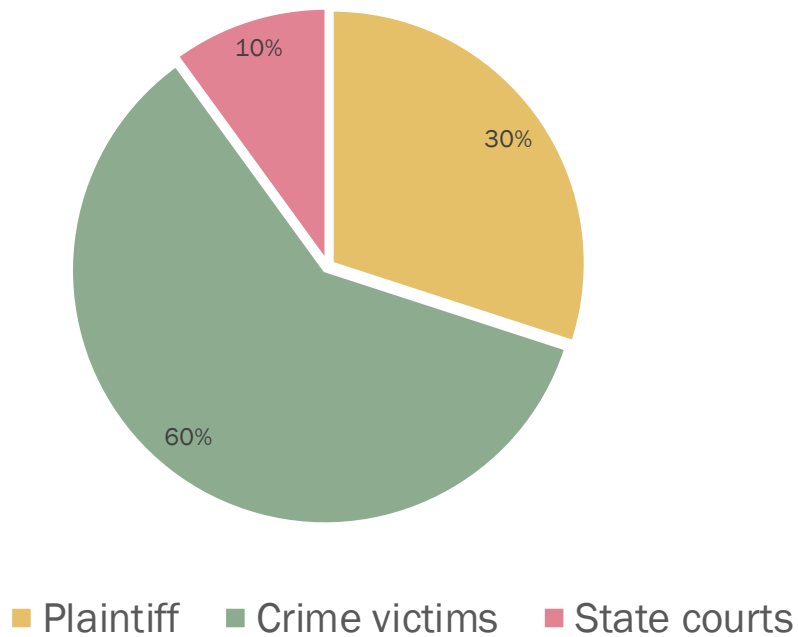
BMW v. Gore, 517 U.S. 559, 575 (1996)

# Punitive Damages

“The ... three "guideposts" to consider when evaluating ... punitive damages ... (1) the **degree of reprehensibility** of the defendant's conduct; (2) the disparity between the punitive damages award and the **actual or potential harm inflicted**; and (3) the **civil and criminal sanctions** provided for comparable misconduct.”

*Parrott v. Carr Chevrolet, Inc.*, 331 Or. 537, 550 (2001) (citing *BMW v. Gore*)

# Distribution of Punitive Damages



ORS 31.735

# Distribution of Punitive Damages

- In the **BP debit fee class action**, David Sugerman filed a UTPA action in state court and did not demand punitive damages from the jury.
- In **Miller v Equifax**, Justin Baxter filed a FCRA action in federal court and recovered \$18 million in punitive damages from the jury.
- Did **ORS 31.725** affect their decision-making process?

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# ORS 646.608 – “The Laundry List”

**2015 ORS 646.608<sup>1</sup>**  
**Additional unlawful business, trade practices**

· [proof](#)  
· [rules](#)

[Text](#) [News](#) [Annotations](#) [Related Statutes](#)

(1) A person engages in an unlawful practice if in the course of the person's business, vocation or occupation the person does any of the following:

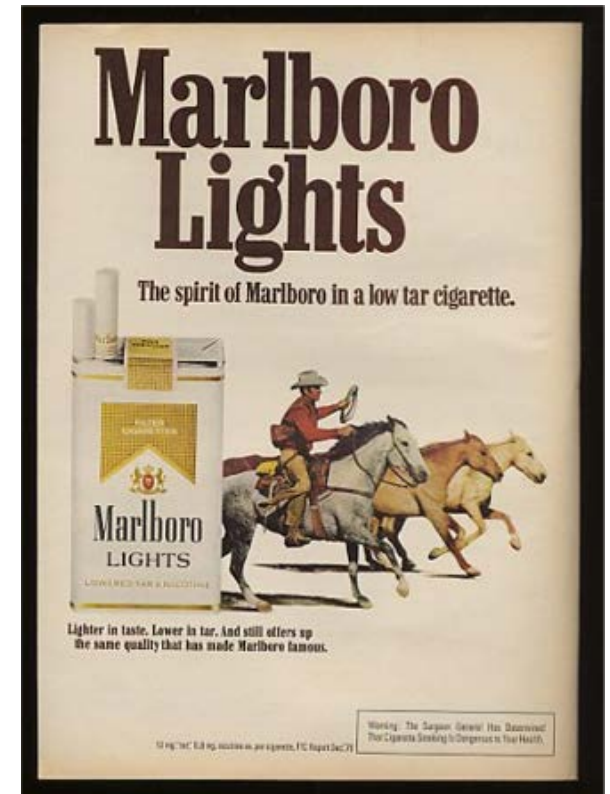
- (a) Passes off real estate, goods or services as the real estate, goods or services of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if the real estate or goods are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if the real estate, goods or services are of another.



# Unlawful Trade Practices Act

“What a plaintiff must prove is that (1) the defendant committed an **unlawful trade practice**; (2) plaintiff suffered an ascertainable **loss of money** or property; and (3) plaintiff's injury (ascertainable loss) was the **result** of the unlawful trade practice.”

*Pearson v. Philip Morris, Inc.*, 358 Or. 88, 127 (2015)



# Unlawful Trade Practices Act

8/25/2016 6:30:58 AM  
190127621

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

J PODAWILTZ, individually and on  
behalf of all other similarly situated  
persons,  
Plaintiff,  
vs.  
SWISHER INTERNATIONAL, INC.,  
a Delaware corporation,  
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

Plaid Pantry

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL  
- Page 1 of 11



# Unlawful Trade Practices Act

## PortlandTribune

Friday, March 10, 2017

Community  
Classifieds [Click here](#)

### Portland's Latest News



March 10, 2017

### Coconut water - minus the coconut - leads to federal lawsuit

by Kevin Harden

Attorneys say Washington's Unique Beverage Co. used 'puffery' and 'deceit' to entice unsuspecting consumers.



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geragos@geragos.com  
Phone 213-625-3900

(additional counsel on signature page)

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**VICKY SILVA**, a consumer  
residing in Oregon, individually  
and on behalf of all others  
similarly situated,

Plaintiff,

v.

**UNIQUE BEVERAGE  
COMPANY, LLC**, a foreign  
corporation,

Defendant.

Case No. 3:17-cv-391

**CLASS ACTION  
ALLEGATION COMPLAINT**

Unlawful Trade Practices

28 U.S.C. § 1332

Demand for Jury Trial





In *Silva*, which UTPA “laundry list” provisions did Unique Beverage allegedly violate?

**In Silva, which UTPA "laundry list" provisions did Unique Beverage allegedly violate?**

All of the below

(1)(b) – causing likelihood of confusion about product source...

(1)(e) – falsely representing product characteristics...

(1)(g) – falsely representing product quality...



In *Silva*, why was the “**Contains No Coconut**” disclaimer ineffective?

## In Silva, why was the "Contains No Coconut" disclaimer ineffective?

All of the below

The prominence of the coconut depictions on the front label

The word "Coconut" on the front label

The disclaimer was ambiguous





According to *Pearson*, what is the basis of the **diminished value theory**?

## According to Pearson, what is the basis of the "diminished value theory"?

None of the below

The product is worth less than what the customer paid for it

The customer would not have made the purchase without the misrepresentation

The defendant committed a fraud on the marketplace



According to *Pearson*, what is the basis of the **purchase price refund theory**?

## According to Pearson, what is the basis of the purchase price refund theory?

the consumer didn't receive what they thought they were buying

The consumer received no benefit from the product they bought

The consumer could have bought a similar product for less money

The consumer paid more than they intended to



In the *Scott* tent case, what did the Oregon Supreme Court identify as the plaintiff's **ascertainable loss**?

## In the Scott tent case, what did the Oregon Supreme Court identify as the plaintiff's ascertainable loss?

The tent plaintiff received had less value because it was missing a flap and eaves

The tent plaintiff received would have cost more if it had a flap and eaves

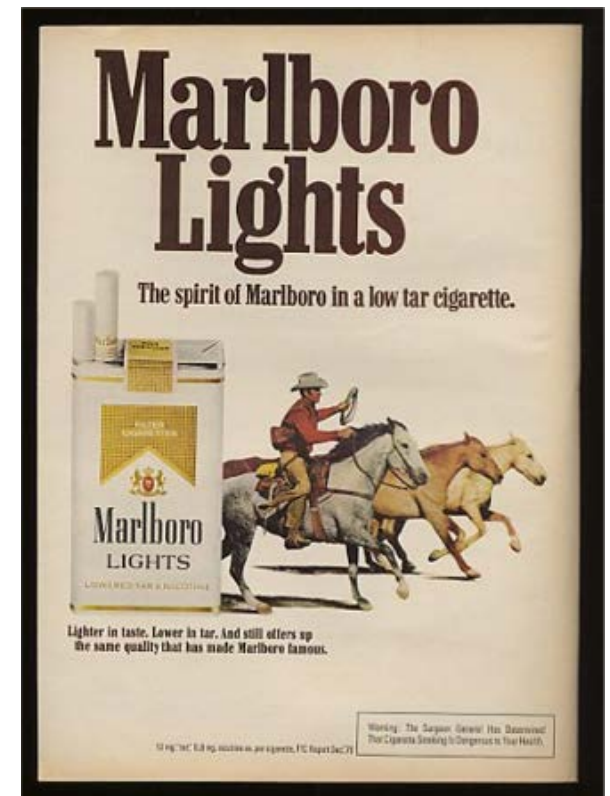
Plaintiff had no use for a tent without a flap and eaves

None of the above

# Unlawful Trade Practices Act

“What a plaintiff must prove is that (1) the defendant committed an **unlawful trade practice**; (2) plaintiff suffered an ascertainable **loss of money** or property; and (3) plaintiff's injury (ascertainable loss) was the **result** of the unlawful trade practice.”

*Pearson v. Philip Morris, Inc.*, 358 Or. 88, 127 (2015)



# Unlawful Trade Practices Act







# ORS 646.607

## 2015 ORS 646.607<sup>1</sup>

### Unlawful business, trade practices

[Text](#)

[News](#)

[Annotations](#)

[Related Statutes](#)

A person engages in an unlawful trade practice if in the course of the person's business, vocation or occupation the person:

- (1) Employs any unconscionable tactic in connection with selling, renting or disposing of real estate, goods or services, or collecting or enforcing an obligation;

# ORS 646.638 – Civil action by private party

## 2015 ORS 646.638<sup>1</sup>

### Civil action by private party

- damages
- attorney fees
- effect of prior injunction
- time for commencing action
- counterclaim
- class actions

Text

News

Annotations

Related Statutes

- (1) Except as provided in subsections (8) and (9) of this section, a person that suffers an ascertainable loss of money or property, real or personal, as a result of another person's willful use or employment of a method, act or practice declared unlawful under ORS [646.608 \(Additional unlawful business, trade practices\)](#), may bring an individual action in an appropriate court to recover actual damages or statutory damages of \$200, whichever is greater. The court or the jury may award punitive damages and the court may provide any equitable relief the court considers necessary or proper.

# ORS 646.605 – Definitions

- (9) "Unconscionable tactics" include, but are not limited to, actions by which a person:
- (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;
  - (b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit;
  - (c) Permits a customer to enter into a transaction with knowledge that there is no reasonable probability of payment of the attendant financial obligation in full by the customer when due; **or**

# ORS 124.110 – Financial abuse

## 2015 ORS 124.110<sup>1</sup>

### Financial abuse subject to action

Text

News

Annotations

Related Statutes

- (1) An action may be brought under ORS **124.100 (Definitions for ORS 124.100 to 124.140)** for financial abuse in the following circumstances:
- (a) When a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person.

# ORS 124.100 – Definitions

## 2015 ORS 124.100<sup>1</sup>

### Definitions for ORS 124.100 to 124.140

- action authorized
- relief
- qualifications for bringing action
- service on Attorney General

Text News Annotations Related Statutes

- (1) As used in ORS [124.100 \(Definitions for ORS 124.100 to 124.140\)](#) to [124.140 \(Estoppel based on criminal conviction\)](#):
- (a) "Designee" means a person designated by the Department of Human Services to conduct investigations under ORS [430.731 \(Uniform investigation procedures\)](#) in a county with a population of 650,000 or more persons.
- (b) "Elderly person" means a person 65 years of age or older.
- (c) "Financially incapable" has the meaning given that term in ORS [125.005 \(Definitions\)](#).
- (d) "Incapacitated" has the meaning given that term in ORS [125.005 \(Definitions\)](#).
- (e) "Person with a disability" means a person with a physical or mental impairment that:
- (A) Is likely to continue without substantial improvement for no fewer than 12 months or to result in death; **and**
- (B) Prevents performance of substantially all the ordinary duties of occupations in which an individual not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the person with the physical or mental impairment.

# Unlawful Trade Practices Act

Case 3:13-cv-01940-MO Document 7 Filed 11/28/13 Page 1 of 3 Page ID#: 54

Michael Fuller, Oregon Bar No. 09357  
*Pro Bono* Trial Attorney for Mr. Sorenson  
OlsenDaines, PC  
PO Box 2316  
Portland, Oregon 97208  
[Michael@UnderdogLawBlog.com](mailto:Michael@UnderdogLawBlog.com)  
Mobile 503-201-4570  
Fax 503-362-1375

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

SCOTT SORENSON,  
Portland consumer of  
mental health services,

Plaintiff,

v.

VERIZON WIRELESS aka CELLCO  
PARTNERSHIP, INC., VERIZON  
COMMUNICATIONS INC., and JOHN  
DOES 1-50,

Defendants.

///

///

///

NOTICE OF SETTLEMENT - Page 1

OlsenDaines, PC  
PO Box 2316  
Portland, Oregon 97208  
Office 503-274-4252  
Fax 503-362-1375

Case No. 3:13-cv-01940-MO

## NOTICE OF SETTLEMENT

Case 3:13-cv-01940-MO Document 7 Filed 11/28/13 Page 2 of 3 Page ID#: 55

### NOTICE OF SETTLEMENT

The Parties to this lawsuit have reached a settlement agreement as follows:

1. Mr. Sorenson agrees to **release** all claims and **dismiss** his lawsuit.
2. Verizon Wireless agrees to **apologize** to Mr. Sorenson.
3. Verizon Wireless agrees to **compensate** Mr. Sorenson \$5,000 for his emotional harm.

### REQUEST FOR 30 DAY DISMISSAL ORDER

May It Please The Court, all future matters in this lawsuit may be taken off calendar. Mr.

Sorenson requests entry of a 30 day dismissal order.

DATED: November 28, 2013

s/ Michael Fuller  
Michael Fuller, Oregon Bar No. 09357  
*Pro Bono* Trial Attorney for Mr. Sorenson  
OlsenDaines, PC  
PO Box 2316  
Portland, Oregon 97208  
[Michael@UnderdogLawBlog.com](mailto:Michael@UnderdogLawBlog.com)  
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NOTICE OF SETTLEMENT - Page 2

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## Week 5 – UTPA (cont.)

- 5:30 Today's agenda
  - Course review results
  - UTPA Fee shifting
  - UTPA Damages
- 6:00 Break
  - UTPA Statute of limitations
  - Punitive damages
  - ORS 646.608**
  - Common UTPA violations
- 6:45 Break
  - Speaker: Pilar French



## Week 5 – UTPA (cont.)

- 5:30 Today's agenda
  - Course review results
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  - Punitive damages
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  - Common UTPA violations**
- 6:45 Break
  - Speaker: Pilar French

# Unlawful Trade Practices Act



# Unlawful Trade Practices Act

Case 3:14-cv-00252-ST Document 1 Filed 02/14/14 Page 1 of 13 Page ID#: 1

Eric Olsen, Oregon Bar No. 783261  
Lead Trial Attorney for Mr. Fuller  
David Johnson, Oregon Bar No. 123553  
Of Attorneys for Mr. Fuller  
OlsenDaines, PC  
PO Box 2316  
Portland, Oregon 97208  
[olsen@olsendaines.com](mailto:olsen@olsendaines.com)  
503-362-9393

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

MICHAEL FULLER,  
a Portland consumer,

Plaintiff,

v.

LA FITNESS aka  
Fitness International, LLC, a  
Delaware company,

Defendant.

Case No. 3:14-cv-252

**UNFAIR TRADE PRACTICES  
COMPLAINT**

28 USC § 2201(a)  
ORS 646.636  
ORS 646.638

Demand for Jury Trial

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///

///

///

UNFAIR TRADE PRACTICES COMPLAINT - Page 1

OlsenDaines, PC  
PO Box 2316  
Portland, Oregon 97208  
Office 503-274-4252

# Unlawful Trade Practices Act



**SAFEWAY**

# Unlawful Trade Practices Act



# Unlawful Trade Practices Act



Michael Fuller, Chair  
Consumer Protection Group

DELIVERED VIA FIRST CLASS MAIL

**Attorneys**

Eric W. Olsen \* \*\* A \*  
Dwayne R. Murray \*  
Lars R. Olsen \*  
Rex K. Daines \*  
Kevin D. Swartz \*  
D. Neal Pelton \*  
Matthew A. Casper \*  
Michael R. Fuller \*  
Michael Sperry  
Kris Sperry \*  
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800-258-3518

**Website**

www.OlsenDaines.com/cpg

*"Proudly protecting the rights of  
consumers for over 30 years"*

*\*\* Expedient letter - document has not read*

May 8, 2013

Safeway Inc.  
c/o Jim Labianco  
1303 NW Lovejoy St  
Portland, Oregon 97209

**RE: Fuller v. Safeway Inc.  
ORS 646.638 – False Representation**

Ladies and Gentlemen,

**A. Liability**

Based on the facts as I see them, On May 1, 2013 you violated ORS 646.608(1)(j) by falsely representing the amount of a price reduction.

See attached copies of my receipts and product packaging.

Your customer service manager admitted liability on May 2, 2013.

**B. Damages**

As a result of the violation, I suffered a loss of \$2.37.

I am a consumer protection trial attorney and under *Review (Colby) v. Gunson*, 349 Or. 1, 238 P.3d 374 (Or. 2010), I am entitled to compensation for representing myself in this matter.

See attached billing ledger and judgment from a recent consumer protection trial I won verifying my rate.

# Unlawful Trade Practices Act



COMCAST

# Unlawful Trade Practices Act

Case 3:15-cv-00688-ST Document 1 Filed 04/23/15 Page 1 of 16

Eric Olsen, Oregon Bar No. 783261  
Lead Attorney for Plaintiff  
David Johnson, Oregon Bar No. 123553  
Of Attorneys for Plaintiff  
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Portland, Oregon 97204  
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Phone 503-362-9393

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**MICHAEL FULLER**, individually and on behalf of all others similarly situated, Case No. 3:15-cv-688  
Plaintiff, **CLASS ACTION ALLEGATION COMPLAINT**  
v. Unfair Trade Practices  
ORS 646.605 *et seq.*  
**COMCAST OF CALIFORNIA/  
COLORADO/FLORIDA/OREGON, INC.**, Demand for Jury Trial  
a Georgia corporation,  
Defendant.

1.

**JURISDICTION AND THE PARTIES**

This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 because true diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000, including class statutory damages, punitive damages, attorney fees and costs.

COMPLAINT - Page 1

OlsenDaines, P.C.  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204



# Unlawful Trade Practices Act



# Unlawful Trade Practices Act



# Unlawful Trade Practices Act



# Unlawful Trade Practices Act



August 3, 2014

Delivered via First Class Mail

Petco Animal Supplies Stores, Inc.  
c/o Registered Agent Corp. Service Co.  
285 Liberty St. NE  
Salem, Oregon 97301

RE: **Request to Arbitrate Claim**  
**M. Robert Fuller v Petco Animal Supplies Stores, Inc.**

To Whom It May Concern:

Mr. Fuller has retained me to prosecute you for unlawful trade practices. His letter dated July 5, 2014 and attached documentation set out the facts underlying his claim. I understand he's also provided you a copy of an additional receipt as you've requested.

I have take-it-or-leave-it authority to accept \$1,000 in exchange for release of Mr. Fuller's claim. This offer fairly represents the claim's value, in light of your exposure to statutory damages, punitive damages, and expenses pursuant to ORS 646.638.

If settlement is not possible, Mr. Fuller would like to reduce expenses by stipulating to arbitration. Please let me know if you agree to arbitrate this claim pursuant to the AAA by August 18. Thank you.

Sincerely,

s/ David Johnson  
Attorney at Law

cc: Sedgwick Claims Management Services, Inc.  
c/o Karen Reynoza  
PO Box 14153  
Lexington, KY 40512

OlsenDaines Executive Office • 3995 Hagers Grove Road SE • Salem, Oregon 97317 • 503-362-9393 • www.OlsenDaines.com

Page 1 of 1

Sedgwick Claims Management Services, Inc.  
PO Box 14153  
Lexington, KY 40512-4153



Phone: (714)256-5114  
Fax: (859)264-4062

July 14, 2014

Michael Fuller or David Johnson  
111 SW 5th Ave 31st Fl  
Portland, OR 97204

RE: Account: Petco Animal Supplies, Inc.  
Claimant: Michael Fuller  
Date of Loss: 07/05/2014  
Claim Number: 30142454084-0001

Dear Mr. Fuller

This letter is an acknowledgement of your recent complaint in your letter dated July 5, 2014. Please direct all correspondence and telephone calls to me. We are currently investigating this matter.

In addition, I am requesting the following information from your client, so that I may complete my investigation of the claim:

- Copy of the receipt for the batteries you purchased.
- Date of Birth
- A list of damages incurred due to the alleged violation of ORS 646.608(1)(e) and (4)

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Karen Reynoza  
Claims Examiner  
Direct Dial: (714)256-5114  
Toll Free: (800)221-5473  
Facsimile: (859)264-4062



## Week 5 – UTPA (cont.)

- 5:30    Today's agenda  
         Course review results  
         UTPA Fee shifting  
         UTPA Damages
- 6:00    Break  
         UTPA Statute of limitations  
         Punitive damages  
         ORS 646.608  
         **Common UTPA violations**
- 6:45    Break  
         Speaker: Pilar French

## Week 5 – UTPA (cont.)

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## Week 5 – UTPA (cont.)

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  - Common UTPA violations
- 6:45 Break

**Speaker: Pilar French**

## Next Week – FCRA

- 5:30 Today's agenda
  - Credit report disputes
  - FCRA elements
  - FCRA damages
- 6:00 Break
  - FCRA statute of limitations
  - Spokeo*
- 6:20 Break
  - Speaker: Attorney General Ellen Rosenblum
  - Speaker: Justin Baxter