



Week 6 – UTPA / FCRA

- 5:30 Today's agenda
 - ORS 646.608
 - Common UTPA violations
 - 6:00 Speaker: Attorney General Ellen Rosenblum
 - 6:30 Break
 - Credit report disputes
 - FCRA charts
 - 6:45 Speaker: Justin Baxter
- 

Week 6 – UTPA / FCRA

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Credit report disputes

FCRA charts

6:45 Speaker: Justin Baxter

Announcements

Oregon Consumer League Board Meeting

February 20 – 7pm to 8pm

Independent Living Resources

OSB Consumer Section Meeting

February 21 – 12pm to 1pm

Downtown Portland DOJ

Debtor-Creditor Saturday Session

February 24 – 9am to 12pm

Salem Convention Center



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ORS 646.608 – “The Laundry List”

2015 ORS 646.608¹

Additional unlawful business, trade practices

- proof
- rules

Text News Annotations Related Statutes

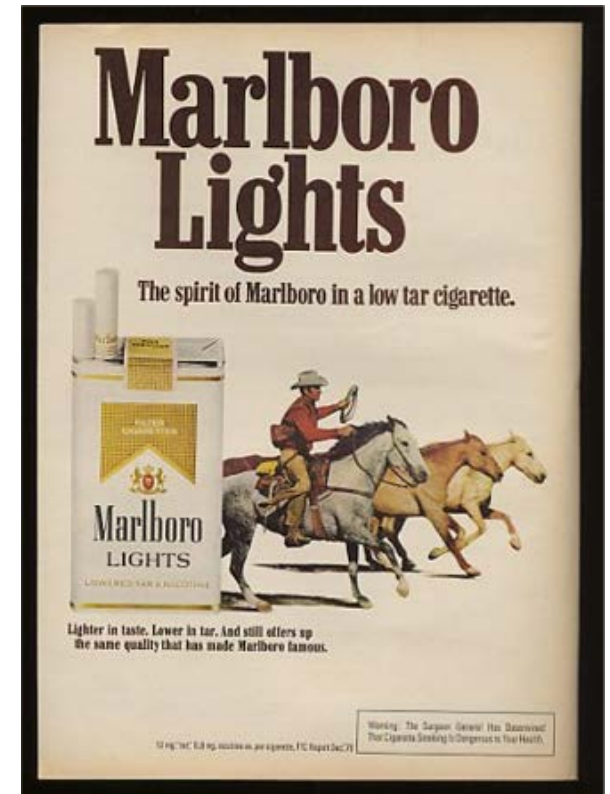
(1) A person engages in an unlawful practice if in the course of the person's business, vocation or occupation the person does any of the following:

- (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)



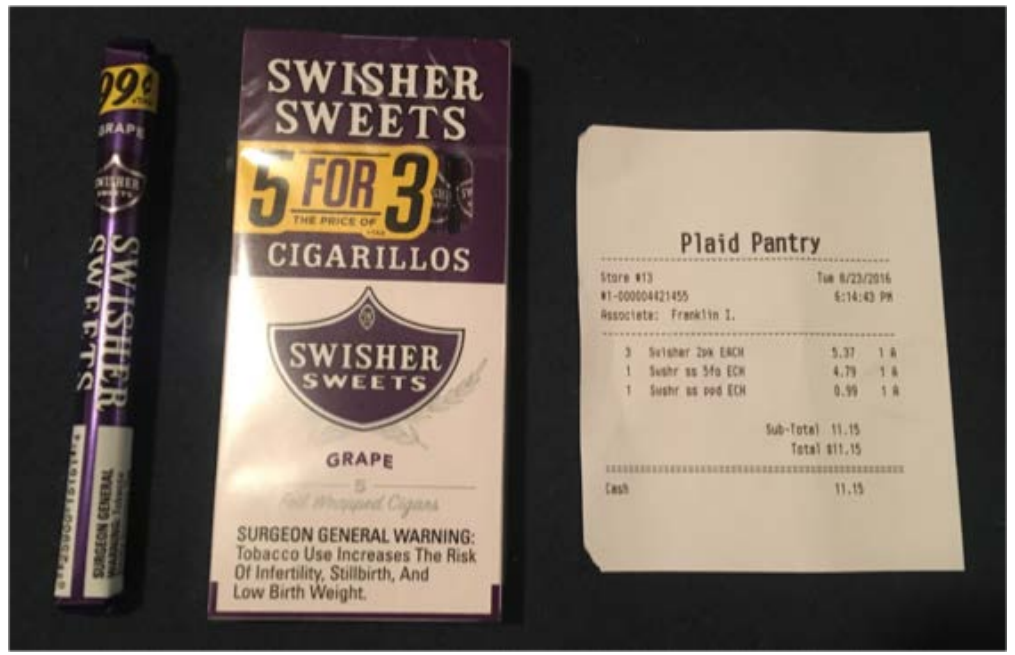
Unlawful Trade Practices Act

8/25/2016 4:30:52 AM
16027821

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

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27</p> <p>J PODAWILTZ, individually and on behalf of all other similarly situated persons,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>SWISHER INTERNATIONAL, INC., a Delaware corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.</p> <p>CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL</p> <p>Oregon Unlawful Trade Practices Act ORS 646.608</p> <p>Class action claims not subject to mandatory arbitration</p> <p>Filing fee authority: ORS 21.135 Filing fee: \$252</p>
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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.



Michael Fuller, OSB No. 09357

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Direct 503-201-4570

Mark Geragos, Pro Hac Pending

Of Trial Attorneys for Plaintiff
Geragos & Geragos
Historic Engine Co. No. 28
644 South Figueroa Street
Los Angeles, California 90017
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**

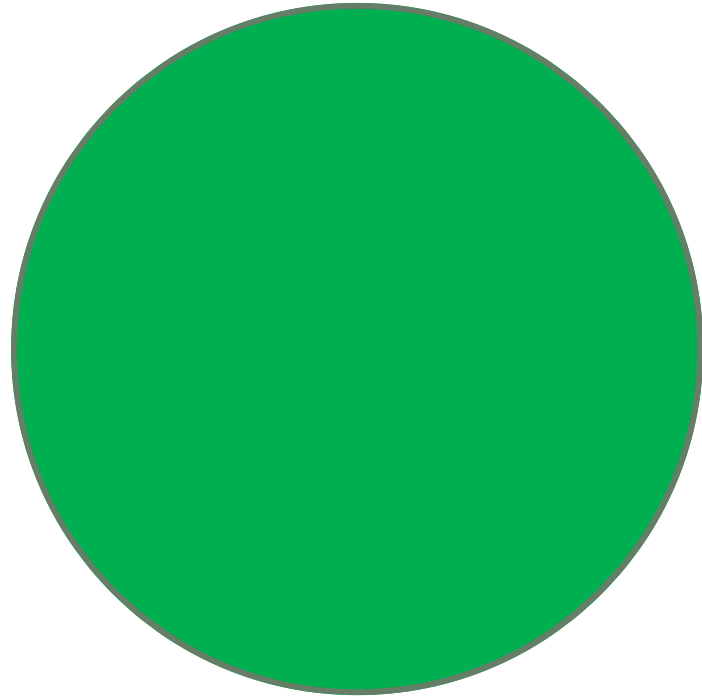
Unlawful Trade Practices

28 U.S.C. § 1332

Demand for Jury Trial



Class Break
Over





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

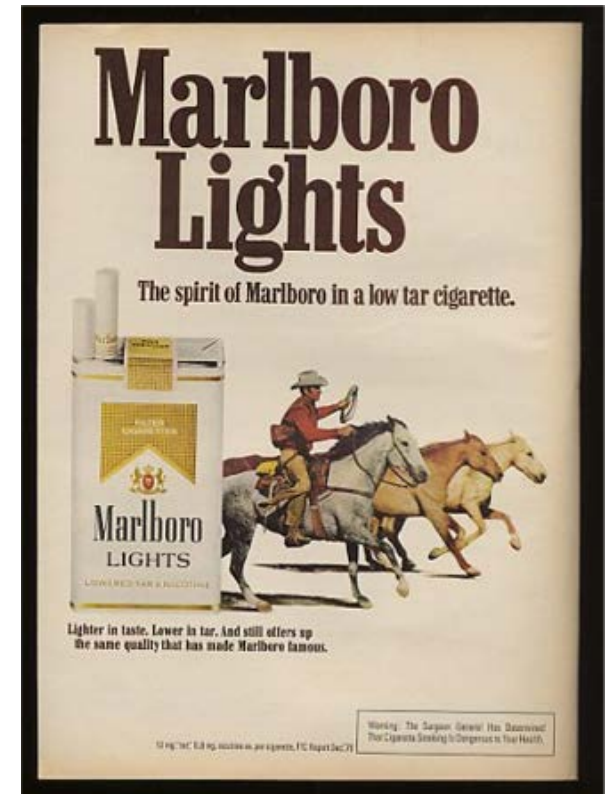
Plaintiff had no use for a tent without a flap and eaves

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 646.607¹

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 646.638¹

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 124.110¹

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 124.100¹

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

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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
Mobile 503-201-4570
Fax 503-362-1375

NOTICE OF SETTLEMENT - Page 2

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Week 6 – UTPA / FCRA

5:30 Today's agenda

ORS 646.608

Common UTPA violations

6:00 Speaker: Attorney General Ellen Rosenblum

6:30 Break

Credit report disputes

FCRA charts

6:45 Speaker: Justin Baxter

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Unlawful Trade Practices Act



ORS 646.608(1)(f)

- (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.

Unlawful Trade Practices Act



Unlawful Trade Practices Act



Unlawful Trade Practices Act



Delivered via First Class Mail

August 3, 2014

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



Unlawful Trade Practices Act



LA | FITNESS

ORS 646.608(1)(s)

- (s)** Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

Unlawful Trade Practices Act

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

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Lead Trial Attorney for Mr. Fuller
David Johnson, Oregon Bar No. 123553
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Portland, Oregon 97208
colsen@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

///

///

///

///

UNFAIR TRADE PRACTICES COMPLAINT - Page 1

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

Unlawful Trade Practices Act



SAFeway

ORS 646.608(1)(j)

- (j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

Unlawful Trade Practices Act



Unlawful Trade Practices Act



Michael Fuller, Chair
Consumer Protection Group

DELIVERED VIA FIRST CLASS MAIL

Attorneys

Eric W. Olsen **FA*
Dwayne R. Murray *
Lars R. Olson *
Rex K. Daines **
Kevin D. Swartz **
D. Neal Pelton *
Matthew A. Casper *
Michael R. Fuller *
Michael Sperry *
Kris Sperry *
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* Licensed in OR
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* Licensed in ID
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* Licensed in MT
* Licensed in AZ

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Website

www.OlsenDaines.com/cpg

*"Proudly protecting the rights of
consumers for over 38 years"*

*** Equalized letter - delivered first class mail*

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

ORS 646.608(1)(i)

- (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or services as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

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
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djohnson@olsendaines.com
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.**,
a Georgia corporation, Demand for Jury Trial

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

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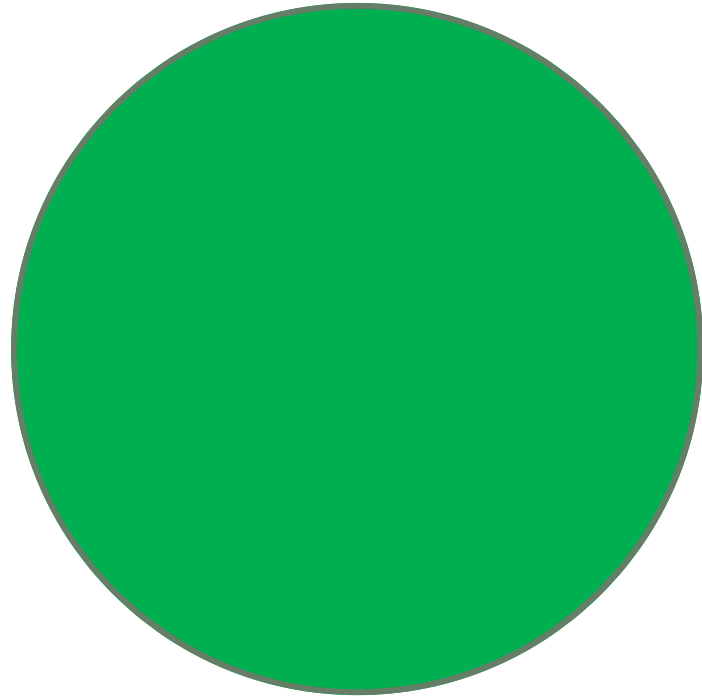
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Fair Credit Reporting Act

PRIVATE RIGHT OF ACTION	CLAIM ELEMENTS	DAMAGES	ATTORNEY FEES	STATUTE OF LIMITATIONS
15 U.S.C. § 1681n, o	(1) Failure of a furnisher or CRA to properly reinvestigate (2) After a consumer (3) Sends notice of a dispute to a CRA	Actual or statutory damages, punitive damages	Prevailing plaintiff	Two years*

Fair Credit Reporting Act

Private Right of Action

- Duties of **CRA**s and **furnishers** to reinvestigate after a consumer **sends notice** of dispute **to a CRA** are enforceable by private right of action and federal or state agencies. 15 U.S.C. § 1681s-2(b).
- General duties regarding the initial furnishing of accurate credit information are only enforceable by **federal or state agencies**. 15 U.S.C. § 1681s-2(a), (c).

EQUIFAX®

 **Experian**™

 **TransUnion**®

Fair Credit Reporting Act

Claim Elements

- Within **5 business days** after receiving a dispute, a CRA must **provide** all **relevant** information regarding the dispute (an “ACDV form”) to the furnisher. 15 U.S.C. § 1681i(a)(2).
- If a CRA determines a dispute is **frivolous**, it must notify the consumer within **5 business days**. 15 U.S.C. § 1681i(a)(3).
- Within **30 days** after receiving a dispute, CRAs and furnishers must **investigate, review** all relevant information, and **delete** any incorrect credit information. 15 U.S.C. § 1681s-2(b); i(a). *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147 (9th Cir. 2009).
- A CRA must provide reinvestigation **results** to a consumer within **5 business days**. 15 U.S.C. § 1681i(a)(6).

The logo for Equifax, featuring the word "EQUIFAX" in a bold, red, sans-serif font with a registered trademark symbol.The logo for Experian, featuring a stylized blue and red dot pattern to the left of the word "Experian" in a blue, sans-serif font with a trademark symbol.The logo for TransUnion, featuring a green and grey dot pattern to the left of the word "TransUnion" in a green, sans-serif font with a registered trademark symbol.

Credit Dispute Letter

September 20, 2015

Equifax
PO Box 740241
Atlanta, GA 30374

RE: FCRA Credit Report Dispute Letter

Ladies and Gentlemen,

I dispute the credit information referenced below because... *[the debt was included in bankruptcy, the account belongs to someone else, the balance is incorrect, etc.]*:

Account No.: XXXXXX1234
Original Creditor: Capital Chase Bank, N.A.

Please see the attached documents in support of my dispute: *[bankruptcy discharge order, credit reports with errors circled, collection letters, original agreement, etc.]*

Please immediately investigate this dispute and correct my credit report. This dispute is very important to me because if this credit information is not corrected immediately, ... *[I won't be able to refinance my home, I won't be able to obtain credit, I can't realize my fresh start after bankruptcy, etc.]*.

Thank you.

John Q. Public

Full Legal Name: John Quincy Public
Social Security No.: 555-55-5555
Date of Birth: 01-01-1962
Current Address: 5678 Consumer Drive, Portland, OR 97204
Current Phone No.: 555-555-5555

Results Letter

EQUIFAX

CREDIT FILE : May 25, 2016

Confirmation #

Dear Sarah :

Below are the results of your reinvestigation request and, as applicable, any revisions to your credit file. If you have additional questions regarding the reinvestigated items, please contact the source of that information directly. You may also contact Equifax regarding the specific information contained within this letter or report within the next 60 days by visiting us at www.investigate.equifax.com or by calling a Customer Representative at (888) 425-7961 from 9:00am to 5:00pm Monday-Friday in your time zone.

For an added convenience, use one of the below options to start an investigation or check the status of your dispute.

Please note, when you provide documents, including a letter, to Equifax as part of your dispute, the documents may be submitted to one or more companies whose information are the subject of your dispute.

Visit us at www.equifax.com/CreditReportAssistance or Call us at 866-349-5186.

Thank you for giving Equifax the opportunity to serve you.

The Results Of Our Reinvestigation

>>> **We have reviewed the current address. The results are:** The current address has been added/updated per the information you have supplied. **Salt Lake City UT 84152**

Credit Account Information			
(For your security, the last 4 digits of account number(s) have been replaced by 'X')			
(This section includes open and closed accounts reported by credit grantors)			
Account History	1 : 30-59 Days Past Due	5 : 150-179 Days Past Due	J : Voluntary Surrender
Status Code	2 : 60-89 Days Past Due	6 : 180 or More Days Past Due	K : Repossession
Descriptions	3 : 90-119 Days Past Due	G : Collection Account	L : Charge Off
	4 : 120-149 Days Past Due	H : Foreclosure	

>>> **We have researched the credit account. Account # - 74* The results are:** Please be advised that account included in bankruptcy does not report any balance, if you have additional questions about this item please contact: **Trident Asset Management, 53 Perimeter Ctr E Ste 440, Atlanta GA 30346-2294 Phone: (866) 695-8893**

Trident Asset Management, LLC 5755 N Point Pkwy Ste 12 Alpharetta GA 30022-1136 : (866) 695-8893													
Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Months Paid	Activity Designator	Creditor Classification					
774*	08/01/2011		\$0					Retail					
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of 1st Delinquency	Date of Last Activity	Days Mtd. Del. 1st Pmt	Charge Off Amount	Delinquent Pay Start Date	Setback Pay Amount	Setback Pay Date	Date Closed
11/28/2014				\$0	\$0	08/2011		11/2014	\$0				

Status - Account Included in Bankruptcy; Type of Loan - Returned Check; Whose Account - Individual Account; ADDITIONAL INFORMATION - Returned Check; Bankruptcy Chapter 7; Bankruptcy Discharged; Consumer Disputes - Reinvestigation in Process;

(Continued On Next Page)



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Week 6 – UTPA / FCRA

- 5:30 Today's agenda
 - ORS 646.608
 - Common UTPA violations
- 6:00 Speaker: Attorney General Ellen Rosenblum
- 6:30 Break
 - Credit report disputes**
 - FCRA charts
- 6:45 Speaker: Justin Baxter

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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)		✓	✓	
ORLTA	ORS 90 et seq.		✓		

Fair Credit Reporting Act Damages

- The FCRA provides for **actual damages, \$1,000 statutory damages, punitive damages, and attorney fees**. 15 U.S.C. § 1681n,o.
- The most important factor in determining a reasonable amount of punitive damages is the degree of **reprehensibility** of the defendant's conduct. *BMW v. Gore*, 517 U.S. 559, 575 (1996).
- An \$18.4 million punitive damages award in light of \$180,000 actual damages was reduced to \$1.62 million under the 14th amendment's **due process** clause. *Miller v. Equifax*, 2014 U.S. Dist. LEXIS 69450 (D. Or. May 20, 2014).

The logo for Equifax, featuring the word "EQUIFAX" in a bold, red, sans-serif font with a registered trademark symbol.The logo for Experian, featuring a stylized blue and red dot pattern to the left of the word "Experian" in a blue, sans-serif font with a trademark symbol.The logo for TransUnion, featuring a stylized green and grey dot pattern to the left of the word "TransUnion" in a green, sans-serif font with a registered trademark symbol.

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			✓

Fair Credit Reporting Act

Attorney Fees

- Unlike the American rule, a **prevailing plaintiff** under the FCRA may recover reasonable attorney fees and costs. 15 U.S.C. § 1681n(a)(3), o(a)(2).
- A defendant may only recover its fees in a FCRA claim as **sanctions**, or after successfully responding to a complaint or motion filed in **bad faith** or for purposes of **harassment**. FRCP 11, FRCP 37, 15 U.S.C. § 1681n(b), o(b).
- A reasonable fee award under the FCRA is based on the **lodestar** method, which takes into account the time expended and hourly rate. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973 (9th Cir. 2008).

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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.	✓			

Fair Credit Reporting Act

Statute of Limitations

- The statute of limitations under the FCRA expires the earlier of **2 years** after the date of **discovery** by the plaintiff of the violation that is the basis for such liability; or **5 years** after the date on which the violation that is the basis for such liability **occurs**. 15 U.S.C. § 1681p.

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Next Week – FCRA / FDCPA

- 5:30 Today's agenda
Credit report disputes
FCRA charts
Spokeo
- 6:30 Break
FDCPA elements
FDCPA charts
Tourgeman
Henson v. Santander
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