IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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RICHARD R. ROOKER, CLERK

D.C.

STATE OF TENNESSEE,	)	
Plaintiff,	)	**JURY DEMAND**
v.	)	**No. 06C1093**
CONSUMER DEPOT, LLC, AUCTION LOGISTIX, LLC, MARTIN RANDOLPH FIKE, CAROL FIKE and MICHAEL HINDS, individually and collectively d/b/a AUCTION DEPOT, BARGAIN DEPOT, CONSUMER DEPOT, FACTORY DEALZ, SURPLUS DEALZ, RETURN DEALZ, auctiondepot99, auctiondepot-tn01, bargaindepot04, bargainuniverse05, factorydealz, returndealz04, software-universe, ubid-it, saveonsalvage, surplusdealz05, swdiscounters, techgraveyard, youbid2003, www.consumerdepot.com and mr-appliance.	)	
Defendants.	)	

AMENDED COMPLAINT
FOR TEMPORARY AND PERMANENT INJUNCTION AND OTHER RELIEF

This civil law enforcement proceeding is brought in the name of the State of Tennessee, in its sovereign capacity, by and through Paul G. Summers, Attorney General ("Attorney General"), and at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Director")[1].

The Attorney General brings this action pursuant to the Tennessee Consumer

[1]See Affidavit of Mary Clement, attached to original Verified Complaint.

Protection Act of 1977[2] ("TCPA"), and pursuant to his general statutory[3] and common law authority. The Attorney General and the Director have reason to believe that the above-named defendants have violated and continue to violate the TCPA by engaging in deceptive advertising and marketing, and other unfair and deceptive business practices in connection with their retail and internet sales of electronic and computer products, and that this action is in the public interest. For the purposes of this Complaint, the terms "goods," "products" or "item"shall mean tangible chattels, *i.e.* personal property, sold primarily to individuals for personal, family, or household purposes. The defendants have been previously provided with ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2). Upon information and belief, the State alleges the following:

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3), because it is the county where the unfair and deceptive acts and practices alleged in the Complaint took place, or are about to take place, and is the county where defendants conduct, transact, or have transacted business.

THE PARTIES

2. Plaintiff, State of Tennessee, *ex rel.* Paul G. Summers, Attorney General, is charged with enforcing the Tennessee Consumer Protection Act of 1977,[4] which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. The Attorney General may initiate civil law enforcement proceedings in the name of the State to

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[2] Tenn. Code Ann. §§ 47-18-101, *et seq.*

[3] Tenn. Code Ann. § 8-6-109.

[4] Tenn. Code Ann. § 47-18-101, *et seq.*

enjoin violations of the TCPA, and to secure such equitable and other relief as may be appropriate in each case under broad grants of statutory and common law authority.[5]

3. Defendant Consumer Depot, LLC ("Consumer Depot") is a Tennessee limited liability company with a principal place of business at 3332 Powell Avenue, Nashville, Tennessee. Consumer Depot has been administratively dissolved on at least three previous occasions for failing to observe filing and reporting requirements enforced by the Tennessee Secretary of State. Consumer Depot has been reinstated and is currently registered with the Tennessee Secretary of State. Consumer Depot's registered agent is Mike Castellavin of 95 White Bridge Road, Nashville, TN 37204.

4. Defendant Auction Logistix, LLC ("Auction Logistix") is a Tennessee limited liability company with a principal place of business at 3332 Powell Avenue, Nashville, Tennessee. Auction Logistix' registered agent is Mike Castellavin of 95 White Bridge Road, Suite 509, Nashville, TN 37205. At all times relevant hereto, Auction Logistix has actively participated in defendants' sales and advertising, including the sale and advertising of defendants' products and the facilitation of consumers' payments for such products. Auction Logistix has also served as an agent of defendants, and has participated in the unlawful conduct alleged in the Complaint.

5. Defendant Martin Randolph Fike ("Fike") is an individual and a resident of the State of Tennessee, residing at 1212 Beddington Pike, Nashville, Tennessee. At all times relevant hereto, Fike has been an owner, operator, officer, director, employee, agent and manager of defendants Consumer Depot and Auction Logistix, and has personally and actively participated in their day-to-day activities and operations. In addition, and at

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[5] Tenn. Code Ann. § 8-6-109 and § 47-18-108(a)(1).

all times relevant to this Complaint, Fike has, acting alone or in concert with others, formulated, directed, controlled or had authority to control, or participated in the acts and practices of defendants Consumer Depot and Auction Logistix, including all of the unlawful conduct alleged in the Complaint, and has had the authority to control and stop their violations of the law.

6. Defendant Carol Fike ("Carol Fike") is an individual and a resident of the State of Tennessee, residing at 1212 Beddington Pike, Nashville, Tennessee. At all times relevant hereto, Carol Fike has been married to defendant Martin Fike, and has been an owner, operator, officer, director, employee, agent and manager of Defendant Consumer Depot, and has personally and actively participated in its day-to-day activities. In addition, and at all times relevant to this Complaint, Carol Fike has, acting alone or in concert with others, formulated, directed, controlled or had authority to control, ratified or participated in the acts and practices of Defendant Consumer Depot, including the unlawful conduct alleged in the Complaint, and has had the authority to control and stop its violations of the law.

7. Defendant Michael Hinds ("Hinds") is an individual and a resident of the State of Tennessee, residing at 126 Buckingham Court, Goodlettsville, TN. At all times relevant hereto, Hinds has been an operator, employee, agent and manager of defendant Consumer Depot, and has personally and actively participated in its day-to-day activities. In addition, and at all times relevant hereto, Hinds has, acting alone or in concert with others, formulated, directed, controlled or had authority to control, ratify or participate in the acts and practices of Consumer Depot, including the unlawful conduct alleged in the Complaint, and has had the authority to control and stop its violations of the law.

FACTUAL ALLEGATIONS

Upon information and belief, the State of Tennessee alleges as follows:

8. On or about March 30, 1995, Fike caused Articles of Organization to be filed with the Tennessee Secretary of State for the creation of Consumer Depot, LLC, a Tennessee limited liability company.

9. On or about June 2, 2004, Fike caused Articles of Organization to be filed with the Tennessee Secretary of State for the creation of Auction Logistix, LLC, a Tennessee limited liability company.

10. Since its inception, Fike has served as CEO and Chief Manager of Consumer Depot and Auction Logistix, and has been actively involved in their day-to-day activities, including in the unlawful activities alleged in this Complaint. Fike has maintained a controlling interest in Consumer Depot and Auction Logistix, and serves as their main authority figure. Fike and Consumer Depot have, on occasion, falsely represented to the public that Auction Logistix was an unrelated, third-party payment service.

11. Since its inception, Carol Fike has served as an officer, manager and employee of Consumer Depot, and has been actively involved in its day-to-day activities, including in the unlawful conduct alleged in the Complaint. At all times relevant hereto, Carol Fike has had an ownership interest in Consumer Depot and is the only other owner of Consumer Depot besides Fike. Carol Fike has also participated in formulating policy for Consumer Depot and supervises certain Consumer Depot employees and departments.

12. At all relevant times hereto, Hinds has served as a manager and employee of Consumer Depot, and has been actively involved in its day-to-day activities, including in the unlawful conduct alleged in this Complaint. Hinds has also participated in formulating policy for Consumer Depot and supervises certain of its employees and departments.

13. Fike and Carol Fike (hereinafter collectively "the Fikes"), Hinds and Consumer Depot, offer various electronic and computer goods for sale to the general public from the Consumer Depot retail facility located at 3332 Powell Avenue, Nashville, Tennessee, and through Consumer Depot's website or affiliate websites, and more recently, through third-party internet auction sites such as eBay, Inc.

14. Consumer Depot and the Fikes obtain their inventory through bulk purchases of overstocked inventory, customer returns, open box returns, liquidated, damaged, defective, malfunctioning and broken items from larger retailers such as Staples, Best Buy, Bell Micro-products and others. Defendants allegedly sort these items, valuate them, and then offer them for sale to the public through their retail operation and/or through the internet.

15. For their auctions on third party websites such as eBay, the Fikes, Hinds and Consumer Depot post photographs purporting to depict the items offered for sale, along with written descriptions of the items, payment information, shipping information and sometimes, return policies. Auction Logistix, Hinds, the Fikes and Consumer Depot also post so-called "disclaimers" or FAQ or other links, which purport to disclaim any express or implied warranties such as the implied warranty of merchantability and fitness for a particular purpose, or otherwise contradict or change a material aspect of the message of their products' advertisement(s). Such disclaimers or contradictions are often on a different page from the subject of the "disclaimers," and often appear on a separate Auction Logistix web page. Such disclaimers or contradictions are often not readily observable, in small print, unclear, inconspicuous, concealed or presented only after a consumer has purchased or initiated the purchasing process.

DEFENDANTS' UNLAWFUL INTERNET AND RETAIL SALES

16. Since at least January of 2002, the Fikes, Hinds and Consumer Depot have been selling electronic and computer goods through a retail store, a website and through the eBay and other internet auction websites. The Fikes, Hinds and Consumer Depot have sold such goods through eBay using a variety of trade aliases, including, but not limited to, at least the following: Consumer Depot, Bargain Depot, Factory Dealz, Return Dealz, Surplus Dealz, bargaindepot04, ubid-it, youbid2003, auctiondepot99, auctiondepot-tn01, returndealz04, techgraveyard, saveonsalvage, surplusdealz04, swdiscounters, software-universe, bargainuniverse05, factorydealz, mr-appliance and others. Many of the aforesaid eBay aliases were originally registered to Fike individually, and certain other eBay aliases were registered to Hinds or Carol Fike.

17. Since at least June of 2004, and continuing to date, the Fikes, Hinds and/or Consumer Depot have been using defendant Auction Logistix to process all payments from internet or eBay consumers, and to present unfair, deceptive, conflicting, undisclosed or false messages to consumers regarding their purchases, and/or the terms and conditions of sale or return. Auction Logistix is therefore a necessary participant in the completion of each and every eBay or other internet sale, and its conflicting or deceptive advertising messages are published to each and every consumer who chooses to look at or purchase a product from defendants through eBay or through the internet.

18. In connection with their aforesaid sales, defendants have engaged in conduct which has generated hundreds of consumer complaints to the Tennessee Division of Consumer Affairs, the Better Business Bureau, the Internet Fraud Complaint Center and the Tennessee Attorney General's Office. The complaints against Fike and Consumer Depot have been so numerous, that the Better Business Bureau has stopped processing them, and

instead, refers complaining consumers directly to the Tennessee Attorney General's Office.

THE THOUSANDS OF COMPLAINTS AGAINST DEFENDANTS

19. Since approximately 2002, when the defendants began doing business on eBay, *over twenty-one thousand consumers (21,000) consumers* have lodged complaints or posted negative or allegedly neutral feedback against defendants on the eBay internet auction website, describing various acts of deception, falsehood or unfairness committed by defendants in connection with their sale and advertising of products. Similar victim complaints have been posted against defendants in other public or private complaint forums. Attached hereto as Exhibit A, and fully incorporated herein by reference, is a compilation victim complaints lodged against defendants and their various eBay aliases on the eBay auction website since August 12, 2003.[6]

20. The majority of complaints against defendants can be summarized as unfair or deceptive conduct generally characterized as a failure by defendants to deliver products as advertised or promoted. Instead, consumers often receive something less than what was advertised or promoted, and often receive broken, defective or empty product, or nothing at all. Defendants regularly refuse to remedy or correct such problems, act in bad faith, refuse to honor their representations, contradict their representations and/or refuse to issue refunds, leaving consumers with worthless or useless product and high out-of-pocket shipping costs.

By way of example, the following allegations are representative of many consumer complaints filed to date as described in paragraph numbers 18 through 21, above.

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[6] To the extent defendants have refused and continue to refuse to provide the State with identities of these complaining consumers as requested in discovery, the State is only able to identify these consumer victims through their eBay aliases, but reserves the right to supplement and expand this victim list once discovery is complete. The State further reserves the right to include all known and unknown consumer victims as part of the overall restitution remedy sought in this case.

EXAMPLE 1 - The BARGAIN DEPOT DECEPTIONS
(Passing Off Used or Broken Merchandise as New)

21. On or about January 9, 2002, Fike, Consumer Depot and/or Hinds created the trade alias **bargaindepot04**, and registered it with eBay for the purpose of selling Consumer Depot merchandise through eBay's internet auctions. Fike, Hinds and/or Consumer Depot also use the alias **Bargain Depot** in connection with their website and eBay internet auction sales.

22. The Fikes, Hinds and Consumer Depot represented and continue to represent, directly and by implication, that **bargaindepot04** merchandise is new, fully functional, of high quality and a good value. More particularly, defendants have made and continue to make the following express statements and representations in their advertisements for **bargaindepot04** merchandise, including, but not limited to, the following:

"in [its] original box"
"works great"
"7 day return period"
is "absolutely awesome"
"cream of the crop"
"another super bargain from one of eBay's largest suppliers"
"someone is going to get a great deal"
"works and looks great"
"Inspected by our technicians to insure TOP QUALITY"
"This item came in on a huge liquidation from a MAJOR RETAILER"
"This item is the one you want if you are looking to SAVE BIG"

23. In truth and in fact, some **bargaindepot04** merchandise was not new, functional, of high quality or a good value as represented by defendants, but instead, was broken, defective, incomplete or otherwise not as advertised or promoted.

24. Numerous unsuspecting consumers bid on and purchased **bargaindepot04**

merchandise on eBay. Such consumers paid the winning auction price along with high shipping costs through Auction Logistix, which defendants required them to use. While some consumers received the promised product, many other consumers received broken, defective, incomplete or otherwise not-as-advertised merchandise.

25. When these consumers attempted to complain to the Fikes, Hinds, Auction Logistix and/or Consumer Depot, their complaints were frequently ignored, or at best, were dismissed on the pretext that, for example, the consumers did not read the auction details carefully, or, failed to precisely follow strict refund procedures, even in cases where the auction item had been *expressly misrepresented* on eBay by defendants. In some cases where consumers were able to obtain refunds, the Fikes, Hinds, Auction Logistix and/or Consumer Depot nevertheless refused to refund all or part of their total shipping costs, and/or attempted to charge an undisclosed, so-called "restocking fee."

26. During the immediately preceding one-year time period,[7] *over four thousand* (4,000) consumers have posted negative feedback against **bargaindepot04** on eBay's website, complaining of defendants' failure to deliver what was promised in their advertising. *See* Exhibit A. Since Defendants created **bargaindepot04**, *over eleven thousand* (11,000) consumers have posted negative feedback against **bargaindepot04**. *See* Exhibit A.

EXAMPLE 2 - The SURPLUS DEALZ Deceptions
(Passing Off Empty Ink Cartridges as New)

27. By way of further example, on or about January 12, 2004, Fike and/or Hinds created, or caused to be created, the alias **surplusdealz05**, for the purpose of selling Consumer Depot merchandise through eBay's internet auctions. The Fikes, Hinds and/or

[7] This refers to May 3, 2006, the date of the filing of the original Verified Complaint.

Consumer Depot also used the aliases **Surplus Dealz** and **surplusdealz04** in connection with their **surplusdealz05** internet sales.

28. At all times relevant hereto, the Fikes, Hinds and Consumer Depot represented, and continue to represent, directly and by implication, that **surplusdealz05** merchandise is fully functional, "***GENUINE,***" still in its original box, and "**a great DEAL!!**" The Fikes, Hinds and/or Consumer Depot represented, directly and by implication, that **surplusdealz05** merchandise consisted of inventory that had been liquidated by retailers, implicitly consisting of new items or items that had been returned. Much of the **surplusdealz05** merchandise defendants sold on the internet consisted of ink and toner cartridges and was often sold "as is."

29. When selling as **surplusdealz05**, the Fikes, Hinds and/or Consumer Depot typically displayed a photograph purporting to depict the offered ink or toner cartridge, often depicting it in a new, unopened box or package, and thereby creating the overall net impression that the ink or toner cartridge was full, intact and in an unopened box. Moreover, the Fikes, Hinds and/or Consumer Depot would further bolster this impression by emphasizing in writing that the ink or toner cartridge was "***GENUINE,***" and by promising that "**Someone is going to get a great DEAL!!**"

30. The Fikes, Hinds and/or Consumer Depot have made the following express statements and representations in their eBay advertising regarding **surplusdealz05** merchandise, including, but not limited to, the following:

"GENUINE"
"a great deal"
"These are customer returns but are in the original manufacturers retail boxes and look good."
"The condition of these items range from NEW to Open Box Returns"

31. In truth and in fact, a great deal of **surplusdealz05** merchandise was not

functional, **"GENUINE,"** still in its original box, and/or **"a great deal,"** as promised by the Fikes, Hinds and/or Consumer Depot, but instead, was often used, empty, broken, defective, incomplete or otherwise not as advertised.

32. Numerous unsuspecting consumers bid on and purchased the Fikes, Hinds and/or Consumer Depot's merchandise, mostly through Auction Logistix, which defendants required them to use, including ink and toner cartridges, on eBay. Such consumers paid the winning auction price along with high shipping costs. While some consumers received the promised product, many other consumers received dirty, broken and/or empty ink cartridges or other merchandise which proved completely useless and worthless to them.

33. When the consumers who received dirty, broken and/or empty ink cartridges or other merchandise attempted to complain to the Fikes, Hinds, Auction Logistix and/or Consumer Depot, their complaints were frequently ignored, or at best, were dismissed on the purported grounds that the sale was an "as is" sale, and therefore, the consumer was left with the worthless product and the overpriced shipping costs.

34. During the immediately preceding one-year time period,[8] *over seven hundred* (700) consumers have posted negative feedback against **surplusdealz05** on eBay's website, complaining about **surplusdealz05**'s failure to deliver what was promised in their advertising. *See* Exhibit A. Since Defendants created **surplusdealz05,** *over four thousand* (4,000) consumers have posted negative feedback against **surplusdealz05**. *See* Exhibit A.

EXAMPLE 3 - The SWDISCOUNTERS Deceptions
(Sale of Incomplete Software)

35. By way of further example, on or about February 23, 2005, the Fikes, Hinds and/or Consumer Depot created, or caused to be created, the alias **swdiscounters**, for the

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[8] This refers to May 3, 2006, the date of the filing of the original Verified Complaint.

purpose of selling computer software through their website and through eBay's internet auctions.

36. At all times relevant hereto, the Fikes, Hinds and/or Consumer Depot represented and continue to represent, directly and by implication, that **swdiscounters'** products had been checked to ensure that all software discs were in the package. The Fikes, Hinds and/or Consumer Depot also represented, directly and by implication, that **swdiscounters'** merchandise consisted of overstock inventory that had been liquidated by a retailer, and consisted of new items or items that had been returned.

37. The Fikes, Hinds and/or Consumer Depot would frequently offer such software by displaying a photograph purporting to depict the software in a new, unopened box or package, and thereby creating the overall net impression that the software was new and intact, and in an unopened box.

38. In truth and in fact, a great deal of **swdiscounter** merchandise was not new and intact, but instead, was missing discs, and/or was "used," having been already registered to someone else and thus useless to the consumer.

39. Numerous unsuspecting consumers bid on and purchased the Fikes, Hinds and/or Consumer Depot's **swdiscounters** software on eBay, mostly through Auction Logistix, which defendants required them to use. Such consumers paid the winning auction price along with high shipping costs. While some consumers received the promised product, many other consumers received used, already registered, nonfunctional or incomplete software.

40. When the consumers who received used, already registered, nonfunctional and/or incomplete software attempted to complain to the Fikes, Hinds, Auction Logistix and/or Consumer Depot, their complaints were frequently ignored, or at best, were dismissed on the purported grounds that the sale was an "as is" sale, and therefore the consumer was stuck with the worthless product and the overpriced shipping costs.

41. During the immediately preceding one-year time period,[9] *over nine hundred* (900) consumers have posted negative feedback against **swdiscounters** on eBay's website, complaining of Fike and Consumer Depot's failure to deliver what was promised in their advertising. *See* Exhibit A. Since Defendants created **swdiscounters**, *over one thousand, one hundred* (1,100) consumers have posted negative feedback against **swdiscounters**. *See* Exhibit A.

EXAMPLE 4 - The FACTORYDEALZ Deceptions
(Water Damaged/Moldy CDs and DVDs)

42. By way of further example, on or about June 28, 2005, the Fikes, Hinds and/or Consumer Depot created, or caused to be created, the alias **factorydealz**, for the purpose of selling music and movie CDs and DVDs through their website and through eBay's internet auctions.

43. At all times relevant hereto, the Fikes, Hinds and/or Consumer Depot represented and continue to represent, directly and by implication, that **factorydealz** products were new and intact, by stating such products were **"sealed"** and/or **"BRAND NEW !!!"**

44. The Fikes, Hinds and/or Consumer Depot would frequently offer such music and movie CDs and DVDs by displaying a photograph purporting to depict the CD or DVD in a new, unopened box or package, and thereby creating the overall net impression that the CD or DVD was new and intact, and in an unopened box.

45. In truth and in fact, a great deal of **factorydealz** merchandise was not new and intact, but instead, was water logged, damaged, and in some cases, was growing a layer of mold on the outside of the disc package. Some discs were so moldy that the smell of mold permeated the air immediately upon opening the delivery box.

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[9] This refers to May 3, 2006, the date of the filing of the original Verified Complaint.

46. Numerous unsuspecting consumers bid on and purchased the Fikes, Hinds and/or Consumer Depot's **factorydealz** CDs and DVDs on eBay, mostly using Auction Logistix, which defendants required them to use. Such consumers paid the winning auction price along with high shipping costs. While some consumers received the promised product, many other consumers received water logged, damaged, moldy or empty discs that were completely nonfunctional and useless.

47. When the consumers who received such water logged, damaged, moldy or empty discs attempted to complain to the Fikes, Hinds, Auction Logistix and/or Consumer Depot, their complaints were frequently ignored or rejected, or at best, were subject to partial refunds only.

48. To date,[10] during its brief, nine month existence, over *five hundred (500) consumers* posted negative feedback against **factorydealz** on eBay's website, complaining about Fike and Consumer Depot's failure to deliver what they had promised in their advertising. *See* Exhibit A.

ADDITIONAL EXAMPLES OF DEFENDANTS' UNLAWFUL CONDUCT

49. At all times relevant hereto, the Fikes, Hinds, Auction Logistix and/or Consumer Depot, directly and through the use of aliases, have engaged in, and continue to engage in, numerous unfair and deceptive trade practices including, but not limited to, the following:

(A) Advertising, directly and by implication, that a specific product was being offered for sale, but delivering a different product;

(B). Advertising, directly and by implication, that items were being sold as "new," but delivering items that are refurbished, used or damaged;

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[10] This refers to May 3, 2006, the date of the filing of the original Verified Complaint.

(C). Advertising, directly and by implication, that products were "tested," "inspected," or otherwise checked by trained personnel, but delivering items that were broken, defective or incomplete;

(D). Advertising, directly and by implication, that merchandise was functional, but delivering merchandise that Defendants knew, or should have known was defective;

(E). Advertising, directly and by implication, that products were in good cosmetic shape, but delivering items that were broken, scratched, dirty, or that Defendants knew, or should have known, were empty;

(F). Advertising, directly and by implication, that products "work great," but delivering items that did not work or did not function properly;

(G). Advertising, directly or by implication, that certain components or hardware was included with an item, but delivering those items without the advertised components or hardware;

(H). Advertising or otherwise representing that products were covered by guarantees or manufacturer's warranties, when, in fact, they were not;

(I). Advertising software without disclosing that the software has already been opened and registered to someone else, and thus, not legally useable;

(J). Advertising a fixed cost for shipping and handling, but charging a higher amount;

(K) Posting "terms and conditions"of sale on the internet which are illegal, contrary to law, unfair or deceptive or unconscionable;

(L) Posting "terms and conditions"of sale on the internet which are designed to deter and in fact, do deter legitimate complaints by consumers;

(M) Falsely representing that Auction Logistix was an unrelated, third-party payment processor;

(N) Obstructing and evading legitimate return attempts and failing to provide meaningful responses and/or customer service for legitimate consumer complaints, questions and returns; and

(O). Retaliating against consumers who filed eBay complaints by, *inter alia*, posting negative feedback on eBay against such consumers.

VIOLATIONS OF THE LAW

50. Plaintiff hereby incorporates by reference and realleges each and every allegation contained in paragraphs 1 through 49, herein.

51. Defendants' conduct of offering of merchandise to consumers as alleged herein, constitutes the offering of or providing of "goods" and/or "services" and constitutes "trade," "commerce" and/or a "consumer transaction" as defined in Tenn. Code Ann. §§ 47-18-103 (5), (10) and (11).

COUNT ONE
(Violations of the Tennessee Consumer Protection Act of 1977)

52. Plaintiff hereby incorporates by reference and realleges each and every allegation contained in paragraphs 1 through 59, herein.

53. At all times relevant hereto, the Fikes, Hinds, Auction Logistix and/or Consumer Depot have individually and collectively participated in the unlawful conduct alleged herein, and have served as agents of each other and/or have aided and abetted each other by committing the aforesaid acts and practices that are unfair or deceptive, in violation of Tenn. Code Ann. § 47-18-104(a).

54. By engaging in the aforesaid conduct, the Fikes, Hinds, Auction Logistix and/or Consumer Depot have violated the Tennessee Consumer Protection Act by committing acts and practices that are unfair or deceptive, in violation of Tenn. Code Ann. § 47-18-104(a).

COUNT TWO
(Violations of the Tennessee Consumer Protection Act of 1977)

55. Plaintiff hereby incorporates by reference and realleges each and every allegation contained in paragraphs 1 through 54, herein.

56. At all times relevant hereto, the Fikes, Hinds, Auction Logistix and/or Consumer Depot have individually and collectively participated in the unlawful conduct alleged herein, and have served as agents of each other and/or have aided and abetted each other by committing the aforesaid acts and practices that are unfair or deceptive, in violation of Tenn. Code Ann. § 47-18-104(b).

57. By engaging in the aforesaid conduct, Fike and Consumer Depot have violated the Tennessee Consumer Protection Act by committing acts and practices that are *per se* deceptive, in violation of Tenn. Code Ann. § 47-18-104(b), as follows:

(A) Advertising, directly and by implication, that a particular product is offered for sale, but delivering a different product, in violation of Tenn. Code Ann. § 47-18-104(b)(27);

(B). Advertising, directly and by implication, that items are being sold as "new," but delivering items that are refurbished, used or damaged, in violation of Tenn. Code Ann. § 47-18-104(b)(6) and (b)(27);

(C). Advertising, directly and by implication, that products are "tested," "inspected," or otherwise checked by trained personnel, but delivering products that are broken, defective or incomplete, in violation of Tenn. Code Ann. § 47-18-104(b)(2), (b)(5), (b)(7), (b)(21) and (b)(27);

(D). Advertising, directly and by implication, that merchandise was functional, but delivering merchandise that Defendants knew, or should have known was defective; in violation of Tenn. Code Ann. in violation of Tenn. Code Ann. § 47-18-104(b)(2), (b)(3), (b)(5), (b)(7), (b)(9), (b)(21) and (b)(27);

(E). Advertising, directly and by implication, that products were in good cosmetic shape, but delivering items that were broken, scratched, dirty, or that Defendants knew, or should have known, were empty; in violation of Tenn. Code Ann. § 47-18-104(b)(5), (b)(7), (b)(21) and (b)(27);

(F). Advertising, directly and by implication, that products "work great," but delivering items that do not work or do not function properly, in violation of Tenn. Code Ann. § 47-18-104(b)(5), (b)(7), (b)(21) and (b)(27);

(G). Advertising, directly or by implication, that certain components

or hardware was included with an item, but delivering those items without the advertised components or hardware, in violation of Tenn. Code Ann. § 47-18-104(b)(5), (b)(7), (b)(21) and (b)(27);

(H). Advertising or otherwise representing that products are covered by guarantees or manufacturer's warranties, when, in fact, they are not, in violation of Tenn. Code Ann. § 47-18-104(b)(12), (b)(19) and (b)(27);

(I). Advertising software without disclosing that the software has already been opened and registered to someone else, and thus, not legally useable, in violation of Tenn. Code Ann. § 47-18-104(b)(5), (b)(7), (b)(12), (b)(21) and (b)(27);

(J). Advertising, directly or by implication, that a fixed cost would be charged for shipping and handling, but charging a higher amount in violation of Tenn. Code Ann. § 47-18-104(b)(27);

(K) Advertising terms and conditions of sale which are illegal, contrary to law, unfair or deceptive or unconscionable, or otherwise represent that the transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. § 47-18-104(b)(12), (b)(27) and 47-18-113;

(L) Posting "terms and conditions"of sale on the internet which are designed to deter legitimate consumer complaints in violation of Tenn. Code Ann. § 47-18-104(b)(27);

(M) Obstructing and evading legitimate return attempts and failing to provide meaningful responses and/or customer service for legitimate consumer complaints, questions and returns; in violation of Tenn. Code Ann. § 47-18-104(b)(12) and (b)(27); and

(N) By retaliating against consumers who file complaints against them on eBay, and in particular by posting harmful, negative and/or false feedback on eBay against such consumers, in violation of Tenn. Code Ann. § 47-18-104(b)(27).

58. Consumers in Tennessee and throughout the country have suffered and continue to suffer ascertainable losses as a result of the Fikes, Hinds, Auction Logistix and/or Consumer Depot's bad faith, unfair and deceptive business practices and violations of the

TCPA as set forth above. In addition, legitimate businesses and sellers who operate ethically and honestly on eBay are unable to compete with the Fikes, Hinds, Auction Logistix and/or Consumer Depot, who claim to be one of the largest sellers on eBay. The Fikes, Hinds, Auction Logistix and/or Consumer Depot advertise, process and sell millions of dollars of merchandise annually through the aforesaid unlawful acts and practices, and have been unjustly enriched as a result of their violations of the TCPA at the expense of consumers and legitimate businesses. Absent injunctive relief by this Court, the Fikes, Hinds, Auction Logistix and/or Consumer Depot are likely to continue to injure consumers and businesses, reap unjust enrichment and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

59. Section (a)(4) of Tenn. Code Ann. § 47-18-108, empowers this Court to issue orders and injunctions to restrain and prevent violations of the Tennessee Consumer Protection Act of 1977. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including, but not limited to, restitution and the disgorgement of ill-gotten gains, to prevent and remedy the harm and injury caused by Fike and Consumer Depot's violations of the law.

60. Since at least January 16, 2004, the date of the issuance of the State's 10-Day Notice to Martin Fike, Carol Fike and/or Consumer Depot, LLC, pursuant to Tenn. Code Ann. 47-18-108(a)(2), or in the alternative, since at least May 3, 2006, the date of the filing of the State's Verified Complaint in this action, or in the alternative, since at least July 11, 2006, the date of the hearing on the State's motion for temporary injunction, or in the alternative, since at least September 25, 2006, the date of the filing of the State's Status report with this Court, defendants have been placed on notice that their aforesaid conduct was and remains unlawful and in violation of the Tennessee Consumer Protection Act of 1977.

61. Notwithstanding the aforesaid notice(s) to defendants that their conduct was unlawful and in violation of the Tennessee Consumer Protection Act of 1977, all defendants, together and individually, have continued engaging in the aforesaid unlawful acts and practices, and their continuing violations of the law have been knowing and persistent.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff State of Tennessee, *ex rel.* Paul G. Summers, Attorney General, pursuant to the TCPA, statutory authority of the Attorney General, common law and this Court's equitable powers, prays:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 47-18-116;

2. That process issue and be served upon Defendants Martin Fike, Carol Fike, Michael Hinds, Auction Logistix, LLC and Consumer Depot, LLC, requiring each Defendant to appear and answer this Complaint;

3. That this Court adjudge and decree that the Defendants Martin Fike, Carol Fike, Michael Hinds, Auction Logistix and Consumer Depot, LLC have each engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977;

4. That this Court adjudge and decree that the Defendants Martin Fike, Carol Fike, Michael Hinds and Consumer Depot, LLC were each placed on notice that their aforesaid conduct was in violation of the Tennessee Consumer Protection Act of 1977, and that their continuing violations of the law have been knowing and persistent;

5. That this Court adjudge and decree that the Defendants Martin Fike and Consumer Depot, LLC were duly served with an Attorney General's Investigative

Subpoena pursuant to Tenn. Code Ann. § 47-18-106, and that each defendant has failed to comply with such Subpoena.

6. That this Court temporarily and permanently enjoin Defendants Martin Fike, Carol Fike, Michael Hinds, Auction Logistix and Consumer Depot, LLC from engaging in the aforementioned unfair or deceptive acts or practices which violate the Tennessee Consumer Protection Act of 1977, and that such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108(4);

7. That this Court enter an order temporarily or permanently revoking the business license of Consumer Depot, LLC, as well as any other certificate or document authorizing Consumer Depot, LLC, Auction Logistix, LLC, Martin Fike, Carol Fike and/or Michael Hinds from engaging in the aforesaid sales and advertising of electronics, computer goods and other items within the borders of the State of Tennessee;

8. That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses, including statutory interest suffered by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977, and requiring that Defendants be taxed with the cost of distributing and administering the same, pursuant to Tenn. Code Ann. § 47-18-108(b)(1);

9. That this Court make such orders or render such judgments as may be necessary for restoration of consumers' reputations on eBay by ordering Defendants to remove any and all negative feedback posted by Defendants against such consumers;

10. That this Court make such orders or render such judgments as may be necessary to disgorge the profits and ill-gotten gains Defendants realized by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977;

11. That this Court enter judgment against Defendants and in favor of the State

for the reasonable costs and expenses of the investigation and prosecution of the defendants' actions, including attorney fees, expert and other witness fees, as provided by Tenn. Code Ann. §§ 47-18-108(a)(5) and (b)(4);

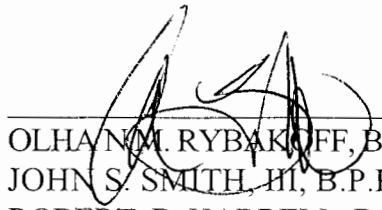
12. That this Court adjudge and decree that the Defendants Martin Fike, Carol Fike, Michael Hinds, Auction Logistix, LLC and Consumer Depot each separately pay civil penalties of not more than one thousand dollars ($1,000.00) per violation to the State for each and every violation of the TCPA as provided by Tenn. Code Ann. § 47-18-108(b)(3);

13. That all costs in this case be taxed against Defendants;

14. That this Court grant Plaintiff's demand for a trial by jury in Davidson County, made pursuant to Tennessee Rules of Civil Procedure, Rule 38.02, and by the Local Rules - Davidson County Courts of Record for the 20th Judicial District of Tennessee, Rule 31; and

15. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,



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