



OFFICE OF THE ATTORNEY GENERAL

HARDY MYERS

FOR IMMEDIATE RELEASE

June 28, 2007

AG STOPS OUT-OF-STATE COMPANIES FROM USING 'JUNK SCIENCE' TO PROMOTE CHIROPRACTIC DEVICES

Oregon Chiropractors Disseminated Deceptive Advertisements

Attorney General Hardy Myers today filed settlement agreements with a Florida manufacturer of "spinal decompression devices" and a California chiropractor, who markets promotional services to chiropractors. The agreements resolve allegations that the companies disseminated deceptive advertisements in Oregon that were used by Oregon chiropractors.

Named in Assurances of Voluntary Compliances (AVC) filed in Marion County Circuit Court are Axiom Worldwide, Inc. of Tampa, Florida and Altadonna Communications, Inc. and its owner Benjamin A. Altadonna of Danville, California. Neither AVC admits law violation.

"Oregon chiropractors must do their own homework before purchasing and promoting medical devices," Myers said. "Medical professionals cannot simply rely on the sellers' claims without investigating for themselves."

"Consumers also must be wary of unrealistic health claims that lack adequate substantiation; even those being made by Oregon medical professionals," Myers added.

Oregon Department of Justice (DOJ) lawyers, initially using information from the Oregon Board of Chiropractors, found that Axiom manufactures a "spinal decompression device" called the DRX 9000 used by medical professionals to treat back pain. The devices, costing approximately \$100,000 each, were sold throughout the country including nine in Oregon. Along with the device, Axiom provided a marketing

package that included deceptive sample advertisements. Assisting with Axiom's promotion of the DRX 9000 was California chiropractor Benjamin Altadonna and his company Altadonna Communications.

DOJ lawyers found deceptive claims throughout the advertising package including statements that the DRX 9000 had an 86 percent success rate for the treatment of degenerative disc disease, disc herniations, sciatica and post-surgical pain; in fact, the companies did not possess competent and reliable evidence to substantiate the claim.

The companies stated that the Food and Drug Administration (FDA) approved the devices and substantiated their claims of effectiveness. DOJ found the device had merely been cleared as similar to preexisting devices. They also misrepresented the DRX 9000 by claiming it was a scientific and medical breakthrough that resulted from NASA discoveries when, in fact, NASA discoveries had no relationship with the device.

Under the agreements, both companies must change how they market their products. All promotional claims must be substantiated with "competent and reliable scientific evidence," which means tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area.

The agreement also prohibits the companies from misrepresenting scientific studies and patient testimonials.

Axiom must pay DOJ's Consumer Protection and Education Fund a total of \$100,000. If Axiom complies with the AVC, \$25,000 will be suspended.

Benjamin Altadonna and Altadonna Communications Inc. must pay the state's Consumer Protection and Education Fund a total of \$25,000.

Consumers wanting more information about consumer protection in Oregon may call the Attorney General's consumer hotline at (503) 378-4320 (Salem area only), (503) 229-5576 (Portland area only) or toll-free at 1-877-877-9392. The Department of Justice is online at www.doj.state.or.us.

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CONTACT: Jan Margosian, (503) 947-4333 (media line only)

Email: jan.margosian@doj.state.or.us

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ENTERED

JUN 28 2007

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STATE OF OREGON
MARION COUNTY COURTS
JUN 28 2007
FILED

CIRCUIT COURT OF OREGON

MARION COUNTY

IN THE MATTER OF:

ALTADONNA COMMUNICATIONS., INC
AND BENJAMIN A. ALTADONNA.

Case No.

07C16284
ASSURANCE OF VOLUNTARY
COMPLIANCE

1.

Altadonna Communications, Inc. and Benjamin A. Altadonna have promoted spinal decompression devices to doctors in Oregon and are the Respondents herein. This agreement is between Respondents and the Oregon Department of Justice ("DOJ") acting pursuant to ORS 646.632.

PROCEDURE

2.

This Assurance of Voluntary Compliance ("AVC") is a settlement of a disputed matter. It shall not be considered an admission of a violation of any law, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Respondents expressly denies. This AVC does not constitute an admission by Respondents for any purpose, of any fact or of a violation of any state law, rule, or regulation, nor does this AVC constitute evidence of any liability, fault, or wrongdoing. Respondents enters into this AVC for the purpose of resolving the concerns of DOJ. Respondents do not admit any violation of the State Consumer Protection Laws, and do not admit any wrongdoing that could have been alleged by DOJ. Respondents and DOJ agree that no provision of the AVC operates as a penalty, forfeiture, or punishment under the

1 Constitution of the United States, under the Constitution of the State of Oregon, or under any
2 other provision of law.

3 3.

4 Respondents acknowledge they received a notice from the State of Oregon pursuant to
5 ORS 646.632(2) of the alleged unlawful trade practice and the relief to be sought. In that
6 regard, DOJ has investigated the advertising practices of Respondents and persons utilizing
7 products manufactured and/or sold and/or promoted by Respondents in the State of Oregon for
8 purposes of determining whether such advertising practices have violated the Oregon Unlawful
9 Trade Practices Act, ORS 646.605 through ORS 646.656 or any other legal requirements. This
10 investigation included, but was not limited to, the matters which are specified in the Notice of
11 Unlawful Trade Practices and Proposed Resolution attached hereto as **Exhibit A**. For purposes
12 of this AVC, the DOJ investigation of Respondents' business practices as described in this
13 paragraph shall be referred to as the "**Matters Investigated**."

14

15 4.

16 Respondents deny that they have engaged in unlawful Trade Practices or violated the
17 Oregon Unlawful Trade Practices Act, ORS 646.605 through ORS 646.656 or any other legal
18 requirements Respondents further state that all marketing materials relating to the DRX9000 was
19 derived from information and representations received from the manufacturer, Axiom Worldwide
20 ("Axiom") and Axiom had full knowledge of the contents of Respondents marketing materials.
21 Respondents further state that they reasonably relied upon the information and claims received from
22 Axiom relating to Axiom's products

23

24 5.

25 Respondents understand and agree that this AVC applies to Respondents, Respondents'
26 principals, officers, directors, agents, employees, representatives, successors and assigns, jointly

1 and severally, while acting personally, or through any corporate or other business entities,
2 whose acts, practices or policies are directed, formulated or controlled by Respondents.
3 Respondents shall be responsible for making the substantive terms and conditions of this AVC
4 known to its officers, directors, managers, and employees who are responsible for implementing
5 the obligations set forth in this AVC.

6 6.

7 Respondents understand and agree that if this AVC is accepted by DOJ, it will be
8 submitted to the Circuit Court of the State of Oregon for Marion County for approval, and, if
9 approved, will be filed with the court pursuant to ORS 646.632(2).

10 7.

11 Respondents agree to accept service of a conformed or court certified copy by prepaid
12 first class mail sent to the address following Respondent's signature and to Respondent's
13 attorney.

14 8.

15 If monies which are ordered to be paid in this AVC are not paid timely, DOJ may
16 convert the AVC to a money judgment under ORS 646.632(2); provided, however, DOJ shall
17 provide Respondents and Respondents' attorney with written notice of any default in payment
18 and Respondent shall have fifteen (15) business days from the date of such notice to cure the
19 default. In the event that such default is not cured, DOJ may convert the AVC to a money
20 judgment as provided herein. Respondents agree that a copy of the money judgment may be
21 sent to Respondents, via first class mail to the address following Respondents' signatures and to
22 Respondents' attorney.

23 9.

24 Respondents understands that, in addition to any other sanctions which may be imposed
25 under this AVC or under the law, violation of any of the terms of this AVC may result in
26 contempt of court proceedings, civil penalties of up to \$25,000 for each violation, and such

1 further relief as the court may deem appropriate. ORS 646.632(4), ORS 646.642(1) and ORS
2 646.642(2). If DOJ determines that Respondents have failed to comply with any of the terms of
3 this AVC, and if in DOJ's sole discretion, failure to comply does not threaten the health or
4 safety of the citizens of the State of Oregon, DOJ shall notify Respondent in writing at the
5 following facsimile number: (925) 314-9442 and overnight mail addressed to Benjamin
6 Altadonna, 169 E. Prospect Avenue, Suite B Danville, CA 94526 with a copy to Respondents'
7 attorneys, Robert S. Thompson at 4000 SunTrust Plaza, 303 Peachtree Street NE, Atlanta, GA
8 30308-3243 and Michael Hassen at Jeffers, Mangels, Butler & Marmaro LLP, Two
9 Embarcadero Center, Fifth Floor, San Francisco, CA 94111, or any person subsequently
10 designated by Respondents to receive such notice of failure to comply. The notice shall advise
11 Respondents of the manner in which it is believed that this AVC has been violated.
12 Respondents shall then have fifteen (15) days from the receipt of such written notice to provide
13 a good faith written response to DOJ's determination (the "Cure Period"). The response shall
14 include an affidavit containing, at a minimum, either:

15 (A) a statement explaining why Respondents believe they are in compliance with the
16 AVC; or

17 (B) an explanation of how the alleged violation occurred and

18 (1) a statement that the alleged breach has been cured and how; or

19 (2) a statement that the alleged breach cannot be reasonably cured within fifteen

20 (15) days from receipt of the notice, but:

21 (a) Respondents have begun to take corrective action to cure the alleged
22 breach;

23 (b) Respondents are pursuing such corrective action with reasonableness
24 and due diligence; and

25 (c) Respondents have provided DOJ with a reasonable timetable for
26 curing the alleged breach.

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10.

Nothing herein shall prevent DOJ from agreeing in writing to provide Respondents with additional time beyond the fifteen (15) day period to respond to the notice of failure to comply.

11.

Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this AVC after the Effective Date; to compromise the authority of DOJ to initiate a proceeding for any contempt or sanctions for failure to comply; or to compromise the authority of the court to punish as contempt any violation of this AVC. Furthermore, nothing in this subsection shall be construed to limit the authority of DOJ to protect the interest of the State of Oregon. Notwithstanding the foregoing, DOJ agrees that it will not institute an enforcement proceeding relating to the practices at issue in the notice provided under Section 8 against Respondent during the Cure Period.

12.

The parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the parties. The parties further acknowledge that this AVC constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

REMEDIES

13.

Respondents shall comply with Oregon's Unlawful Trade Practices Act, ORS 646.605 to ORS 646.656.

14.

Respondents shall not represent or imply that DOJ acquiesces or approves of Respondents' past business practices, current practices, efforts to reform its practices, or any future practices that Respondents may adopt or consider adopting. DOJ's decision to settle this

1 matter or to otherwise unilaterally limit current or future enforcement action does not constitute
2 approval or imply authorization for any past, present, or future business practice.

3 15.

4 Respondents shall pay the sum of Twenty-five Thousand Dollars (\$25,000) to DOJ for
5 deposit to the Consumer Protection and Education Revolving Account established pursuant to
6 ORS 180.095. Said sum shall be used by DOJ as provided by law. The monies due under this
7 paragraph shall be paid to DOJ within thirty (30) days following approval of this AVC by the
8 Court.

9 16.

10 Effective immediately upon execution by Respondents of this AVC, Respondents agree
11 to adhere to each of the following requirements, which Respondents contend they already
12 comply with::

13 A. When promoting products in Oregon, Respondents shall not make any express or
14 implied statements that have the capacity, tendency or effect of deceiving or misleading or that
15 fail to state any material fact, the omission of which deceives or tends to deceive.

16 B. Respondents, in connection with the labeling, advertising, promotion, offering
17 for sale, sale, or distribution of products in Oregon, shall not make any representation, expressly
18 or by implication, concerning such products' efficacy, performance, safety or benefits, unless, at
19 the time the representation is made, Respondents possess and rely upon competent and reliable
20 scientific evidence that substantiates the representation.

21 C. For purposes of this Assurance, "*competent and reliable scientific evidence*"
22 shall mean tests, analysis, research, studies, or other evidence based on the expertise of
23 professionals in the relevant area, that have been conducted and evaluated in an objective
24 manner by persons qualified to do so, using procedures generally accepted in the profession to
25 yield accurate and reliable results.

26

1 D. Respondents shall not disseminate any patient testimonial in Oregon that does
2 not clearly and conspicuously disclose what the generally expected performance would be in
3 the depicted circumstances or clearly and conspicuously disclose the limited applicability of
4 the experience described by the patient testimonial to what consumers may generally expect to
5 achieve.

6 E. When Respondents present information in detailing pieces, brochures, booklets,
7 mailing pieces, published journals, magazines, other periodicals and newspapers, and broadcast
8 through media such as radio, television, the Internet, and telephone communications systems,
9 that references a clinical study, Respondents shall (1) accurately reflect the methodology used
10 to conduct the clinical study; (2) shall not present favorable information or conclusions from a
11 study that is inadequate in design, scope, or conduct to furnish significant support for such
12 information or conclusions; (3) shall not use statistical analyses and techniques on a
13 retrospective basis to discover and cite findings not soundly supported by the study, or to
14 suggest scientific validity and rigor for data from studies the design or protocol of which are
15 not amenable to formal statistical evaluations; (4) shall not present information from a study in
16 a way that implies that the study represents larger or more general experience with the product
17 than it actually does; (5) shall not use statistics on numbers of patients, or counts of favorable
18 results or side effects, derived from pooling data from various insignificant or dissimilar
19 studies in a way that suggests either that such statistics are valid if they are not or that they are
20 derived from large or significant studies supporting favorable conclusions when such is not
21 the case.

22 F. Respondents shall not use of the term "FDA approved" in reference to the FDA
23 510 (k) clearance process.

24 G. Nothing in this AVC shall require Respondents to: (1) take an action that is
25 prohibited by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301, *et seq.*, or any
26 regulation promulgated thereunder, or by the FDA; or (2) fail to take action as required by the

1 Federal Food, Drug and Cosmetic Act or any regulation promulgated thereunder, or by the
2 FDA.

3 **RELEASE**

4 17.

5 Based on inquiry into Respondents' promotional practices, the Attorney General has
6 concluded that this AVC is the appropriate resolution of any alleged violation of the Oregon's
7 Consumer Protection Laws. The Attorney General acknowledges by his execution hereof that
8 this AVC terminates his inquiry under the State Consumer Protection Law of Respondents.

9 18.

10 In consideration of the Remedies, payments, undertakings, and acknowledgments
11 provided for in this AVC, and conditioned on Respondents making full payment of the amount
12 specified in Paragraph 14, the State releases and forever discharges, to the fullest extent
13 permitted by law, Respondents and their past and present officers, directors, shareholders,
14 employees, representatives, agents, affiliates, parents, subsidiaries, predecessors, attorneys,
15 assigns, and successors (collectively, the "Releasees"), of and from any and all civil causes of
16 action, claims, damages, costs, attorney's fees, or penalties that the Attorney General could have
17 asserted against the Releasees under the State Consumer Protection Law by reason of any
18 conduct that has occurred at any time up to and including the Effective Date of this Judgment
19 relating to or based upon the Matters Investigation of this AVC ("Released Claims").
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22 19.

23 The Released Claims set forth in Paragraph 17 specifically do not include the following claims:

24 (a) private rights of action by consumers, provided, however, that this Judgment
25 does not create or give rise to any such private right of action of any kind;
26

- 1 (b) Medicaid fraud or abuse;
2 (c) claims of antitrust, environmental or tax liability;
3 (d) claims for property damage; and
4 (e) claims to enforce the terms and conditions of this AVC.
5

6 GENERAL PROVISIONS

7 20.

8 A. Nothing in this AVC shall be construed to authorize or require any action by
9 Respondent in violation of applicable federal, state or other laws.

10 B. This AVC shall be effective ("**Effective Date**") on the date that it is approved by
11 the Marion County Circuit Court and Respondent has been notified via facsimile and regular
12 U.S. mail that all the parties hereto have fully executed this AVC.

13 C. If Respondents believe that modification of the terms of this AVC become
14 warranted due to (1) changes in the marketplace or applicable law, including, but not limited to,
15 administrative rules or (2) an erosion in Respondents' competitive position as a result of the
16 terms of this AVC, Respondent may submit the proposed modification in writing to DOJ. DOJ
17 will respond within a reasonable period of time after the receipt of the request.

18 D. In the event any law or regulation is enacted or adopted by the federal
19 government or by the State of Oregon which creates an impossible conflict with the terms of
20 this AVC such that Respondents cannot comply with both the statute or regulation and the terms
21 of this AVC, the requirements of such law or regulation, to the extent of the impossible conflict,
22 and after written notice by Respondents, shall replace any provisions contained herein so the
23 compliance with such law or regulation shall then be in compliance with this AVC.

24 E. At any time during the term of this AVC, Respondents shall have the right to
25 request that DOJ, based on Respondents' act or performance of the terms of this AVC, modify
26 or terminate this AVC. DOJ shall make a good faith evaluation of Respondents' request and
make a prompt decision (in no event more than forty-five (45) days from Respondents' request)

1 as to whether to grant Respondents' request. The decision whether to grant Respondents'
2 request to modify or terminate this AVC shall rest solely within the discretion of DOJ.

3 F. All notices and other communications relating to this AVC between DOJ and
4 Respondents shall be in writing and shall be deemed to have been given when delivered in
5 person to the parties' designated representatives at their addresses set forth below, or when
6 received or refused, if sent to parties' designated representatives at their addresses given below
7 by registered or certified mail with return receipt requested, or to such other representatives or
8 addresses as the parties shall designate by a notice sent in like manner.

9 G. Any notices required to be sent to DOJ or Respondents by this AVC shall be sent
10 by United States mail, certified mail, return receipt requested, or other nationally recognized
11 courier service that provides for tracking services and identification of the person signing for the
12 document. Any such notice shall be sent to the following address:

13 For Respondents, see paragraph 9.

14 For the Attorney General: David A. Hart, Assistant Attorney General, Department of
15 Justice, 1162 Court Street, N.E., Salem, Oregon 97301-4096

16 H. This AVC may be executed and delivered in counterparts, each of which
17 shall be an original, but such counterparts together shall constitute but one and the same
18 AVC.

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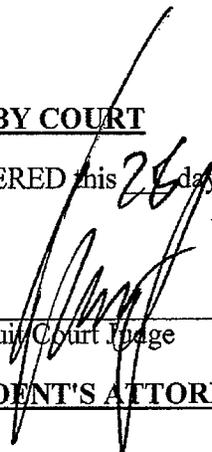
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APPROVAL BY COURT

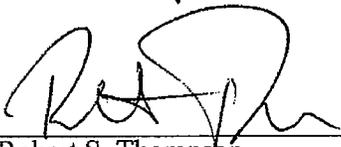
APPROVED FOR FILING and SO ORDERED this 26 day of June, 2007.



Circuit Court Judge

REVIEW BY RESPONDENT'S ATTORNEY

Approved as to form.



Robert S. Thompson
Attorney for Respondent

RESPONDENTS' SIGNATURE AND ACKNOWLEDGMENT

1 Respondents have read and understands this agreement and each of its terms.
2 Respondents agree to each and every term.

Corporate Respondent

3
4 I, Ben Altadonna, being first duly sworn on oath depose and say that I am the
5 President of Altadonna Communities, Inc. and am fully authorized and
6 empowered to sign this Assurance of Voluntary Compliance on behalf of Altadonna Communities, Inc.
and bind the same to the terms hereof.

Ben Altadonna
Print Name

President
Title

Address 169 E Prospect Ave Suite B
Danville CA 94526

13 SUBSCRIBED AND SWORN to before me this 25th day of June, 2007. by Benjamin Anthony-
14 Sarita Bhateja Altadonna
15 Notary Public

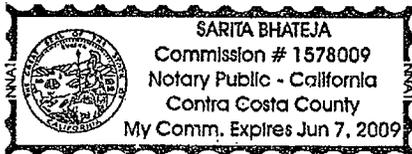
INDIVIDUAL RESPONDENT

Ben Altadonna
Benjamin S. Altadonna
A.

Address 169 E. Prospect Suite B
Danville CA 94526

21 SUBSCRIBED AND SWORN to before me this 25th day of June, 2007.

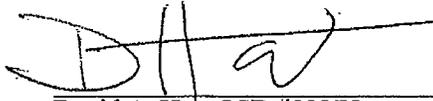
Sarita Bhateja
Notary Public



ACCEPTANCE OF DOJ

1 Accepted this 28th day of June, 2007.

2
3 HARDY MYERS
Attorney General

4
5 

6 David A. Hart OSB #00275
7 Assistant Attorney General
8 Department of Justice
9 Of Attorneys for Plaintiff
10 Financial Fraud/Consumer Protection Section
11 1162 Court Street NE
12 Salem, OR 97301-4096
13 Phone: (503) 947-4333
14 Fax: (503) 378-5017
15 Email: david.hart@doj.state.or.us

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DEPARTMENT OF JUSTICE
STATE OF OREGON

IN THE MATTER OF
ALTADONNA COMMUNICATIONS, INC.
AND BENJAMIN A LTADONNA

NOTICE OF UNLAWFUL TRADE
PRACTICES AND PROPOSED
RESOLUTION

Respondent.

TO: BENJAMIN A. ALTADONNA
c/o Robert, S. Thompson, Esq.
Hawkins & Parnell LLP
4000 Suntrust Plaza
303 Peachtree Street NE
Atlanta, GA.3038-3243

This notice is to inform you the Oregon Attorney General is authorized to file a lawsuit against you 10 days after you receive this notice. The Attorney General is required by statute to give you this notice. See Oregon Revised Statute 646.632.

You may avoid the filing of a lawsuit by delivering an Assurance of Voluntary Compliance [AVC] to the Financial Fraud Section of the Oregon Department of Justice within 10 days after you receive this notice.

An AVC must be in writing and state what actions you intend to take to resolve the violations described below. The AVC is not an admission of violation of law and is submitted to a Circuit Court for the State of Oregon for approval and filing.

Before submitting the AVC to the Circuit Court, it must be approved and accepted by the Attorney General. Once filed with the court, any willful violation of the terms of an AVC is a contempt of court which may result in punitive or remedial sanctions including confinement and civil penalties of up to \$25,000 per violation.

Exhibit A
Page 1 of 3

1 This notice becomes a public record after 10 days have passed following your receipt of
2 this notice.

3 The Attorney General sent you this notice because there are concerns you violated the
4 Oregon Unlawful Trade Practices Act, ORS 646.605 through ORS 646.656, including but not
5 limited to the following alleged conduct.

6 A) Misrepresenting the efficacy of the DRX 9000 and 9000C "axial decompression"
7 devices by claiming an 86% success rate for the treatment of degenerative disc
8 disease, disc herniations, sciatica, and post surgical pain, when in fact, you do not
9 possess competent and reliable evidence to substantiate this claim.

10 B) Misrepresenting that the FDA approved the devices and substantiated your efficacy
11 claims when in fact, this is not the case.

12 C) Misrepresenting that the DRX 9000 and 9000C was a scientific and medical
13 breakthrough that resulted from NASA discoveries when in fact, this is not the case.

14 D) Misrepresenting that patient testimonials relating to the DRX 9000 and DRX 9000C
15 are typical treatment outcomes when in fact, you do not possess competent and
16 reliable evidence to substantiate this claim.

17 E) Misrepresenting the nature of DRX 9000 and DRX 9000C treatment by encouraging
18 those seeking coverage by insurance companies for DRX 9000 and DRX 9000C
19 treatments to submit treatment codes other than the one customarily used for
20 unattended mechanical traction.

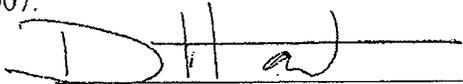
21 If we file the lawsuit, we will ask the court to order you to pay:

- 22 1) Civil penalties of up to \$25,000 for each violation;
23 2) Restitution to anyone harmed by your acts; and
24 3) Our reasonable attorney's fees, costs and disbursements.

25 In addition, we may ask the court to order that you be permanently enjoined from
26 conducting any aspect of any trade or commerce in the State of Oregon.

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Dated this 15th day of June, 2007.



David A. Hart OSB #00275
Assistant Attorney General
Department of Justice
Financial Fraud/Consumer Protection Section
1162 Court Street NE
Salem, OR 97301-4096
Phone: (503) 947-4333
Fax: (503) 378-5017
Email: david.hart@doj.state.or.us



STATE OF OREGON } ss
County of Marion

The foregoing copy has been compared and is certified by me as a full true and correct copy of the original on file in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the

Court on: 02/28/07
TRIAL COURT ADMINISTRATOR

By: 