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Of Attorneys for Plaintiff Ernest Spence, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ERNEST SPENCE, JR., an individual,

Plaintiff,

v.

NEEDA PARTS MANUFACTURING, INC., a business corporation; **DORMAN PRODUCTS, INC.**, a business corporation; **O'REILLY AUTOMOTIVE, INC.**, a business corporation; **AUTOZONE INC.**, a business corporation; **J.C. WHITNEY, INC.**, a business corporation; **CARQUEST CORPORATION**, a business corporation; **GENERAL PARTS, INC.**, a business corporation; **NATIONAL AUTOMOTIVE PARTS ASSOCIATION**, a business corporation; **THE PEP BOYS - MANNY MOE & JACK**, a business corporation,

Defendants.

Civil No. 3:11-cv-00251-AC

FIRST AMENDED COMPLAINT
(Patent Infringement - 35 U.S.C. § 271; Lanham Act - 15 U.S.C. § 1125; Breach of Contract / Settlement Agreement; Common Law Fraud; Unfair and Deceptive Trade Practices)

JURY TRIAL DEMANDED

NATURE OF THE CASE

1. This is an action at law and in equity for patent infringement under 35 U.S.C. § 271 against all defendants; false designation of geographic origin under 15 U.S.C. § 1125 against all defendants except Needa Parts Manufacturing, Inc.; for unfair and deceptive trade practices against all defendants, and for breach of contract and common law fraud against Needa Parts Manufacturing, Inc.

2. Plaintiff demands a trial by jury for all issues so triable.

PARTIES AND DEVICES AT ISSUE

Plaintiff

3. Plaintiff Ernest Spence, Jr. is an individual ("Spence"). Spence is an inventor, and on March 1, 2005 was granted United States Patent No. 6,860,565 ("565 Patent") (Exhibit "A"). On August 25, 2009 Spence was granted United States Patent No. 7,578,560 ("560 Patent") (Exhibit "B").

Defendant Needa Parts Manufacturing, Inc.

4. Defendant Needa Parts Manufacturing, Inc. ("Needa") has its corporate office in Flint, Michigan. Needa claims to offer over 3,000 different auto parts for sale to wholesalers and retailers worldwide. Needa sells and ships its products directly to wholesalers and retailers throughout the United States, including within the state of Oregon.

5. Needa maintains an extensive website which lists its products, actively assists users and potential customers in finding, purchasing, and shipping its parts to the purchaser, provides contact information to customers who have questions or wish

to request that a particular part be offered by Needa. The website also allows potential purchasers to request quotes for parts in quantities between 100 to more than 2,500 pieces. Needa claims its parts can be found at all Parts Plus Stores, O'Reilly/Murray's Discount Auto Stores, Inc. ("O'Reilly"), Auto Pride Stores, VIP and many other nationwide auto parts retailers.

6. On its website, Needa provides links to a variety of retail outlets that sell its parts, including those with stores located within the state of Oregon to which it ships its parts. The link to the O'Reilly retail stores provides access to the O'Reilly store locator, which indicates that numerous O'Reilly stores are located within the state of Oregon, and sell parts manufactured and distributed by Needa.

7. On information and belief, Needa ships a substantial volume of the parts it manufactures and sells to retailers and other entities within the state of Oregon.

8. One part Needa imports, manufactures, offers for sale, and has sold in the United States is Needa part number 777791 and, on information and belief, other related part numbers for substantially similar devices ("Needa device"). The Needa device is referred to as "Instant Repair for Broken Seat Recliner Mechanism." An image of one the infringing Needa device in its packaging is shown below:



Defendant Dorman Products, Inc.

9. Defendant Dorman Products, Inc. ("Dorman") has its corporate office in Colmar, Pennsylvania. Dorman is a supplier of dealer "exclusive" automotive replacement parts, automotive hardware, brake products, and household hardware to the automotive aftermarket and mass merchandise markets. Dorman markets over 103,000 different automotive replacement parts. Dorman products are marketed under the Dorman[®], OE Solutions[™], HELPI[!], AutoGrade[™], First Stop[™], Conduct-Tite[®], Renew[®], Techchoice[®], Symmetry[®] and Scan-Tech[®] brand names. Dorman's products are sold primarily in the United States through automotive aftermarket retailers such as AutoZone, Advance Auto, and O'Reilly, national, regional and local warehouse distributors such as Carquest and NAPA and specialty markets and salvage yards.

10. Dorman maintains an extensive website where it provides parts search and applicability assistance, provides access to its catalogs, provides "live chat" technical support, dealer and distributor registration and login, and allows dealers and distributors to purchase and order parts, make payment, and arrange shipping. The Dorman website provides an 800 number that customers can call for assistance. In the "Where to Buy" pages of its website, users are directed to retail stores within their area where they can purchase parts sold by Dorman. A user located in Portland, Oregon who clicks on the tab to find "Where to Buy" Dorman products is presented a page showing multiple retail locations where Dorman parts can be found within the state.

11. On information and belief, Dorman ships a substantial volume of the parts it manufactures and sells to retailers and other entities within the state of Oregon.

12. One of the parts Dorman imports, manufactures, offers for sale, and has sold in the United States is Dorman part number 77199, under the Help! product line. The part is referred to as "Seat Release Handles." An image of the infringing Dorman device in its packaging is shown below:

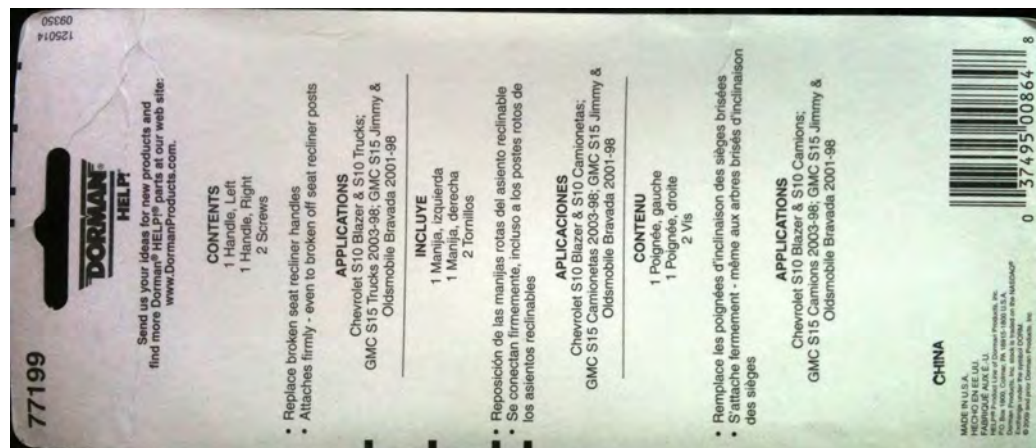


13. An image of the reverse side of the packaging for the Dorman part number 77199 is shown below, and indicates that the product is used to:

"Replace broken seat recliner handles" and

"Attaches firmly - even to broken off seat recliner posts,"

and also indicates in three languages that the product is "Made in U.S.A."



14. On information and belief, at various times relevant to this matter, part number 77199 has been offered by defendants for sale, and sold with and without the word "China" stamped onto the back of the package.

15. On Dorman's website, at <http://www.dormanproducts.com/p-20594-77199.aspx>, its description of Dorman part number 77199 includes the following representation:

"Fixes seats with broken release shafts, attaches directly to broken stud, no need to buy entire seat adjuster mechanism".

Defendant O'Reilly Automotive

16. Defendant O'Reilly Automotive, Inc. ("O'Reilly") is one of the largest specialty retailers of automotive aftermarket parts, tools, supplies, equipment, and accessories in the United States, serving both professional installers and do-it-yourself customers. As of December 31, 2009 O'Reilly operated 3,421 stores in 38 states, and 42 retail stores in the state of Oregon.

17. O'Reilly, offers for sale, and has sold in the United States an infringing device contained in packaging indicating Needa part number 777791, and referred to on the packaging as "Instant Repair for Broken Seat Recliner Mechanism." The part is listed on O'Reilly's website as "Needa Parts - Seat Recliner Handle Repair Kit." On information and belief, in addition to Needa part number 777791, O'Reilly also offers to sell, and sells other substantially similar Needa devices with related part numbers.

18. On information and belief, O'Reilly has also offered to sell, and has sold in the United States the infringing device designated as Dorman part number 77199, under the Help! product line, and in the packaging described above.

Defendant AutoZone, Inc.

19. Defendant AutoZone, Inc. ("Autozone") is a Fortune 300 corporation based in Memphis, Tennessee. AutoZone is engaged primarily in the business of the retail sale of automotive parts and accessories. Defendant AutoZone has more than 15 locations within state of Oregon.

20. Autozone offers for sale, and has sold in the United States an infringing device identified as part number 77199, referred to as "Seat Release Handle", and contained in the packaging described above.

21. An image of an infringing product offered for sale and/or sold by Autozone is shown below:



Defendant J.C. Whitney

22. Defendant J.C. Whitney and Co. ("Whitney") is a major online seller of parts and accessories for vehicles. It sells products through its website, located at www.jcwhitney.com to customers throughout the United States, including within the state of Oregon.

23. Whitney also distributes its paper catalogues for distribution, display, and

sale through various bookstores, magazine sellers, and retailers throughout the United States and into the state of Oregon to make them available to the public, and to encourage persons to purchase its products. At all times relevant to this lawsuit, the Whitney catalogue has been available for viewing and purchase at various locations, including Rich's Cigar Shop located at 820 S.W. Alder St., Portland, Oregon 97205.

24. Whitney offers for sale, and has sold in the United States an infringing device identified as part number 17082G, referred to as "Dorman Seat Release Handle", and contained in the packaging described above.

25. On information and belief, Whitney has sold and shipped products to consumers within the state of Oregon, including one or more of the infringing products at issue in this lawsuit.

26. An image of one of the infringing products offered for sale and/or sold by Whitney is shown below:



Defendant Carquest Corporation

27. CARQUEST Corporation ("Carquest") is a privately held corporation with its corporate headquarters in Raleigh, North Carolina. Carquest is a supplier of replacement products, accessories, supplies and equipment for virtually all makes of

automobiles, as well as light and heavy-duty trucks, off-road equipment, buses, recreational vehicles and agricultural equipment. It also distributes and sells tools, equipment, chemicals, paint and accessories.

28. Carquest distributes its products through a network of about 40 distribution centers serving more than 3,400 distributor-owned and independent jobbers in the US, Canada, and Mexico. Carquest sells its own line of auto parts to jobbers and wholesalers, for eventual resale to professional repair centers, service stations, dealerships, and retail customers.

29. One of Carquest's distribution centers is located at 14819 North Lombard Street Portland, OR 97203. There are also more than 25 Carquest-branded stores within the state of Oregon selling Carquest and other products distributed to each store by Carquest Corporation.

30. Carquest offers for sale, and has sold in the United States an infringing device identified as part number 77199, referred to as "Seat Release Handles", and in the packaging described above.

31. An image of an infringing device purchased from a Carquest store is shown below:

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Defendant General Parts, Inc.

32. General Parts, Inc. ("General") is a distributor of replacement automotive parts, supplies, and tools for every make and model of foreign and domestic car, truck, bus, and farm or industrial vehicle. The firm operates the Carquest auto parts distribution network of some 40 distribution centers and owns about 1,400 of Carquest's 3,400 auto parts stores across the US, Canada, and Mexico. The company sells its parts to the general public, mechanics, professional installers, body shops, farmers, and fleet owners.

33. General owns or operates Carquest retail automotive parts stores within the state of Oregon, including stores in Albany, Corvallis, Eugene, Salem, and Tigard.

34. Through its distribution channels, and its Carquest stores, General offers for sale, and/or has sold in the United States an infringing device identified as part number 77199, referred to as "Seat Release Handles", and in the packaging described above.

35. An exemplar of an infringing device offered for sale or sold by General is shown below:



Defendant National Automotive Parts Association

36. National Automotive Parts Association ("NAPA") has 6,000 auto parts stores, 69 Distribution Centers, 13,000 affiliated NAPA AutoCare repair facilities, and over 320,000 parts in inventory. NAPA is a supplier of replacement parts, specialty parts and equipment for the automotive repair, collision, heavy-duty truck, and industrial markets. NAPA's website, located at www.napaonline.com, shows that NAPA has more than 50 retail parts stores within the state of Oregon.

37. NAPA offers for sale, and has sold in the United States an infringing device identified as part number BK 7355395, referred to as "Seat Release Handles", and in the packaging described above.

38. An image of one of the infringing products offered for sale and/or sold by NAPA is shown below:



Defendant The Pep Boys - Manny, Moe and Jack

39. Defendant The Pep Boys - Manny, Moe and Jack ("Pep Boys") is headquartered in Philadelphia, Pennsylvania, and has 600 stores and approximately 6,000 service bays in the United States and Puerto Rico. Along with its full-service vehicle maintenance and repair capabilities, Pep Boys also serves the commercial auto parts delivery market and is one of the leading sellers of replacement tires in the United States. During times relevant to the conduct at issue in this lawsuit, Pep Boys operated one or more retail stores within the state of Oregon.

40. At all times material, including during the year 2010, Pep Boys displayed television advertising to viewers and potential customers in the state of Oregon. Its advertising to Oregonians includes the well-known jingle, "Pep Boys does everything for less."

41. Pep Boys offers for sale, and has sold in the United States an infringing device identified as part number 777791, and referred to as "GM seat recliner replacement kit". On information and belief, in addition to Needa part number 777791, Pep Boys also offers to sell, and sells other substantially similar Needa devices with related part numbers.

42. On information and belief, Pep Boys has also offered to sell, and has sold

in the United States the infringing device designated as Dorman part number 77199, under the Help! product line, and in the packaging described above.

JURISDICTION AND VENUE

43. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338. Plaintiff's state law contract claims, fraud, and unfair and deceptive trade practice claims against defendants are so closely related to plaintiff's federal claims that it is part of the same case or controversy under Article III of the United States Constitution. Because the federal claims predominate, jurisdiction over the state claims is proper under the doctrine of supplemental jurisdiction. 28 U.S.C. § 1367(a).

44. Through sustained and ongoing contacts with and commercial activity in Oregon, and/or specifically targeting the citizens of the state of Oregon and/or selling or offering to sell infringing products in the state of Oregon, each of the defendants have purposely availed themselves to the privilege of conducting business activities within Oregon, thereby invoking the benefits and protections of its laws, and/or have purposefully directed conduct at and within Oregon that had effects within Oregon, and are thereby subject to the personal jurisdiction of this Court. Defendants are further subject to personal jurisdiction since each has committed material acts alleged herein within this jurisdiction.

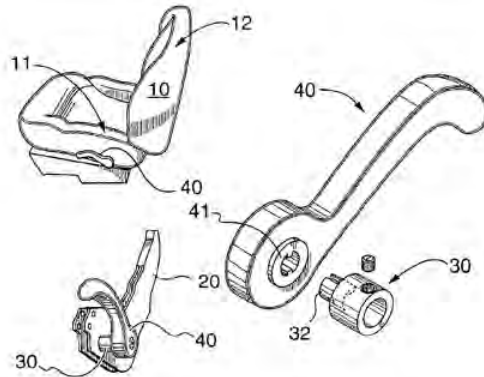
45. This court is a proper venue pursuant to 28 U.S.C. §§ 1391 and 1400(b).

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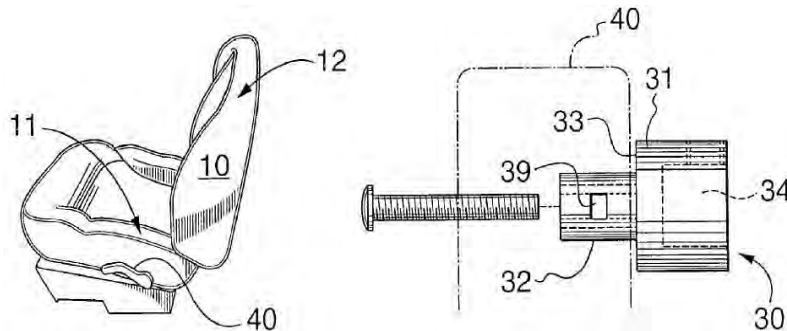
PATENTS AT ISSUE

46. On March 1, 2005 the United States Patent and Trademark Office issued U.S. Patent No. 6,860,565 ('565 Patent). A drawing of the device subject to that patent



is shown below, and complete copy of the '565 patent is attached as Exhibit "A".

47. On August 25, 2009 the United States Patent and Trademark Office issued U.S. Patent No. 7,578,560 ('560 Patent). An drawing of the device subject to that patent is shown below, and a complete copy of the '560 Patent is attached as Exhibit "B".



FIRST CLAIM FOR RELIEF

PATENT INFRINGEMENT - 35 U.S.C. § 271

(All Defendants)

48. Plaintiff realleges and incorporates by reference the allegations stated in paragraphs 1 through 48, and further alleges:

49. Defendants have infringed, and continue to infringe the '560 and '565 Patents by making, using, importing, offering for sale, and/or selling in the United States products that fall within one or more of the claims for the '560 Patent and '565 Patent, or perform substantially the same function in substantially the same way to obtain the same result as the device claimed in the '560 Patent and the '565 Patent. Defendants' actions were done without authority, a prohibited activity under 35 U.S.C. § 271(a).

50. Defendants were and are actively inducing their distributors, resellers, and others to infringe the '560 Patent and the '565 Patent, a prohibited activity under 35 U.S.C. § 271(b).

51. Plaintiff will suffer irreparable damage from defendants' conduct unless enjoined by this Court from acts that infringe the '560 Patent and the '565 Patent.

52. There are no possible non-infringing uses or applications for the defendants' infringing devices. To prevent future infringement and additional damages to plaintiff, the appropriate remedy is an injunction pursuant to 35 U.S.C. § 283 ordering the destruction of all defendants' infringing devices, or seizure of all such devices to be turned over to plaintiff for liquidation.

53. Plaintiff has suffered, and will continue to suffer economic loss and damages, including loss of past and future royalties as a result of defendants'

infringement of the '560 Patent and '565 Patent, as set forth in plaintiff's prayer for relief below, and in an amount to be determined at trial.

CLAIM FOR ENHANCED DAMAGES

(All Defendants)

54. Plaintiff realleges and incorporates by reference the allegations stated in paragraphs 1 through 53, and further alleges:

55. Each of the defendants' conduct has evidenced willful and deliberate infringement and violations of plaintiff's rights, justifying an award of interests, costs, and treble damages under 35 U.S.C. § 284.

(Needa)

56. On November 11, 2008, defendant Needa, its president James Koleszar individually, plaintiff Ernest Spence, and others executed a [RESTATED] SETTLEMENT AGREEMENT ("Needa Settlement"). A copy is attached as Exhibit "C".

57. The Needa Settlement shows that Needa had actual knowledge of the existence and claims in the '560 Patent and '565 Patent at issue, knew that its activities and product infringed one or both Patents, and that its rights to produce any product falling within one or more claims of those Patents had been terminated as of November 11, 2008.

58. Regardless, Needa continued making, using, importing, offering for sale, and/or selling in the United States products that fall within one or more of the claims for the '560 Patent and '565 Patent, or perform substantially the same function in substantially the same way to obtain the same result as the device claimed in the '560

Patent and the '565 Patent.

59. Defendant Needa's conduct has evidenced willful and deliberate infringement and violations of plaintiff's rights, justifying an award of interests, costs, and treble damages under 35 U.S.C. § 284.

SECOND CLAIM FOR RELIEF

LANHAM ACT / FALSE DESIGNATION OF ORIGIN - 15 U.S.C. § 1125(a)

(Defendants Dorman, O'Reilly, Autozone, J.C. Whitney, Carquest, General, NAPA, and Pep Boys)

60. Plaintiff realleges and incorporates by reference the allegations stated in paragraphs 1 through 59, and further alleges:

61. Section 43 of the Lanham Act, 15 U.S.C. § 1125 prohibits false designations of origin and false descriptions of goods, including false, confusing, or misleading representations related to geographic origin.

62. Dorman, O'Reilly, Autozone, J.C. Whitney, Carquest, General, NAPA, and Pep Boys each offered for sell, and sold the Dorman product designated as part number 77199 in a package that indicated in printed text that the device was "Made in U.S.A." in English, Spanish, and French languages.

63. On information and belief, and based on representations by Dorman made in pleadings in this case, the Dorman part number 77199 is not made in the United States.

64. The text on the packaging of the Dorman product designated as part number 77199 violated 15 U.S.C. § 1125(a).

65. Plaintiff has been in the market as a licensor, and/or a potential licensor of

a competing product within the marketplace, and has suffered, and will continue to suffer economic loss and damages as a result of defendants' false designation of geographic origin and violations of 15 U.S.C. § 1125.

66. Pursuant to 15 U.S.C. § 1117, plaintiff is entitled to recover: (1) defendant's profits, (2) damages sustained by the plaintiff because of defendants' violation of 15 U.S.C. § 1125, and (3) the costs of this action.

67. Plaintiff asks that the court find this an exceptional case, and award plaintiff his reasonable attorney fees.

THIRD CLAIM FOR RELIEF

UNFAIR AND DECEPTIVE TRADE PRACTICES - STATE LAW

**(Defendants Dorman, O'Reilly, Autozone, J.C. Whitney
Carquest, General, NAPA, and Pep Boys)**

68. Plaintiff realleges and incorporates by reference the allegations stated in paragraphs 1 through 65, and further alleges:

69. Defendants' false designation of geographic origin of the Dorman product as alleged constitutes unfair and deceptive acts or practices in the course of business, trade, or commerce in violation of the unfair and deceptive trade practices statutes of several states, including California, CAL. BUS. & PROF. CODE § 17200, et seq. (West 2009); Colorado, COLO. REV. STAT. ANN. §§ 6-1-101 to 6-1-115 (West 2009); Delaware, DEL. CODE ANN. title 6, §§ 2531 to 2536 (2009); Georgia, GA. CODE ANN. §§ 10-1-370 to 10-1-375 (2009); Hawaii, HAW. REV. STAT. §§ 481A-1 to 481A-5 (2009); Illinois, ILL. COMPo STAT. ANN. ch. 815, 510/1 to 510n (2009); Maine, ME. REV. STAT. ANN. tit. 10, §§ 1211 to 1216 (West 2009); Minnesota, MINN. STAT. ANN. § 325D.43

to.48 (West 2009); Nebraska, NEB. REV. STAT. §§ 87-301 to 87-306 (2009); New Mexico, N.M. STAT. ANN. §§ 57-12-1 to 57-12-22 (Michie 2009); New York, N.Y. GEN. BUS. Law § 349 (McKinney 2009); Ohio, OHIO REV. CODE ANN. §§ 4165.01 to 4165.04 (Baldwin 2009); Oklahoma, OKLA. STAT. ANN. tit. 78, §§ 51 to 55 (West 2009), Washington, RCW § 19.86.020.

70. Plaintiff is entitled to the damages and remedies provided by each of these statutes for defendants' violations within each of the applicable states.

FOURTH CLAIM FOR RELIEF

BREACH OF CONTRACT / SETTLEMENT AGREEMENT

(Defendant Needa)

71. Plaintiff realleges and incorporates by reference the allegations stated in paragraphs 1 through 57, and further alleges:

72. Needa's conduct has been in material breach and violation of the Needa Settlement, which states the following:

"Neither Plaintiff [Needa] nor Jim Koleszar nor any related company will reorder, re-manufacture, manufacture, or otherwise sell said parts after the date of this agreement. * * * Jim Koleszar acknowledges that he has no patent rights to the ES-1000 part, and from this date forward that neither he nor Needa, Inc. nor any related company shall re-manufacture, manufacture, or otherwise sell said part, except as provided herein."

73. It was foreseeable to Needa at the time of its breach that plaintiff would be exposed to significant consequential damages and harm as a result of its conduct.

74. Plaintiff has suffered, and will continue to suffer economic loss and damages as a result of defendant Needa's breach, as set forth in plaintiff's prayer for relief below, and in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF

COMMON LAW FRAUD

(Defendant Needa)

75. Plaintiff realleges and incorporates by reference the allegations stated in paragraphs 1 through 57 and 69 through 72, and further alleges:

76. On information and belief, at the time Needa entered into the Settlement Agreement with plaintiff, it had no present intention of acting on the promises and agreements it made therein.

77. On information and belief, Needa's promises and agreements in the Settlement Agreement were material, knowingly false when made, and made with the intention that plaintiff rely upon them. Plaintiff had a right to rely on the statements, and did so to his damage as alleged herein.

SIXTH CLAIM FOR RELIEF

UNFAIR AND DECEPTIVE TRADE PRACTICES

(Defendant Needa)

78. Plaintiff realleges and incorporates by reference the allegations stated in paragraphs 1 through 57 and 69 through 75, and further alleges:

79. Defendant Needa's conduct constitutes unfair and deceptive acts or practices in the course of a business, trade, or commerce in violation of the unfair and deceptive trade practices statutes of several states, including California, CAL. BUS. & PROF. CODE § 17200, et seq. (West 2009); Colorado, COLO. REV. STAT. ANN. §§ 6-1-101 to 6-1-115 (West 2009); Delaware, DEL. CODE ANN. title 6, §§ 2531 to 2536

(2009); Georgia, GA. CODE ANN. §§ 10-1-370 to 10-1-375 (2009); Hawaii, HAW. REV. STAT. §§ 481A-1 to 481A-5 (2009); Illinois, ILL. COMPo STAT. ANN. ch. 815, 510/1 to 510n (2009); Maine, ME. REV. STAT. ANN. tit. 10, §§ 1211 to 1216 (West 2009); Minnesota, MINN. STAT. ANN. § 325D.43 to.48 (West 2009); Nebraska, NEB. REV. STAT. §§ 87-301 to 87-306 (2009); New Mexico, N.M. STAT. ANN. §§ 57-12-1 to 57-12-22 (Michie 2009); New York, N.Y. GEN. BUS. Law § 349 (McKinney 2009); Ohio, OHIO REV. CODE ANN. §§ 4165.01 to 4165.04 (Baldwin 2009); and Oklahoma, OKLA. STAT. ANN. tit. 78, §§ 51 to 55 (West 2009); Washington, RCW § 19.86.020.

80. Plaintiff is entitled to the damages and remedies provided by each of these statutes for defendants' violations within each of the applicable states.

WHEREFORE, plaintiff asks for judgment as follows:

1. On plaintiff's **First Claim for Relief for Patent Infringement** against all defendants for:
 - A. A preliminary injunction or, in the alternative a permanent injunction under 35 USC § 283 restraining defendants from further infringing activity;
 - B. A preliminary injunction or, in the alternative a permanent injunction under 35 USC § 283 ordering defendants to destroy all infringing devices within their possession, custody, or control, or, in the alternative, to surrender all infringing devices to plaintiff;
 - C. Economic damages adequate to compensate for plaintiff's lost profits caused by defendants' infringement, or in the alternative a

reasonable royalty;

- D. Prejudgement interest pursuant to 35 USC § 284;
- E. Plaintiff's costs incurred in pursuing this matter;
- F. Treble damages;
- G. Plaintiff's reasonable attorney fees.

2. On plaintiff's **Second Claim for Relief for Violation of 15 U.S.C. § 1125** against defendants Dorman, O'Reilly, Autozone, Carquest, General, NAPA, and Pep Boys for:

- A. Each defendant's profits gained from sales of the Dorman product with falsely designated geographic origin;
- B. Plaintiff's losses and damages as a result of defendant's violations of 15 U.S.C. § 1125;
- C. Reasonable attorney fees;
- D. Plaintiff's costs incurred in pursuing this matter.

3. On plaintiff's **Third Claim for Relief for Violation of the Unfair and Deceptive Trade Practices Acts of Various States** against defendants Dorman, O'Reilly, Autozone, Carquest, General, NAPA, and Pep Boys for:

- A. Economic damages adequate to compensate plaintiff's damages caused by defendant's violations and misconduct;
- B. As allowed under various statutes cited, statutory, exemplary, and/or punitive damages in an amount sufficient to punish defendant's for their violations, and to prevent such future

misconduct;

- C. Attorney fees as provided by any of the applicable state statutes cited herein;
- D. Any other statutory damages, or damage multipliers allowed in any of the applicable state statutes cited herein;
- E. Plaintiff's costs and disbursements incurred in pursuing this matter.

4. On plaintiff's **Fourth Claim for Relief for Breach of Contract /**

Settlement Agreement against defendant Needa for:

- A. A preliminary injunction or, in the alternative a permanent injunction under 15 USC § 1116(a) restraining defendant from further breaches of the Settlement Agreement;
- B. A preliminary injunction or, in the alternative a permanent injunction under 15 USC § 1116(a) ordering defendants to destroy all materials containing false and misleading descriptions and representations of fact regarding the infringing devices that are within their possession, custody, or control;
- C. Economic damages adequate to compensate for plaintiff's damages caused by defendant's breach of contract, or in the alternative a reasonable royalty;
- D. Plaintiff's costs incurred in pursuing this matter.

5. On plaintiff's **Fifth Claim for Fraud** against defendant Needa for:

- A. Economic damages adequate to compensate plaintiff's damages caused by defendant Needa's fraud;
- B. Punitive damages in an amount sufficient to punish Needa for its fraudulent conduct, and to prevent such future misconduct.
- C. Plaintiff's costs incurred in pursuing this matter.

6. On plaintiff's **Sixth Claim for Relief for Violation of the Unfair and Deceptive Trade Practices Acts of Various States** against defendant Needa for:

- A. Economic damages adequate to compensate plaintiff's damages caused by defendant Needa's violations and misconduct;
- B. As allowed under various statutes cited, exemplary and/or punitive damages in an amount sufficient to punish defendant Needa for its violations, and to prevent such future misconduct;
- C. Attorney fees as provided by any of the applicable state statutes cited herein;
- D. Any other statutory damages, or damage multipliers allowed in any of the applicable state statutes cited herein;

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E. Plaintiff's costs and disbursements incurred in pursuing this matter.

DATED: June 23, 2011.

RICK KLINGBEIL, P.C.



Rick Klingbeil, OSB #933326
of Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Rick Klingbeil, hereby certify that on the date below, I served the foregoing document by filing it with the Court's Electronic Case Filing system for this case, which upon information and belief, will cause the documents to be served on each of the following counsel for the defendants at the electronic mail addresses filed with the court:

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DATED: June 23, 2011.

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