

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

Court File No. _____

State of Minnesota, by its Attorney General,
Lori Swanson, and Minnesota Board of
Chiropractic Examiners

Plaintiffs,

SUMMONS

vs.

Erik Okeson, D.C. individually and d/b/a
Okeson Optimal Chiropractic,

Defendants.

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon plaintiffs' attorney an answer to the complaint which is herewith served upon you, within twenty (20) days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

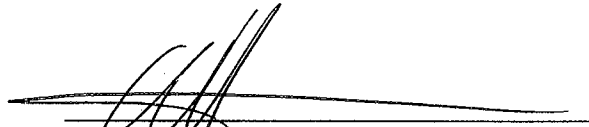
You may seek alternative dispute resolution of the issues in this complaint as set forth in the Minnesota General Rules of Practice for the District Courts. Alternative dispute resolution includes mediation, arbitration, and other processes as set forth in these rules. You may contact the court administrator for further information or about resources in your area. If you cannot pay

for alternative dispute resolution, in some counties assistance may be available to you through a nonprofit provider or a court program.

Dated: 11/24/09

LORI SWANSON
Attorney General
State of Minnesota

KERMIT N. FRUECHTE
Assistant Attorney General



CAREEN MARTIN
Assistant Attorney General
Atty. Reg. No. 0386878

445 Minnesota St., #1400
St. Paul, Minnesota 55101-2131

(651) 757-1272 (Voice)
(651) 297-7206 (TTY)

ATTORNEYS FOR PLAINTIFFS

AG: #2541623-v1

STATE OF MINNESOTA

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State of Minnesota, by its Attorney General,
Lori Swanson, and Minnesota Board of
Chiropractic Examiners

Plaintiffs,

COMPLAINT

vs.

Erik Okeson, D.C. individually and d/b/a
Okeson Optimal Chiropractic,

Defendants.

The State of Minnesota, by its Attorney General, Lori Swanson, and the Minnesota Board of Chiropractic Examiners, for their Complaint against Erik Okeson, D.C. individually and d/b/a Okeson Optimal Chiropractic, hereby state and allege as follows:

INTRODUCTION

1. Defendant Erik Okeson, D.C. ("Okeson") owns and operates a chiropractic clinic in Lakeville, Minnesota. The clinic is operated under the name Okeson Optimal Chiropractic ("Okeson Optimal"). Defendants aggressively enrolled patients in "CareCredit" credit cards issued by GE Money Bank. To ensure that patients would qualify for lines of credit on which defendants could charge their chiropractic services, defendants engaged in a pattern of fraudulent conduct including: 1) misrepresenting unrelated third parties as co-applicants on credit cards without the third parties' permission and 2) falsifying patients' income, in some cases more than doubling their actual annual income. By falsely listing unsuspecting strangers as co-applicants

on the other patients' credit cards and by inflating the actual annual income of the primary applicants, defendants jeopardized the credit histories of both the unsuspecting co-applicants and the primary applicants and caused patients to incur thousands of dollars in debt for which they otherwise may not qualify for credit. Defendants engaged in these practices in order to create a lucrative source of funding for their chiropractic services. Through their conduct, Okeson Optimal and Okeson have violated Minnesota's statutory prohibitions against consumer fraud, deceptive trade practices, and the Chiropractic Practice Act.

PARTIES

2. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minnesota Statutes chapter 8, including Minnesota Statutes sections 8.01, 8.31, 8.32, and under sections 325F.67 and 325F.70, and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota law.

3. The Minnesota Board of Chiropractic Examiners is authorized under Minnesota Statutes section 214.11 to bring this action.

4. Erik Okeson, D.C. resides in Burnsville and conducts business as Okeson Optimal Chiropractic. Okeson Optimal Chiropractic has a physical location at 16372 Kenrick Avenue #210, Lakeville, Minnesota 55044.

JURISDICTION

5. This Court has jurisdiction over the subject matter of this action pursuant to Minnesota Statutes sections 8.01, 8.31, 8.32, subdivision 2(a), 325F.67, 325F.70, and 214.11.

6. This Court has personal jurisdiction over Okeson Optimal Chiropractic because Okeson Optimal Chiropractic does business in Minnesota, has agents and property in Minnesota, and has committed acts in Minnesota causing injury to Minnesota citizens.

7. This Court has personal jurisdiction over Okeson because Okeson is a resident of the State of Minnesota and has committed acts in Minnesota causing injury to Minnesota citizens.

VENUE

8. Venue in Dakota County is proper under Minnesota Statutes section 542.09 (2008) because the defendants reside, and the cause of action arose, in part, in Dakota County.

FACTUAL BACKGROUND

A. **Okeson Optimal and Okeson.**

9. Defendants offer chiropractic services to patients at 16372 Kenrick Avenue #210, Lakeville, Minnesota 55044. Defendant Okeson is intimately involved in all aspects of Okeson Optimal's business and operations. Among other things, Okeson directs the sales of Okeson Optimal's chiropractic services, provides chiropractic services offered by the clinic, and enrolls patients in credit cards.

10. Defendants often made initial contact with prospective patients at booths or kiosks at locations like Burnsville Center, warehouse stores, health clubs, the YMCA, or craft fairs. Defendants often initiated contact with patients by asking them if they wanted a free health screening. At the initial contact, defendants requested that patients fill out an information sheet, which included the patient's name, address, and Social Security number. Defendants then invited patients to the clinic for a full evaluation.

11. After the evaluation at the clinic, defendants often recommended a care plan consisting of a series of expensive future chiropractic treatments. The total cost of a full complement of future treatments, which generally included 40-80 adjustments and other services, ranged from \$1,200 to \$4,376. Defendants charged the full amount for the care plan on patients' credit cards up front, prior to all services being delivered.

B. Defendants' Use of CareCredit.

12. GE Money Bank is a financial institution which offers the CareCredit credit card, which it describes as a "healthcare credit card that can be used as a payment option for certain expenses not covered by insurance or to bridge situations when desired care exceeds insurance coverage." CareCredit offers various promotional plans under which no finance charges are assessed if the purchase amount is paid in full within the promotional period and if the consumer pays the monthly minimum payment on time each month. Otherwise, under a typical program, CareCredit imposes a delinquency interest rate of up to 29.99 percent APR. If a consumer does not pay off the balance within the promotional period, or if the consumer misses a monthly payment, finance charges may be assessed retroactively to the date of purchase.

13. CareCredit gives some providers, including defendants, authority to submit a patient's credit card application information electronically by inputting a patient's personal information into an online form and submitting the form to CareCredit on the internet. CareCredit's contract with defendants, however, required them to have patients sign a paper application and retain a copy for at least three years. The contract was signed by Okeson.

14. When defendants enrolled patients in CareCredit credit card accounts, they typically did not ask patients to sign a hard copy of a CareCredit application, however. Instead,

defendants, including defendant Okeson, directly entered patients' personal information into an online application form for CareCredit.

15. The CareCredit online application form includes blanks for an applicant's personal information, as well as blanks where a co-applicant's personal information can be entered, if applicable. Co-applicant information provided on the online enrollment form includes the co-applicant's name, address, Social Security number, household income, and date of birth.

C. Defendants Fraudulently Made Unsuspecting Patients Co-applicants on the Care Credit Applications of Strangers.

16. In order to ensure that a primary applicant on a CareCredit application qualified for credit, defendants sometimes listed another unrelated patient's name and Social Security number as the co-applicant, without the latter patient's knowledge or authorization. On such occasions, the patients who were identified as co-applicants never consented to be co-applicants, had no knowledge they were made co-applicants, and did not know the primary applicant. A co-applicant on a credit card is financially liable for charges incurred on the credit card.

17. The unsuspecting co-applicants typically provided their personal information, including names, addresses, and Social Security numbers, to defendants as part of an initial health screening on a general patient information form. In most cases, the co-applicants did not return to defendants for additional treatment after the initial visit.

18. Defendants submitted the co-applicant information to CareCredit in a manner designed to make it difficult, if not impossible, for the co-applicants to find out that their identity had been usurped. While defendants submitted correct Social Security numbers for the unsuspecting co-applicants, they sometimes altered the co-applicant's name or used false addresses, telephone numbers, or dates of birth for co-applicants.

19. The primary applicants on the CareCredit applications were unaware defendants had fraudulently added a co-applicant to the primary applicant's application. Some patients first learned defendants added a co-applicant to their application when they received a CareCredit credit card in the mail along with a statement that included the name of an unknown co-applicant.

20. A co-applicant on a line of credit is generally liable financially for the repayment of the debt. By falsely listing strangers as co-applicants on other patients' credit cards, defendants jeopardized the credit histories of the co-applicants, defrauded GE Money Bank, and obligated patients with the repayment of lines of credit for which they otherwise might not qualify.

D. Defendants Inflated Patients' Income.

21. In order to ensure that patients qualified for an extension of credit from GE Money Bank, defendants sometimes submitted false and grossly inflated annual income for the patient—income which was far in excess of the annual income reported by the patient to the clinic. In some cases, defendants also misrepresented that patients owned their homes instead of renting, contrary to information supplied by the patient to the clinic. By inflating patients' income to GE Money Bank, defendants obligated patients to repay lines of credit for which they otherwise might not qualify.

22. Defendants applied for CareCredit credit cards on behalf of 283 patients. Of the 283 enrollees, defendants reported to CareCredit that 108 enrollees had an annual income of *exactly* \$120,000.

23. A few examples of cases where defendants submitted to GE Money Bank false annual income for patients include:

<u>Patient Initials</u>	<u>Approximate Actual Annual Income Reported by Patient to Clinic</u>	<u>False Annual Income Reported to CareCredit by Defendants</u>
H.S.	Less than \$50,000	\$150,000
J.A.	\$30,000	\$120,000
L.B.	\$37,000	\$120,000
M.B.	\$35,000	\$132,000
M.H.	\$15,000	\$180,000
K.L.	\$33,000	\$120,000
T.M.	Less than \$40,000	\$85,200
R.O.	\$15,000	\$120,000

24. J.A. is retired and on Social Security, with an annual income of approximately \$30,000, but defendants told CareCredit that J.A.'s annual income was \$120,000. L.B. is in the National Guard and works in healthcare. L.B.'s annual income when she applied for a CareCredit credit card was approximately \$37,000, but defendants told CareCredit that L.B.'s annual income was \$120,000. M.H. works at a gas station, rents his home, and has an annual income of approximately \$15,000. However, defendants told CareCredit that M.H.'s annual income was \$180,000 and that he owned his home. T.M., a waitress at a pizza restaurant, has an annual income of less than \$40,000 and lives at home with her mother, but defendants reported to CareCredit that T.M.'s annual income was \$85,000 and that she owned her home. R.O., a 22-year-old nurse's aid and single mother, had an annual income of approximately \$15,000 and rented at the time she applied for a CareCredit credit card. However, defendants reported to CareCredit that her annual income was \$120,000 and that she owned her home.

25. Defendants also submitted false and grossly inflated annual income for the unsuspecting co-applicants. For example, S.B.—who had his identity usurped by defendants—has an annual household income of approximately \$60,000, but defendants told CareCredit that S.B.'s annual household income was \$162,000. A.L.—who had his identity usurped by

defendants—has an annual income of approximately \$130,000, but defendants told CareCredit that A.L.’s annual income was \$264,000.

E. Defendants Aggressively Enrolled Patients in CareCredit in Order to Have a Payment Source for Their Chiropractic Treatments.

26. Over a 26-month period, defendants placed over \$630,000 in charges on patients’ CareCredit credit cards. Defendants engaged in the practices described above in order to have a ready source of payments for their future and extensive chiropractic services. In some months, defendants billed CareCredit \$48,000 or more in charges, as illustrated in the following chart:

<i>Period Ending</i>	<i>Charges billed by Clinic to CareCredit</i>	<i>Charges Refunded by Clinic to CareCredit</i>
06/29/07	\$ 13,047	- 0 -
07/31/07	\$ 19,476	- 0 -
08/31/07	\$ 30,117	\$ 9,000
09/30/07	\$ 8,400	- 0 -
10/31/07	\$ 37,097	\$ 8,615
11/30/07	\$ 33,377	\$ 1,000
12/31/07	\$ 24,377	\$ 1,817
01/31/08	\$ 48,572	- 0 -
02/29/08	\$ 36,653	\$ 11,041
03/31/08	\$ 25,913	\$ 17,538
04/30/08	\$ 40,595	\$ 13,175
05/30/08	\$ 21,481	- 0 -
06/30/08	\$ 34,228	\$ 3,445
07/31/08	\$ 41,878	\$ 5,477
08/31/08	\$ 48,920	\$ 10,722
09/30/08	\$ 42,399	\$ 12,782
10/31/08	\$ 60,525	\$ 11,352
11/30/08	\$ 17,918	\$ 4,300
12/31/08	\$ 12,692	\$ 10,561

<i>Period Ending</i>	<i>Charges billed by Clinic to</i>	<i>Charges Refunded by</i>
	<i>CareCredit</i>	<i>Clinic to CareCredit</i>
01/30/09	\$ 3,065	\$ 9,751
02/27/09	\$ 7,955	\$ 10,264
03/31/09	\$ 4,230	\$ 7,894
04/30/09	\$ 2,845	\$ 6,993
05/31/09	\$ 4,365	\$ 1,800
06/30/09	\$ 6,922	\$ 1,480
07/31/09	\$ 5,274	\$ 1,685
TOTAL	\$632,323	\$160,692

27. Defendants' practices directly affected patients' credit histories, jeopardizing patients' credit scores and finances.

F. Illustrative Examples of Defendants' Unlawful Conduct.

28. The following are illustrative, but non-exclusive, examples of defendants' unlawful conduct:

S.B.

29. S.B. is a 41-year old Farmington, Minnesota resident. S.B. attended a craft fair at her church in the spring of 2008 and received a free health screening from defendants and filled out a form for the clinic with her name, address, and Social Security number. S.B. never received any other treatment or services from defendants.

30. In October 2008, when she was preparing to refinance her house, S.B. obtained a copy of her credit report and was surprised that it listed a CareCredit credit card. S.B. never had a CareCredit credit card, so she immediately contacted CareCredit. CareCredit informed her that the account was in S.B.'s name, but that there was another name on the account as well, L.J. S.B. learned the CareCredit card had been charged by Okeson Optimal on two occasions, for \$3,250 and \$1,475. S.B. contacted defendant Okeson, who informed S.B. that L.J. was a patient

at his clinic, that there had been an error, and he would take care of the error. S.B. believed the CareCredit credit card had been removed from her credit report.

31. In October 2009, S.B. obtained a copy of her credit report and learned that the CareCredit credit card, as well as the primary applicant's personal information, was still listed on her credit report. S.B. has ever met or spoken to L.J. and never agreed to be a co-applicant on a CareCredit credit card account for L.J. or anyone else. S.B. never authorized defendants or any of defendants' employees to use her name or Social Security number to apply for credit, or to make her a co-applicant for a CareCredit credit card.

R.J. and K.J.

32. R.J. and his wife K.J. are retired and live in Burnsville, Minnesota. R.J. and K.J. met one of defendants' employees when they took a class at the YMCA and received a free health screening. R.J. and K.J. believe they filled out a form for the free screening, which included their names, addresses, and Social Security numbers. R.J. and K.J. did not receive any services or treatment from defendants other than the one free screening. R.J. and K.J. were surprised to learn in the course of the Attorney General's investigation that their names and Social Security numbers had been used to make them co-applicants on two separate credit card applications submitted to CareCredit by defendants on behalf of applicants named H.S. and S.F. R.J. and K.J. had never agreed to be co-applicants for CareCredit accounts, had never met or spoken with H.S. or S.F., and never authorized defendants to use their names or Social Security numbers to apply for credit, or to make them co-applicants for CareCredit credit cards. Defendants put \$2,500 in charges on the credit card in R.J.'s name and \$2,500 in charges on the credit card in K.J.'s name. When R.J. and K.J. learned that their identity had been misused, they

obtained a copy of their credit report and found errors in their credit report as a result of the identity theft.

M.E.

33. M.E. is a 52-year old Faribault, Minnesota resident who met one of defendants' employees at a mall when she was offered a free health screening. M.E. later went to defendant's clinic for a follow-up visit and filled out a form which included her name, address, and Social Security number. M.E. did not receive any services or treatment after the health screening and the follow-up visit to the clinic. M.E. was surprised to learn in the course of the Attorney General's investigation that her name and Social Security number had been used to make her a co-applicant on a CareCredit credit card application submitted by defendants on behalf of an applicant named S.L.B. M.E. had never agreed to be a co-applicant for S.L.B., or anyone else, never met or spoke to S.L.B., and had never authorized defendants to use her name or Social Security number to apply for credit, or to make her a co-applicant for a CareCredit credit card. Defendants put \$3,150 in charges on this credit card.

A.P.

34. A.P. is a manager of a daycare facility and resides in Rosemount, Minnesota. A.P. visited defendants on one occasion, when she went for a free visit. She believes she filled out a form, which included her name, address, and Social Security number. A.P. did not receive any services or treatment from defendants other than the initial visit. A.P. was surprised to learn in the course of the Attorney General's investigation that her name and Social Security number had been used to make her a co-applicant on a credit card application submitted by defendants on behalf of an applicant named D.C. A.P. had never agreed to be a co-applicant for D.C., or anyone else, never met or spoke to D.C., and never authorized defendants, or any of defendants'

employees, to use her name or Social Security number to apply for credit, or to make her a co-applicant for a CareCredit credit card.

A.L.

35. A.L. is a 53-year-old optometrist who lives in Lakeville, Minnesota. A.L. met defendant Okeson when A.L. and his wife received a free health screening. A.L. filled out a form for the health screening, which he believes included his name, address, and Social Security number. A.L. did not receive any services or treatment from defendants other than the free health screening. A.L. was surprised to learn in the course of the Attorney General's investigation that his name and Social Security number had been used to make him a co-applicant on a credit card application submitted by defendants on behalf of an applicant named B.Z. A.L. had never agreed to be a co-applicant for B.Z., or anyone else, never met or spoke to B.Z., and never authorized defendants, or any of defendants' employees, to use his name or Social Security number to apply for credit, or to make him a co-applicant for a CareCredit credit card. Defendants put \$3,150 in charges on this credit card. When A.L. learned that his identity had been stolen, he obtained a copy of his credit report and found the CareCredit card had appeared as a liability on his credit report.

H.S.

36. H.S. is a 30-year old Minneapolis resident. In March 2008, H.S. received an evaluation from defendant Okeson, who recommended a care plan that would cost between \$3,000 and \$4,000. When H.S. told Okeson she could not afford the care plan, Okeson suggested she apply for a CareCredit credit card. H.S. did not believe she would be approved because of her credit history, but she agreed to apply. When H.S. was not approved, Okeson asked H.S. whether she would be interested in reapplying for a CareCredit credit card with a co-

applicant. A few days later, Okeson contacted H.S. and informed her he had found a patient who would be willing to be H.S.'s co-applicant.

37. H.S. later received a CareCredit statement in the mail with her name on it, as well as the name K.J., whose story is described in paragraph 32 above. H.S. also received a CareCredit credit card with K.J.'s name on it. H.S. did not know K.J. and had never met K.J. In October 2009, when H.S. began to wonder about K.J.'s identity, she contacted CareCredit and was given the telephone number defendants had reported for K.J. on the CareCredit application. H.S. attempted to call K.J., but the telephone number was not in service. Defendants put over \$3,150 in charges on this credit card.

COUNT I

PREVENTION OF CONSUMER FRAUD ACT

38. Plaintiffs re-allege all prior paragraphs of this Complaint.

39. Minnesota Statutes section 325F.69, subdivision 1 (2008) provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

40. Defendants' conduct described above constitutes multiple, separate violations of Minnesota Statutes section 325F.69, subdivision 1. Defendants have engaged in deceptive and fraudulent practices, and have made false and misleading statements with the intent that others rely thereon in connection with the sale of defendants' services. By failing to disclose and omitting material facts, defendants have further engaged in deceptive and fraudulent practices in violation of the Consumer Fraud Act.

COUNT II

UNIFORM DECEPTIVE TRADE PRACTICES ACT

41. Plaintiffs re-allege all prior paragraphs of this Complaint.

42. Minnesota Statutes section 325D.44, subdivision 1 (2008) provides, in part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(5) represents that goods or services have ... characteristic ... benefits ... that they do not have ...

(7) represents that goods or services are of a particular standard, quality, or grade ...if they are of another;...

(13) engages in any other conduct which similarly creates likelihood of confusion or of misunderstanding.

43. Defendants' conduct described above constitutes multiple, separate violations of Minnesota Statutes section 325D.44, subdivision 1, including but not limited to the conduct identified above. Defendants have engaged in deceptive and fraudulent practices, and have made false and misleading statements in connection with the sale of services. By failing to disclose and omitting material facts, defendants have further engaged in deceptive and fraudulent practices in violation of the Deceptive Trade Practices Act.

COUNT III

VIOLATIONS OF CHIROPRACTIC PRACTICE ACT

44. Plaintiffs re-allege all prior paragraphs of this Complaint.

45. Minnesota Statutes section 214.11 (2008) provides, in part:

In addition to any other remedy provided by law, a licensing board may in its own name bring an action in district court for injunctive relief to restrain any unauthorized practice or violation or threatened violation of any statute or rule which the board is empowered to regulate or enforce.

46. Minnesota Statutes section 148.10, subdivision 1(a) (2008) makes it unlawful for a chiropractor to:

(11) [engage in] unprofessional conduct; . . .

(19) exercis[e] influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, good, or appliances; . . .

47. Minnesota Statutes section 148.10, subdivision 1(e) provides, in part that:

Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractor:

(4) charging a patient an unconscionable fee or charging for services not rendered; . . .

(5) directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques; . . .

(6) perpetrating fraud upon patients, third-party payors, or others, relating to the practice of chiropractic . . .

48. Defendants' conduct described above constitutes multiple, separate violations of Minnesota Statutes section 148.10, subdivision 1.

RELIEF

49. WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, and the Minnesota Board of Chiropractic Examiners respectfully ask this Court to award judgment against defendants as follows:

1. Declaring that defendants' acts described in this Complaint constitute multiple, separate violations of Minnesota Statutes sections 325F.69, subd. 1, 325D.44, subd. 1, and 148.10, subd. 1;

2. Enjoining defendants and their employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries,

and all other persons acting in concert or participation with them, from engaging in the unlawful practices described in this Complaint, and from enrolling patients in credit card accounts, providing false information to creditors, or otherwise engaging in conduct described herein that violates Minnesota Statutes sections 325F.69, subd. 1, 325D.44, subd. 1, and 148.10, subd. 1;

3. Awarding judgment against defendants for civil penalties pursuant to Minnesota Statutes sections 8.31, subd. 3, for each separate violation of Minnesota Statutes sections 325F.69, subd. 1, and 325D.44;

4. Awarding judgment against defendants for restitution under the *parens patriae* doctrine, the general equitable powers of this Court, Minnesota Statutes section 8.31 and any other authority, for all persons injured by defendants' unlawful acts described in this Complaint;

5. Awarding Plaintiffs their costs, including costs of investigation and attorneys fees, as authorized by Minnesota Statutes section 8.31, subdivision 3a; and

6. Granting such further relief as provided by law and/or as the Court deems appropriate and just.

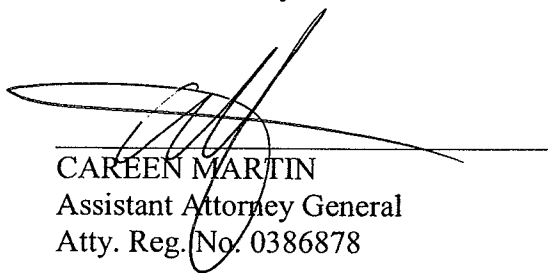
Dated: _____

11/24/09

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

KERMIT N. FRUECHTE
Assistant Attorney General



CAREEN MARTIN
Assistant Attorney General
Atty. Reg. No. 0386878

445 Minnesota St., #1400
St. Paul, Minnesota 55101-2131

(651) 296-8403 (Voice)
(651) 297-7206 (TTY)

ATTORNEYS FOR PLAINTIFFS

**MINN. STAT. § 549.211
ACKNOWLEDGMENT**

The party on whose behalf the attached pleading is served acknowledges through its undersigned counsel that sanctions, including reasonable attorneys fees and other expenses, may be awarded to the opposite party pursuant to Minn. Stat. § 549.211 (2008).

Dated: 11/24/09

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

KERMIT N. FRUECHTE
Assistant Attorney General



CAREEN MARTIN
Assistant Attorney General
Atty. Reg. No. 0386878

445 Minnesota St., #1400
St. Paul, Minnesota 55101-2131
(651) 296-8403 (Voice)
(651) 297-7206 (TTY)

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