


STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE
 FORSYTH COUNTY 09 FEB 13 PM 1:45 SUPERIOR COURT DIVISION
 09 CVS 368

FORSYTH COUNTY C.S.C.

GATEWAY MANAGEMENT SERVICES, LTD.,

BY 

Plaintiff,

v.

JOSEPH BELMONTE and AMERICAN GUARDIAN WARRANTY SERVICES, INC.,

Defendants.

NOTICE OF DESIGNATION OF ACTION AS MANDATORY COMPLEX BUSINESS CASE PURSUANT TO N.C. GEN. STAT. § 45.4(a)

Pursuant to N.C. Gen. Stat. § 7A-45.4, defendants Joseph Belmonte and American Guardian Warranty Services, Inc. (“American Guardian”), hereby designate the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, defendants, through counsel, hereby certify that this action meets the following criteria for designation as a mandatory complex business case pursuant to N.C. Gen. Stat. § 7A-45.4(a), and should be adjudicated in the Business Court:

- (1) The law governing corporations, partnerships, limited liability companies, and limited liability partnerships.
- (2) Securities law.
- (3) Antitrust law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- (4) State trademark or unfair competition law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- (5) Intellectual property law.
- (6) The Internet, electronic commerce, and biotechnology.

In further support of this Notice of Designation, defendants state as follows:

1. This is an action by plaintiff Gateway Management Services, Ltd. (“Gateway”), against American Guardian, Gateway’s “direct competitor.” (Compl. ¶ 7.) Gateway has also sued Mr. Belmonte, an American Guardian employee. Among its five claims against the defendants, Gateway alleges four claims of slander and libel. (See id. ¶¶ 23-64.)

2. As a case between two direct competitors focused on slander and libel claims, this lawsuit meets the criteria for designation as a mandatory complex business case because it expressly involves state “unfair competition law” separate and apart from section 75-1.1. See N.C. Gen. Stat. § 7A-45.4(a)(4) (2007).

3. More specifically, the complaint alleges, among other things, that American Guardian and Mr. Belmonte made false statements about “Gateway’s methods of business and corporate integrity” to Gateway’s customers and to an industry group called the “Used Trucks Association.” (Compl. ¶¶ 8-9.) According to the complaint, Gateway has incurred “significant damage to its professional reputation and a significant unnecessary loss of business” as a direct result of the defendants’ alleged actions. (Id. ¶ 22.)

4. Notably, the Business Court recently administered another lawsuit initiated by Gateway in which Gateway also alleged that American Guardian spread false statements about Gateway to Gateway’s customers. A copy of the complaint from that case, styled Gateway Management Services, Ltd. v. Advanced Lubrication Technology, Inc., is attached as Exhibit 1. In the first Gateway case, the Honorable Ben F. Tennille, the Special Superior Court Judge for Complex Business Cases and senior judge of the North Carolina Business Court, granted Advanced Lubrication Technology’s motion to dismiss Gateway’s claim for slander. A copy of the Court’s opinion is attached as Exhibit 2.

5. The assignment of this action to a single Business Court judge will promote judicial economy. Having administered Gateway's recent lawsuit against Advanced Lubrication Technology, the Business Court will be able to draw on its familiarity with those allegations and, importantly, its written opinion that addressed similar slander allegations.

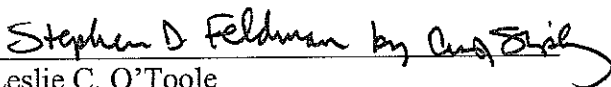
6. Plaintiffs served the complaint on American Guardian and Belmonte on January 16, 2009. Accordingly, defendants are filing this Notice of Designation within thirty days of receipt of service of the complaint, as required by N.C. Gen. Stat. § 7A-45.4(d)(3) (2007).

7. As reflected in the accompanying certificate of service and in accordance with N.C. Gen. Stat. § 7A-45.4(b) (2008), defendants are serving this Notice of Designation on counsel for Gateway and transmitting copies hereof to the Honorable Sarah E. Parker, Chief Justice of the North Carolina Supreme Court, and Judge Tennille.

8. A copy of all pleadings listed in N.C. R. Civ. P. 7(a) that have been filed to date in this action are attached hereto as Appendix A for the convenience of the Court.

This 13th day of February, 2009.

ELLIS & WINTERS LLP


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*Attorneys for defendants Joseph Belmonte and
American Guardian Warranty Services, Inc.*

CERTIFICATE OF SERVICE

I do hereby certify that on this date I served a copy of the foregoing Notice of Designation of Action as Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.5 upon counsel of record by having employees of Ellis & Winters LLP acting at my direction deposit a copy in the United States mail, postage prepaid and addressed as follows:

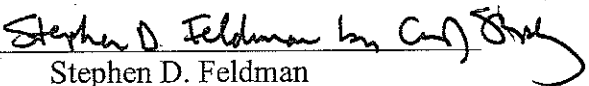
Charles E. Rawlings, M.D.
The Rawlings Law Firm
426 Old Salem Road
Winston-Salem, NC 27101

I further certify that copies of the foregoing Notice of Designation were sent by United States mail, postage prepaid, first class, and by facsimile, as follows:

The Honorable Sarah E. Parker
Chief Justice
Supreme Court of North Carolina
Justice Building
Post Office Box 1841
Raleigh, North Carolina 27602
Facsimile: (919) 733-0105

The Honorable Ben F. Tennille
Chief Special Superior Court Judge for Complex Business Cases
North Carolina Business Court
200 South Elm Street, Suite 200
Greensboro, North Carolina 27401
Facsimile: (336) 334-5162

This 13th day of February, 2009.



Stephen D. Feldman

NORTH CAROLINA
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2007 JAN -4 11:11:41 08 CVS 85

GATEWAY MANAGEMENT
SERVICES, LTD

Plaintiff,

v.

ADVANCED LUBRICATION
TECHNOLOGY, INC.

Defendant.

COMPLAINT

(Jury Trial Demanded)

[CMPL]

NOW COMES Plaintiff Gateway Management Services, Ltd., by and through counsel,
and, complaining of defendant hereby alleges and avers as follows:

PARTIES

1. Plaintiff Gateway Management Services, Ltd., ("Gateway") is a corporation organized under the laws of North Carolina with its principle place of business in Winston-Salem, Forsyth County, North Carolina.

2. Upon information and belief, defendant Advanced Lubrication Technology, Inc. ("ALT") is a corporation organized under the laws of North Carolina with its principle place of business in Raleigh, Wake County, North Carolina, who at all times relevant herein, was a distributor of lubricant product.

3. Upon further information and belief, defendant ALT, at all times relevant herein, supplied a lubricant product to plaintiff Gateway as established by contract.

FACTS

4. The allegations contained in paragraphs 1 through 3 are re-alleged and incorporated by reference as though fully set forth herein.

5. Gateway is a corporation that provides warranties covering both automobiles and truck parts.

6. ALT is a corporation that manufactures and supplies a lubricant product to be used in both automobiles and trucks. The lubricant product was supplied by Gateway to the automobile and truck dealers.

7. The lubricant is a Boron derived formula designed to prolong engine and drive train life as a result of reduced friction.

8. Prior to March 2006, Gateway and ALT enjoyed a mutually beneficial business arrangement.

9. Between 2001 and March 2006, Gateway had ordered and placed into business approximately one million, one hundred thousand dollars (\$1,100,000.00) worth of ALT's lubricant product.

10. On or about the beginning of March 2006, Gateway received at least two significant claims with regard to clogged filters resulting in significant vehicular damage warranted by them. The damage to the vehicles was due to ALT's faulty lubricant product. Prior to these claims, Gateway had rarely received similar claims.

11. On or about March 5, 2006, Gateway was first told of changes to the formula of ALT's product during a meeting with one of ALT's company agents. Prior to this meeting, Gateway had been provided no notice of the changes in ALT's product and had sold the altered product without any knowledge of its altered properties. In fact, ALT has never informed Gateway of when the formula change actually occurred.

12. Prior to changing the product, ALT failed to inform Gateway of any product formula alterations or any possible alterations in its properties.

13. Prior to changing the product, ALT failed to warn Gateway of the existence of a "shelf life" with regard to the altered product.

14. Moreover, prior to changing the product, ALT failed to warn Gateway of any possible hazards due to these alterations. In addition, after altering the lubricant, ALT informed Gateway that the original, unaltered lubricant should not be used due to the hazards inherent in its use.

15. Over the course of the next several months to a year, Gateway received a significant number of claims for clogged filters, curdled lubricants, and component failures, caused by ALT's altered product. Gateway has paid out over eighty thousand dollars (\$80,000.00) in claims generated by clogged filters and other vehicular damage caused by the use of ALT's altered lubricant product.

16. Prior to being informed of the altered nature of the lubricant, Gateway continued to sell the altered lubricant to both truck and car dealers. After March 2006, however, no truck or automotive dealer can or will use the altered lubricant product in any of its vehicles due to its hazardous characteristics.

17. As a result approximately one hundred thirty thousand dollars (\$130,000.00) worth of unusable altered product was sold to the dealers. Gateway was not paid for the hazardous product and will not be able to obtain any payment for the altered product due to its hazardous characteristics. This remaining product is unusable due to the dangers it poses to engines, transmissions and drive-axles.

18. In addition, Gateway possesses approximately three thousand dollars (\$3,000.00) worth of ALT's unusable product. ALT refused to compensate Gateway for this unusable product and refused to accept return of the product secondary to a heretofore undisclosed shelf

life of the product. Finally, Gateway returned approximately six thousand dollars (\$6,000.00) worth of altered product to ALT. ALT refused to compensate Gateway for the claimed unusable product.

19. In addition, over the course of 2006, the same year as in the previous allegations, ALT entered into a business arrangement with a direct competitor of Gateway -- American Guardian -- in which they sold their altered product to and under the auspices of American Guardian. ALT marketed the altered product under the label of MotorSilk, and placed the product name on American Guardian's warranty (Exhibit 1). ALT knew or should have known that by doing so they were in direct competition with Gateway and were interfering with Gateway's clients, business relationships, and contracts.

20. Moreover, ALT made available to Gateway's direct competitor, American Guardian, either by sale, trade or other means, Gateway's list of confidential clients. As a result, American Guardian was able to contact and attempt to interfere with Gateway's contracts and business relationships with its ongoing clients. American Guardian contacted multiple dealers with executed contracts with Gateway in multiple states, including, but not limited to, Michigan Nevada, North Carolina, Illinois, and Florida.

21. During the course of American Guardian's contact with Gateway's dealers American Guardian repeatedly slandered Gateway's methods of business and corporate integrity.

22. In addition, American Guardian, while in the course of selling warranties bearing the ALT name, repeatedly slandered Gateway's methods of business and corporate integrity to members of the Used Trucks Association ("UTA"). This conduct was so prevalent that the President of the UTA requested that American Guardian cease slandering Gateway.

23. Moreover, this conduct has been the subject of multiple board meetings of the UTA, with one emergency board meeting solely dedicated to this issue.

24. In short, ALT's actions have left Gateway and its customers with large quantities of an unusable, hazardous product, have resulted in Gateway paying significant numbers of otherwise avoidable claims, have significantly harmed Gateway's business reputation, and have led to a significant loss of business for Gateway. In addition, ALT informed Gateway that all lubricant prior to alteration did not perform up to standards.

25. As a direct and proximate result of defendant ALT's negligent and deceptive trade practices as alleged above, Gateway has suffered significant financial losses, has suffered a significantly harmed business reputation and has suffered a significant loss of business.

FIRST CLAIM FOR RELIEF

(Unfair and Deceptive Trade Practices against Advanced Lubrication Technology, Inc.)

26. Paragraphs 1-25 are re-alleged and incorporated by reference as though fully set forth herein.

27. Defendant ALT developed a professional relationship with plaintiff Gateway that existed at all times pertinent to the allegations of this Complaint.

28. For years prior to March 2006, Gateway and ALT enjoyed a mutually beneficial business arrangement.

29. Between 2001 and March 2006, Gateway had ordered and placed into business approximately one million, one hundred thousand dollars (\$1,100,000.00) worth of ALT's lubricant product.

30. In March 2006, Gateway was first told of alterations to the original formula and that the old formula was no longer usable. This information had never before been provided to Gateway. In fact, ALT has not told Gateway when the formula change actually occurred.

31. As a result, Defendant ALT was deceptive, and its deception was a proximate and reasonably foreseeable cause of Gateway's harmed business reputation, loss of business, and significant expenses incurred. Defendant ALT breached its duty to engage in responsible business practices expected of a corporation.

32. Defendant ALT was deceptive in the following non-exclusive manner: (a) it deliberately altered the formula of its product in a way that was potentially hazardous; (b) it failed to inform Gateway of the product alterations; (c) it failed to warn Gateway of any potential hazards due to the alterations; (d) it failed to warn Gateway or any of the entities receiving its product of the existence of a "shelf life" for the product in a timely manner; (e) it failed to provide Gateway with instructions on how to return unused product; (f) it failed to provide Gateway with any alternatives or any instructions as to correcting the product's effects; and (g) it failed to inform Gateway that the original formula lubricant was unsafe while still selling the same to Gateway.

33. Moreover, ALT relayed to Gateway that prior to any products changes Gateway would be alerted and informed as to any changes of product, any results of the changes of product, and any protocols necessary to implement the use of the new product. ALT failed to inform Gateway of any such information.

34. Such deception was the direct and proximate cause of Gateway receiving a significant number of claims for clogged filters, curdled lubricants, and component failures, caused by ALT's altered product. Gateway paid out over eighty thousand dollars (\$80,000.00) in claims generated by clogged filters and other vehicular damage caused by the use of ALT's altered lubricant product.

35. ALT's deception was the direct and proximate cause of approximately one hundred thirty thousand dollars (\$130,000.00) worth of unusable altered product being sold to Gateway's dealers. Gateway was not paid for the hazardous product and will not be able to obtain any payment for the altered product due to its hazardous characteristics. This remaining product is unusable due to the dangers it poses to engines, transmissions and drive-axles.

36. In addition, Gateway possesses approximately three thousand dollars (\$3,000.00) worth of ALT's unusable product. ALT refused to compensate Gateway for this unusable product and refused to accept return of the product secondary to a heretofore undisclosed shelf life of the product. Finally, Gateway returned approximately six thousand dollars (\$6,000.00) worth of altered product to ALT. ALT refused to compensate Gateway for the unusable product.

37. As a direct and proximate result of the unfair and deceptive trade practices by the defendant, Gateway suffered over eighty thousand dollars (\$80,000.00) in claims generated by clogged filters and other vehicular damage caused by the use of ALT's altered lubricant product, approximately one hundred thirty thousand dollars (\$130,000.00) worth of unusable altered product being sold to Gateway's dealers, approximately three thousand dollars (\$3,000.00) worth of ALT's unusable product remaining in Gateway's inventory, and approximately six thousand dollars (\$6,000.00) worth of altered product which was returned to ALT but for which Gateway has not been compensated.

38. Accordingly, Plaintiff Gateway is entitled to recover from the defendant damages, as described below in more detail, in an amount in excess of \$10,000.

39. Moreover, under North Carolina General Statute § 75-16, Gateway is entitled to recover from the defendant treble damages for ALT's unfair and deceptive business practices.

SECOND CLAIM FOR RELIEF

(Negligent Misrepresentation against Advanced Lubrication Technology, Inc.)

40. Paragraphs 1-39 are re-alleged and incorporated by reference as though fully set for herein.

41. In the course of defendant ALT's contractual relationship with Gateway, ALT supplied information to Gateway attesting to the reliability of its supplied product. Moreover, ALT relayed to Gateway that prior to any product changes Gateway would be alerted and informed as to any changes of product, any results of the changes of product, and any protocols necessary to implement the use of the new product.

42. ALT failed to alert Gateway of such changes.

43. Defendant ALT intended for Gateway to rely on that information for guidance in its business transactions, including supplying lubricant and providing warranties to truck and automobile companies.

44. Prior to entering into a contractual relationship with Gateway, Defendant ALT negligently misrepresented the quality and consistency of its lubricant product.

45. ALT deliberately altered the formula of their lubricant product and failed to inform Gateway of such alterations, thus negligently misrepresenting the qualities of its altered lubricant. Moreover, ALT has since informed Gateway that its original, unaltered product was unsafe.

46. Prior to the alterations, ALT failed to inform Gateway of the following consequences of its altered product: the existence of a "shelf-life" for the new altered product, and possible hazards due to the alterations of the product, including the potential for curdled lubricant, clogged filters, and component failures.

47. ALT informed Gateway of its product alterations only after Gateway had provided thousands of dollars worth of the altered lubricant to its customers.

48. As a result of these gross omissions, Gateway was entirely unaware of any changes in the product and thus continued to provide lubricant and supply warranties in the same manner it had prior to the alterations.

49. Moreover, ALT failed to exercise reasonable care or competence in obtaining or communicating the information with regard to its altered product. In fact, ALT failed to communicate any information with regard to its altered product prior to the product damaging significant numbers of motor vehicles.

50. As a result, Gateway has lost hundreds of thousands of dollars in the purchase of ALT's unusable product, customer claims of defective parts and component failures, and a significant loss of business reputation.

THIRD CLAIM FOR RELIEF

(Wrongful Interference with Contract Right, existing and future, against Advanced Lubrication Technology, Inc.)

51. Paragraphs 1-50 are re-alleged and incorporated by reference as though fully set for herein.

52. Prior to and during March 2006, multiple valid contracts existed between Gateway, its customers, and multiple truck and automobile dealerships in multiple states including, but not limited to, Texas, Illinois, California, and Michigan. These contracts provided that Gateway supply the dealers with lubricant product produced by ALT.

53. Defendant ALT had knowledge of these contracts, inasmuch as ALT supplied large amounts of lubricant to Gateway in order for Gateway to distribute the lubricant to its clients. Moreover, in the majority of orders, ALT shipped their product directly to Gateway's client

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dealers. In other words, ALT shipped the product directly to Gateway's clients, the dealers. These dealers' identities were unknown to any other entity.

54. Over the course of 2006, the same year as in the previous allegations, ALT entered into a business arrangement with a direct competitor of Gateway -- American Guardian -- in which they sold their product to and under the auspices of American Guardian. ALT marketed the product under the label of MotorSilk, and placed the product name on American Guardian's warranty (Exhibit 1).

55. ALT knew or should have known that by doing so they were in direct competition with Gateway and were interfering with Gateway's present and future business relationships and contracts as ALT shipped their product directly to Gateway's client dealers.

56. ALT was aware of both current and future contracts and that by joining with American Guardian they would interfere with both Gateway's future contracts and present contracts.

57. In providing Gateway with a defective product for distribution to Gateway's clients, ALT has caused severe harm to Gateway's reputation.

58. Moreover, ALT through American Guardian actively attempted to gain a larger customer base through contacting Gateway's customers and supplying a defective product to Gateway for distribution to these same dealers.

59. Furthermore, ALT through American Guardian actively attempted to gain a larger customer base through contacting members of the UTA.

60. ALT knew or should have known that the harm it inflicted on Gateway's reputation would interfere with Gateway's future business relationships and contracts.

61. As a result of ALT's actions, vis-à-vis its interference with Gateway's contracts, Gateway has, in fact, suffered a decline in the establishment of new contracts, as well as a significant loss of business reputation and customer confidence.

FOURTH CLAIM FOR RELIEF

(Misappropriation of Trade Secrets against Advanced Lubrication Technology, Inc.)

62. Paragraphs 1-61 are re-alleged and incorporated by reference as though fully set for herein.

63. ALT had access to Gateway's list of confidential clients inasmuch as ALT shipped their product directly to Gateway's client dealers.

64. ALT made this list available to Gateway's direct competitor, American Guardian, either by sale, trade or other means without express or implied consent or authority of Gateway.

65. By means of this list, American Guardian was able to contact and attempted to interfere with Gateway's contracts and business relationships with its ongoing clients.

66. As a result of ALT's actions, as alleged above, Gateway has lost a significant amount of business and suffered a significant loss in business reputation.

FIFTH CLAIM FOR RELIEF

(Slander Per Se against Advanced Lubrication Technology, Inc.)

67. Paragraphs 1-66 are re-alleged and incorporated by reference as though fully set for herein.

68. American Guardian's warranty included the name of ALT so prominently as to infer that American Guardian's defamatory words were sanctioned by ALT.

69. Agents of American Guardian met with several members of the UTA.

70. Agents of American Guardian met with multiple dealers having executed contracts with Gateway in multiple states, including, but not limited to, Michigan, Nevada, North Carolina, Illinois, and Florida.

71. During these meetings, as alleged in paragraphs 69 and 70 above, the agents of American Guardian verbally defamed Gateway's methods of doing business, as well as other aspects of Gateway's business relations with its customers.

72. The statements made by the agents of American Guardian were false.

73. In addition, the agents of American Guardian verbally defamed Gateway's methods of doing business as well as other aspects of Gateway's business relations with its customer to multiple members of the UTA and multiple dealers having executed contracts with Gateway. These statements were also false.

74. Following these statements, American Guardian was informed by the President of the UTA that American Guardian's defamatory language was unacceptable to the UTA.

75. As a result of ALT's actions by and through American Guardian, Gateway has suffered a significantly damaged business reputation, which has led to a decline in the number of Gateway's new contracts.

SIXTH CLAIM FOR RELIEF

(Constructive Fraud against Advanced Lubrication Technology, Inc.)

76. Paragraphs 1-75 are re-alleged and incorporated by reference as though fully set forth herein.

77. Gateway and ALT enjoyed years of a mutually beneficial business relationship prior to the events described in this complaint.

78. Prior to the events described in this complaint Gateway reposed complete trust in ALT and its formula.

79. Due to the trust and confidence between the parties Gateway purchased and placed into the market millions of dollars worth of ALT's product. After approximately five years, however, ALT relayed to Gateway that all previously provided product was unfit for its intended use.

80. Moreover, ALT failed to inform Gateway of the change in ALT's new formula for its new product and of the existence of a "shelf-life" of six months for the new formula. Prior to changing the product and informing Gateway that the old formula was unfit for its intended use, ALT never informed Gateway of any problems with any product nor did they inform Gateway of any changes in the product's formula.

81. As a result of ALT's constructive fraud vis-à-vis its products, Gateway has lost hundreds of thousands of dollars in the purchase of ALT's unusable product, customer claims of defective parts and component failures, and a significantly harmed business reputation.

82. In addition, as a result of ALT's constructive fraud vis-à-vis its products, ALT sold hundreds of thousands of dollars of its unusable product to Gateway, resulting in profits to ALT.

83. These profits would not have been enjoyed by ALT had Gateway been informed of the nature of ALT's new formula and of its concerns regarding its old product.

EIGHTH CLAIM FOR RELIEF

(Negligence and Breach of Implied Warranty of Merchantability against Advanced Lubrication Technology, Inc.)

84. Paragraphs 1-83 are re-alleged and incorporated by reference as though fully set forth herein.

85. Gateway entered into a contract to buy ALT's lubricant product, which was subject to an implied warranty of merchantability.

86. ALT sold Gateway its lubricant product which was merchantable and acceptable as defined by the contract. ALT then informed Gateway that its lubricant product was unfit for use after years of use.

87. Moreover, ALT then altered its product so as to render it defective. Gateway received numerous complaints of curdled product and component failures. Upon discovery that these problems were being caused by ALT's lubricant product, Gateway determined that the new product was not merchantable.

88. ALT sold Gateway \$130,000.00 of unusable, altered product, unbeknownst to Gateway.

89. Gateway was not paid for the defective product and will not be able to obtain any payment for the altered product due to its hazardous characteristics. The remaining product is unusable due to the dangers it poses to engines, transmissions and drive-axes.

90. As a result of ALT's negligence and breach of the implied warranty of merchantability, Gateway suffered over eighty thousand dollars (\$80,000.00) in claims generated by clogged filters and other vehicular damage caused by the use of ALT's altered lubricant product, approximately one hundred thirty thousand dollars (\$130,000.00) worth of unusable altered product being sold to Gateway's dealers, approximately three thousand dollars (\$3,000.00) worth of ALT's unusable product remaining in Gateway's inventory, and approximately six thousand dollars (\$6,000.00) worth of altered product which was returned to ALT but for which Gateway has not been compensated.

NINTH CLAIM FOR RELIEF

(Breach of Contract against Advanced Lubrication Technology, Inc.)

91. Paragraphs 1-90 are re-alleged and incorporated by reference as though fully set forth herein.

92. Over the course of multiple years, ALT and Gateway entered into multiple contracts for the distribution of ALT's product.

93. The contracts between ALT and Gateway were for the distribution of a product which would be safe to use in automobiles and trucks.

94. ALT's product had hidden dangers unknown to Gateway, including, but not limited to, the existence of a shelf-life for ALT's new products supplied to Gateway.

95. By providing Gateway unsafe, unmarketable, and altered products ALT breached the contracts between ALT and Gateway.

96. As a result of ALT's breach of these contracts, Gateway suffered over eighty thousand dollars (\$80,000.00) in claims generated by clogged filters and other vehicular damage caused by the use of ALT's altered lubricant product, approximately one hundred thirty thousand dollars (\$130,000.00) worth of unusable altered product being sold to Gateway's dealers, approximately three thousand dollars (\$3,000.00) worth of ALT's unusable product remaining in Gateway's inventory, and approximately six thousand dollars (\$6,000.00) worth of altered product which was returned to ALT but for which Gateway has not been compensated.

COMPENSATORY DAMAGES

97. Paragraphs 1-96 are re-alleged and incorporated by reference as though fully set forth herein.

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98. As a direct and proximate result of the afore-alleged actions of the defendants, Gateway suffered over eighty thousand dollars (\$80,000.00) in claims generated by clogged filters and other vehicular damage caused by the use of ALT's altered lubricant product, approximately one hundred thirty thousand dollars (\$130,000.00) worth of unusable altered product being sold to Gateway's dealers, approximately three thousand dollars (\$3,000.00) worth of ALT's unusable product remaining in Gateway's inventory, approximately six thousand dollars (\$6,000.00) worth of altered product which was returned to ALT but for which Gateway has not been compensated, severe damage to Gateway's business reputation, and loss of business from customer dealers unwilling to renew contracts with Gateway. In addition, Gateway has incurred unnecessary expenses for marketing strategies, paperwork, and extra personnel to assess and handle the multiple claims and business perturbations associated with ALT's actions and omissions.

99. As a direct, proximate and reasonably foreseeable result of the actions and omissions of the defendants as herein alleged, Plaintiff is entitled to recover compensatory damages for lost profits and damaged to reputation in an amount in excess of \$10,000.

PUNITIVE DAMAGES

100. Paragraphs 1-99 are re-alleged and incorporated by reference as though fully set forth herein.

101. Upon information and belief, the cavalier approach to the contractual business relations was prompted by ALT's desire to increase profits. The wrongful actions of the defendant were accomplished with such a degree of willfulness and wantonness, and with such reckless disregard for the rights of Gateway, in willful violation of the law, and of acceptable standards of product supplier relations, that the defendant should be held liable for punitive

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damages in an amount calculated to punish defendants for their wrongful conduct to deter similar wrongful conduct in the future, all in an amount in excess of \$10,000.

PRAYER FOR JUDGMENT

NOW WHEREFORE Plaintiff respectfully requests the Court to enter Judgment as follows:

1. That the Defendant be ordered to pay to the Plaintiff compensatory damages in an amount to be determined by the trier of fact;
2. That the Defendant be ordered to pay to the Plaintiff treble damages under N.C.G.S. § 75-16 for Unfair and Deceptive Trade practices;
3. That the Defendant be ordered to pay to the Plaintiff punitive damages in an amount to be determined by the trier of fact.
4. That the Defendant be ordered to pay to the Plaintiff all attorney fees as permitted by law.
5. That all costs and expenses of this action be taxed to the Defendant as permitted by law.
6. That Plaintiff be granted his right to trial by jury as to all matters so triable;
7. For any such other and further relief as the Court may deem just and proper.


FROM

(TUE) JAN 29 2008 19:07/ST. 19:01/No. 6823237417 P 27

This the ~~31~~ day of January, 2008.

THE RAWLINGS LAW FIRM

By:


CHARLES E. RAWLINGS, M.D.
N.C. State Bar No. 28760

426 Old Salem Road
Winston-Salem, NC 27101
Tel: 336.725.6444
ATTORNEY FOR PLAINTIFF

FROM

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EXHIBIT 1

Auto Armor™/Motor Silk BORON CLS MAJOR DRIVE COMPONENTS (Engine, Transmission & Drive Axle)

PRODUCT WARRANTY PROGRAM CUSTOMER APPLICATION

AAB (Vin # Last 6)

TERMS AND CONDITIONS
Auto Armor™ Motor Silk BORON CLS
COVERED COMPONENTS INCLUDE:

(Initial Desired Coverage)

ENGINE - When initiated in this section, only the Engine and stated components are covered. All internally lubricated parts of engine, including: pistons, piston rings, piston pins, crankshaft and main bearings, connecting rods and rod bearings, camshaft and camshaft bearings, timing chain and timing gears, intake and exhaust valves, valve springs, guides, oil pump, push rods, rocker arms, hydraulic lifters and rocker arm shafts. The Engine Block and Cylinder Heads are also covered if mechanical failure was caused by the above-listed parts. (Does not include any other part other than what is supplied in Long Block Assembly.)

ENGINE & TRANSMISSION - When initiated in this section, both Engine and stated components within the Transmission are covered. All internally lubricated parts of manual or automatic transmissions, including: torque converter, oil pump, valve body, governor, bands, drums, clutches, shift gear and shaft, synchro(s), bearing(s) and related bushings, shaft(s), forks, synchronizers, transmission case, ball housing, oil pan(s) and all internally lubricated parts of the 4x4 Transfer Case. Damage resulting from failures by related parts or units such as but not limited to: covers, controls, linkage, radiator, cooler, rubber mounts, external oil lines and electronic components external to the transmission are not covered.

ENGINE, TRANSMISSION & DRIVE AXLE: When initiated in this section, Engine, Transmission and Drive Axle stated components are covered. Final drive housing and all internally lubricated parts including carrier assembly, output shaft, bearings, bushings, gears, axles, axle & bearings, hub bearings, Rear Wheel Drive; Drive axle housing and all internal lubricated parts including pinion, ring and pinion gears, bearings/bushings, axle shaft, axle hub bearings. Four by four/All Wheel Drive: All components listed under drive system and locking hubs. *Seals and gaskets are replaced only as part of repair or replacement of the above covered components.

1. **ELIGIBILITY:**
To be eligible for the Product Warranty offered with this Customer Application, the selected Major Drive Component(s), (Engine, Transmission and Drive Axle) and 4x4 Transfer Case (if applicable) must have been treated with Motor Silk BORON CLS™ Treatment Products within 60 days of commencement date of warranty.

2. **COVERAGES:**
In the event one Motor Silk BORON CLS™ product fails to prevent breakdown within the Boron treated lubricated parts of the engine, transmission and drive axle of the covered vehicle, the Warranty obligation, after payment of \$100 deductible per occurrence, is limited to repairing or replacing defective parts and/or compensating adequately furnished labor including the replacement of all lost fluids (including Motor Silk BORON CLS™ products). The maximum retail labor rate is \$70.00 per hour per nationally recognized repair manual. The limit of liability per covered vehicle is \$3,000.00 per engine, \$2,000.00 per transmission, \$2,000.00 per 4x4 transfer case, and \$1,500.00 per drive axle with total aggregate limit per vehicle the lesser of \$5,000.00 or the actual cash value of the vehicle at time of failure at the discretion of the warrantor. If a claim exceeds the actual cash value of the vehicle and the Warrantor elects to pay the actual cash value of the vehicle, the vehicle becomes the property of the Warrantor for salvage. Towing reimbursement (\$75.00 per occurrence) is authorized as part of any valid claim.

3. **WAITING PERIOD:**
Failure of a covered component which occurs within the first ninety (90) days and 3,000 miles after Commencement Date (Today's Date), as appears on the below Application Form, will not be covered unless the quick start option is selected.

Quick Start Option - When this option is paid and selected by initiating WARRANTY within the space provided, warranty protection begins 500 miles and 15 days after the selected assembly(s) have been treated with the Motor Silk CLS Bond additive. It is a requirement of this provision that the selected assembly(s) have been treated with the Motor Silk CLS Bond at the commencement date of this customer application.

4. **EXCLUSIONS:**
- a) Pre-existing conditions are excluded under this warranty application.
 - b) The Warrantor is not responsible if the covered component(s) have been abused or damaged in an accident.
 - c) The Warrantor is not responsible if the covered component(s) have been tampered with, outside a qualified repair shop after installation.
 - d) Abuse through towing, improper load capacity or continued operation of an impaired vehicle is not covered. If the vehicle has been used for towing purposes without installation of a proper transmission cooler, the claim is invalid.
 - e) Blown head gaskets, oil leaks, cracked heads or block, overheating or other engine failure due to lack of fluids, improper maintenance or pre-existing condition are not covered items.
 - f) Repairs because of collision, misuse, road conditions, negligence, alterations, misuse, fires, floods, hail, vandalism, theft or acts of God are not covered.
 - g) This Product Warranty does not cover such things as loss of use of the vehicle, loss of earnings, personal damages, per diem expenses or any other consequential or incidental damages.
 - h) This Product Warranty does NOT apply to Diesel engines manufactured prior to 1990, Rotary engines, 4100 GM engines, Renault Diesel and Gasoline engines, Dodge Stratus, Dodge Viper, Land Rover, Porsche, NISSAN, Aston Martin, Bentley, Hummer, Lamborghini, Lotus, Mercedes-Benz, Maserati, Rolls Royce, vehicles with more than 8 cylinders.

TO BE VALID THIS WARRANTY MUST BE REGISTERED WITH THE ADMINISTRATOR
This agreement is a product warranty and is not insurance. It is not subject to state insurance laws but is subject to state laws concerning warranties. You must use the product as instructed in order to receive the benefit of the warranty.

MAJOR DRIVE COMPONENTS (ENGINE & TRANSMISSION & DRIVE AXLE) PRODUCT WARRANTY PROGRAM CUSTOMER APPLICATION WHITE - ADMINISTRATOR YELLOW - DEALER PINK - WARRANTY OWNER CANARY - LENDER

(Must be completed in full - Please print or type, using black ink.)

NAME OF REGISTERED OWNER	
MAILING ADDRESS/STREET	
CITY/STATE OR PROVINCE/ZIP	
TELEPHONE NO.	HOME () BUS ()
YEAR, MAKE, MODEL OF VEHICLE	
VEHICLE IDENTIFICATION NUMBER - VIN	
COVERED COMPONENTS	<input type="checkbox"/> Engine <input type="checkbox"/> Engine & Transmission <input type="checkbox"/> Engine, Transmission & Drive Axle
COMMENCEMENT DATE OF WARRANTY	(Today's Date) _____ (Today's Date) _____
COVERAGE SELECTION	Vehicle odometer must be less than 129,000 miles. <input type="checkbox"/> 100,000 Added Miles 60 Months <input type="checkbox"/> 60,000 Added Miles 36 Months
PRESSENT ODOMETER MILEAGE _____ MILES	TERM OF WARRANTY _____
NOTE: For the purpose of marking time as to compliance with any and all requirements noted in this application, this warranty begins on the commencement date listed above and expires at 12:01 A.M. at the end of the number of months specified in the warranty or when the vehicle has been operated for the miles specified in the warranty in addition to the present mileage listed above, whichever occurs first.	
TYPE OF ENGINE	<input type="checkbox"/> Check correct box <input type="checkbox"/> New <input type="checkbox"/> Reman. <input type="checkbox"/> Used <input type="checkbox"/> Gasoline <input type="checkbox"/> Diesel <input type="checkbox"/> 4x4 Transfer Case (if change)
TYPE OF TRANSMISSION	Check One: Manual/Automatic Check One: <input type="checkbox"/> New <input type="checkbox"/> Remanufactured <input type="checkbox"/> Used
NAME OF REMANUFACTURER	DEALER NO. _____
NAME OF DEALER/INSTALLER	DEALER NO. _____
DEALER ADDRESS	STATE OR PROVINCE _____ ZIP _____
QUEN HOLDER	AMOUNT \$ _____
SIGNED: _____ OWNER'S ACKNOWLEDGE BY SIGNATURE GUARANTEE REQUIREMENTS	

STATE OF NORTH CAROLINA
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 85

GATEWAY MANAGEMENT SERVICES, LTD.,

Plaintiff,

v.

ADVANCED LUBRICATION TECHNOLOGY,
INC.,

Defendant.

**ORDER ON PARTIAL MOTION TO
DISMISS**

This matter is before the Court on Defendant's Partial Motion to Dismiss of March 14, 2008. The Court heard oral arguments on the motion on June 6, 2008. Upon review of submission by counsel and after hearing oral arguments, the Court hereby GRANTS IN PART Defendant's motion for partial dismissal.

The Rawlings Law Firm by Charles E. Rawlings for Plaintiff.

Ellis & Winters, LLP by Stephen D. Feldman and Leslie C. O'Toole for Defendant.

Tennille, Judge.

I. BACKGROUND

Plaintiff, Gateway Management Services, Ltd. ("Gateway") is in the business of providing warranties for automobile and truck parts. As a part of its business it purchased a lubricant made by defendant, Advanced Lubrication Technology, Inc. ("ALT") which was used by automobile and truck dealers to whom Gateway sold warranties. (Compl. ¶ 9; Def. Br. Supp. Mot. Summ. J. 1 (hereinafter "Def. Br.")). Over the course of their relationship, Gateway may have purchased as much as \$1,000,000.00 worth of lubricants from ALT. (Compl. ¶ 9.) According to the Compliant, the allegations of which are accepted as true for purposes of this motion, Gateway began to receive complaints from its customers in March of 2006 indicating that the ALT lubricant was faulty and causing damage to cars and trucks. (Compl. ¶ 10.) Gateway alleges that at that point it was told that ALT had altered the formula of the lubricant it sold and that the product was either hazardous or unusable. (Compl. ¶¶ 11, 14.) As a result,

Gateway alleges it has paid over \$80,000 in warranty claims and has absorbed the cost of \$130,000 worth of lubricant for which it cannot receive payment. (Compl. ¶¶ 15–17.)

Gateway ceased purchasing the ALT lubricant. (Compl. ¶ 9.) When it did so, ALT began selling the lubricant to a competitor of Gateway under a different brand name. (Compl. ¶ 19.) Gateway alleges that ALT furnished the competitor with a list of Gateway’s customers so that the competitor could solicit business from those customers. (Compl. ¶ 20.) Gateway alleges that the customer information was confidential business information and that Gateway’s dissemination of that information was an unfair and deceptive trade practice in violation of North Carolina General Statute section 75-1.1. (Compl. ¶¶ 26–39.) Gateway further alleges that the competitor, American Guardian, repeatedly slandered Gateway by making disparaging remarks about Gateway’s method of doing business and its integrity. (Compl. ¶¶ 67–75.) American Guardian is not a party and none of the allegedly slanderous statements in the complaint are attributed directly to ALT.

Based upon the forgoing allegations, Gateway has asserted eight claims for relief against ALT: 1. Unfair and Deceptive Trade Practices, 2. Negligent Misrepresentation, 3. Wrongful Interference with Contract right, existing and future, 4. Misappropriation of Trade Secrets, 5. Slander Per Se, 6. Constructive Fraud, 7. Negligence and Breach of Implied Warranty of Merchantability (Eighth Claim for Relief),¹ and 8. Breach of Contract (Ninth Claim for Relief). Defendants have moved to dismiss all the claims with the exception of the Claim for Breach of Warranty of Merchantability. Defendants acknowledge that the provisions of the Uniform Commercial Code apply to the transactions between the parties. *See* N.C. Gen. Stat. §§ 25-1-101 thru 25-11-108 (2007).

II. LEGAL STANDARD

The purpose of a motion to dismiss under Rule 12(b)(6) is to test the legal sufficiency of the pleading against which the motion is directed. *Sutton v. Duke*, 277 N.C. 94, 99, 176 S.E.2d 161, 163 (1970). In *Branch Banking & Trust Co. v. Lighthouse Financial Corp.*, 2005 NCBC 3 (N.C. Super. Ct. July 13, 2005), <http://www.ncbusinesscourt.net/opinions/2005%20NCBC%203.htm>, this Court summarized the 12(b)(6) standard as follows:

When ruling on a motion to dismiss under Rule 12(b)(6), the court must determine "whether, as a matter of law, the allegations of the complaint . . . are sufficient to state a claim upon which relief may be granted." In making its decision, the court must treat the

¹ The Complaint did not contain a "Seventh Claim for Relief".

allegations in the complaint as true. The court must construe the complaint liberally and must not dismiss the complaint unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim. When considering a motion under Rule 12(b)(6), the court is not required to accept as true any conclusions of law or unwarranted deductions of fact in the complaint. When the complaint fails to allege the substantive elements of some legally cognizable claim, or where it alleges facts which defeat any claim, the complaint should be dismissed under Rule 12(b)(6).

Branch Banking & Trust Co., 2005 NCBC 3 ¶ 8 (citations omitted).

Furthermore, the Court may not consider “extraneous matter” outside the complaint, or else the Rule 12(b)(6) motion will be converted into a Rule 56 motion for summary judgment. *See, e.g., Fowler v. Williamson*, 39 N.C. App. 715, 717, 251 S.E.2d 889, 891 (1979). However, the Court may consider documents the moving party attaches to a 12(b)(6) motion which are the subject of the challenged pleading and specifically referred to in that pleading, even though they are presented to the Court by the moving party. *See Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 60, 554 S.E.2d 840, 847 (2001) (considering a contract on a 12(b)(6) motion even though the contract was presented by the movant). The Court is not required to accept as true “any conclusions of law or unwarranted deductions of fact.” *Id.* at 56, 554 S.E.2d at 844. Thus the Court can reject allegations that are contradicted by the supplementary documents presented to it. *See E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P’ship*, 213 F.3d 175, 180 (4th Cir. 2000) (stating that the court “need not accept as true unwarranted inferences, unreasonable conclusions, or arguments”).

III. ANALYSIS

Based on the application of the standards set forth above and the facts alleged in the pleadings, the Court GRANTS the motion to dismiss with respect to the claims for relief based upon slander, tortious interference with contract, constructive fraud, negligent misrepresentation, and negligence. The motion is DENIED with respect to the claims based upon misappropriation of trade secrets, unfair and deceptive trade practices and breach of contract. While the Court has reservations about the latter three claims, it believes those claims are better addressed in the summary judgment context.

The trade secrets claim appears to be based solely on the alleged dissemination of Plaintiff’s customer list. Customer lists may or may not be trade secrets depending on the circumstances and the use made of them. *See Norman W. Drouillard & Print Purchasing*

Consultants, Inc. v. Keister Williams Newspaper Servs., Inc., 108 N.C. App. 169, 173, 423 S.E.2d 324, 327 (1992); *Combs & Assocs. v. Kennedy*, 147 N.C. App. 362, 370–71, 555 S.E.2d 634, 640 (2001) (citing *Novacare Orthotics & Prosthetics E., Inc. v. Speelman*, 137 N.C. App. 471, 478, 528 S.E.2d 918, 922 (2000)). Discovery will illuminate those circumstances.

The breach of contract claim may be no different from the breach of warranty claim. Again, discovery will clarify the precise nature of the claim. It may well be that the common law contract claim is superceded by the UCC provisions. If this is merely a breach of warranty claim, the contract claim may be dismissed on summary judgment. While it is true that a simple breach of contract will not support an unfair and deceptive trade practice claim, especially one for breach of warranty of merchantability, there are allegations here concerning a failure to disclose a change in formula to a customer who writes warranties based upon use of the product. *See United Virginia Bank v. Air-Lift Assoc.*, 79 N.C. App. 315, 339 S.E.2d 90 (1986). Whether there is an unfair trade practice claim may depend on the factual circumstances. Accordingly, these three claims will be better addressed at summary judgment rather than on the pleadings.

The claim for slander is subject to dismissal for the simple reason that there are no allegations of slanderous comments made by ALT. *See Andrews v. Elliot*, 109 N.C. App. 271, 426 S.E.2d 430 (1993). Nor are there sufficient allegations of agency which would render ALT liable for its customer's statements. The complaint only alleges that ALT and American Guardian had a business relationship for the supply of lubricant that was sold under a different name than the lubricant sold to Gateway. Finally, the allegations of slander are insufficient on their face. They fail to comply with the heightened pleading standard required by Rule 9(i) of the North Carolina Rules of Civil Procedure. The Court is unable to determine from these pleadings whether any statement made was defamatory. *See Andrews*, 109 N.C. App. 271, 426 S.E.2d 430.

The claim for tortious interference is similarly deficient. With respect to contracts which Gateway had with customers for ALT's products, the loss of that business is based upon the defective product, not any tortious interference with the customer relationship. (Hr'g Tr. 11, June 6, 2008 (counsel for Plaintiff stating that it was the quality of the lubricate that resulted in the loss of the contracts).) With respect to future business, there are no allegations that ALT acted to tortiously interfere with Gateway's business, that it acted maliciously or that it lacked justification. *See Spartan Equip. Co. v. Air Placement Equip. Co.*, 263 N.C. 549, 559, 140 S.E.2d 3, 11 (1965). ALT sold product to a competitor of Gateway. It had the right to do so.

Competition does not in and of itself represent tortious interference; rather it is a legitimate justification for seeking business from common customers. Here it is even one step removed since ALT sold product to Gateway's competitor. The North Carolina Court of Appeals set forth the clear test for tortious interference in *Area Landscaping, LLC v. Glaxo-Wellcome, Inc.* 160 N.C. App. 520, 586 S.E.2d 507 (2003). The standard requires: "(1) a valid contract between the plaintiff and a third person which confers upon the plaintiff a contractual right against a third person; (2) the defendant knows of the contract; (3) the defendant intentionally induces the third person not to perform the contract; (4) and in doing so acts without justification; (5) resulting in actual damage to the plaintiff." *Id.* at 523, 586 S.E.2d at 510. Plaintiff's complaint falls far short of meeting that standard.

It is likewise clear that the complaint does not adequately allege interference with prospective economic advantage. To do so the complaint must allege interference with a trade or business by maliciously inducing a person not to enter into a contract with a third person, which he would have entered into but for the interference. *Spartan Equip. Co.*, 263 N.C. at 559, 140 S.E.2d at 11. A legitimate exercise on a person's rights cannot support a claim for interference with prospective economic advantage. *Id.* The complaint fails to meet that standard as well.

The complaint fails to state a cause of action for negligent misrepresentation or negligence. This is a breach of warranty case. The complaint alleges any statements were made in the course of the contractual representation. It fails to establish any independent duty running from ALT to Gateway. To substitute negligent misrepresentation for breach of warranty under the circumstances of this case would eviscerate the pertinent sections of the UCC. Both the negligent misrepresentation claim and the negligence claim in Count VI are barred by the economic loss rule.² Both are based upon a breach of contract or warranty and the recovery is limited to the contract or warranty claim. Our Court of Appeals has held that: "a tort action does not lie against a party to a contract who simply fails to properly perform the terms of the contract." *Spillman v. Am. Homes of Mocksville, Inc.*, 108 N.C. App. 63, 65, 422 S.E.2d 740, 741 (1992).

² For a thorough discussion of the economic loss rule, see Jude Diaz's opinion in *Hospira Inc. v. Alphagary Corp.*, No. 05-cvs-6371 (Mecklenburg Co. Feb. 16, 2006). This case is similar to *Club Car, Inc. v. Dow Chemical Co.*, 2007 NCBC 10 (N.C. Super. Ct. May 3, 2007), <http://www.ncbusinesscourt.net/opinions/2007%20NCBC%2010.pdf> in that there is a written contract providing a remedy for breach of warranty, the losses are economic losses, and defendant acknowledges the existence of the remedy.

The claim for constructive fraud fails because there are insufficient allegations of any relationship of trust and confidence. *See Watts v. Cumberland Cty. Hosp. Sys.*, 317 N.C. 110, 343 S.E.2d 879 (1986). At best, the complaint alleges that during the course of the contractual relationship ALT said it would not change the formula without telling Gateway first and that Gateway trusted ALT because of their contractual relationship. The existence of a contractual or buyer/seller relationship in and of itself does not create a sufficient relationship of trust and confidence to warrant application of the doctrine of constructive trust. *Watts*, 317 N.C. 110, 343 S.E.2d 879.

For the foregoing reasons, Defendants motion to dismiss is GRANTED as to Counts 2. Negligent Misrepresentation, 3. Wrongful Interference with Contract right, existing and future, 5. Slander Per Se, 6. Constructive Fraud, and 7. Negligence (Eighth Claim for Relief) and DENIED as to Counts 1. Unfair and Deceptive Trade Practices, 4. Misappropriation of Trade Secrets, 7. Breach of Implied Warranty of Merchantability (Eighth Claim for Relief), and 8. Breach of Contract (Ninth Claim for Relief).

IT IS SO ORDERED this the 19th day of June, 2008.

/s/ Ben F. Tennille
The Honorable Ben F. Tennille
Chief Special Superior Court Judge
for Complex Business Cases

NORTH CAROLINA)
)
 FORSYTH COUNTY)

FILED IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION

09 JAN 13 PM 4:03 09 Cvs 368

GATEWAY MANAGEMENT SERVICES, LTD,

FORSYTH COUNTY, C.S.C.

BY Beverly
Dobson

Plaintiff,

v.

COMPLAINT

JOSEPH BELMONTE & AMERICAN GUARDIAN WARRANTY SERVICES, INC.,

[CMPL]

Defendants.

NOW COMES Plaintiff Gateway Management Services, Ltd., by and through counsel, and, complaining of defendants hereby alleges and avers as follows:

PARTIES

1. Plaintiff Gateway Management Services, Ltd., ("Gateway") is a corporation organized under the laws of North Carolina with its principle place of business in Winston-Salem, Forsyth County, North Carolina.

2. Joseph Belmonte ("Defendant Belmonte") was an agent of American Guardian Warranty Services, Inc. at all times relevant herein, acting within the scope of his employment with American Guardian.

3. Upon information and belief, Defendant American Guardian Warranty Services, Inc. ("American Guardian" or "Defendant American Guardian") is a corporation organized under the laws of Illinois with its principle place of business in Glen Ellyn, Kane County, Illinois, which at all times relevant herein, was a provider of vehicle extended service contracts and automotive aftermarket services. American Guardian maintains a registered agent in North Carolina, sells

warranties in North Carolina, and is the administrator for Advanced Lubrication Technology, Inc.'s warranty program. Advanced Lubrication Technology, Inc. is a North Carolina corporation. American Guardian is engaged in substantial activity in North Carolina. Moreover, American Guardian avails itself of the resources and immunities of North Carolina as well as engaging in such substantial activity that minimal contacts are established whereby both specific and general jurisdiction under the long arm statute of North Carolina may be maintained.

FACTS

4. The allegations contained in paragraphs 1 through 3 are re-alleged and incorporated by reference as though fully set forth herein.

5. Gateway is a corporation that provides warranties covering vehicles.

6. American Guardian is a corporation that provides warranties covering vehicles.

7. American Guardian is a direct competitor of Gateway.

8. During the course of American Guardian's interaction and association with Gateway's dealers, agents of American Guardian repeatedly, willfully, and wantonly made verbal statements that were false regarding Gateway's methods of business and corporate integrity, dating as far back as 2005.

9. In addition, agents of American Guardian repeatedly, willfully, and wantonly made verbal statements that were false regarding Gateway's methods of business and corporate integrity to members of the Used Trucks Association ("UTA"). This conduct was so prevalent that Eddie Walker, the President of the UTA, requested, in writing, that American Guardian cease slandering Gateway.

10. Defendant Belmonte, who is employed by American Guardian as a Program Manager, on several occasions made false allegations about Gateway and its trademark warranty Premium 2000™ to dealers participating in Gateway's warranty program.

11. On July 14, 2008, Defendant Belmonte writing in an e-mail to one of Gateway's dealers, Wendell Strubhar, Used Truck Manager at Palm Peterbilt-GMC Trucks, Inc., accused Gateway of criminal activity by stating that Gateway was in criminal violation of Florida insurance laws and threatening that the Florida Department of Insurance ("D.O.I.") was cracking down on companies with "unauthorized insurance which P2000 [Premium 2000+™] is without a product to treat". (Exhibit 1)

12. In the same July 14, 2008 writing, Defendant Belmonte stated that when the Florida D.O.I. enforced these regulations that the dealer, Palm Peterbilt-GMC Trucks, Inc., "is in jeopardy also". Furthermore, Defendant Belmonte pleaded with Palm Peterbilt-GMC to "please don't be that dealer!" imploring the company to "remember you always get what you pay for."

13. Defendant Belmonte's accusations that Premium 2000+™, a trademark of Gateway, is uninsured and engaged in criminal activity vis-à-vis in violation of Florida insurance laws are false claims. Florida Statute § 634.031 (3) states that "[n]o person shall transact, administer, or market service agreements unless it holds a subsisting license issued by the office authorizing it to transact the same kind or kinds of service agreement business in this state" Fla. Stat. §.634.031 (3) (2008). Florida Statute § 634.011 (8) defines a service agreement as "any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement...", Fla. Stat. §.634.011 (8) (2008). Florida Statute § 634.011 (6)(a) defines a "motor vehicle" as "[a] self-propelled device operated solely or primarily upon roadways to transport people or property... except such term **does not** include any self-propelled vehicle, or

component part of such vehicle, which: (1) [h]as a gross vehicle weight of 10,000 pounds or more, and is not a recreational vehicle...” Fla. Stat. §.634.011 (6)(a) (2008) (Emphasis added).

Palm Peterbilt-GMC Trucks, Inc. does not sell vehicles with a gross weight less than 10,000 pounds. Gateway’s warranty services are therefore in compliance with Florida law. Moreover, Gateway is in no way conducting criminal activity in Florida. Belmonte’s writing is false.

14. In the same July 14, 2008 email, Defendant Belmonte urged Palm Peterbilt-GMC Trucks, Inc. to “sell NTP and be in compliance than jeopardize the dealers’ insurance licenses.” Defendant Belmonte knew that Palm Peterbilt-GMC Trucks, Inc.’s license was not in jeopardy inasmuch as Gateway was, in fact, only warranting commercial trucks with a gross vehicle weight of 10,000 pounds or more.

15. Gateway received many other complaints from its dealers with regard to such incidences promulgated by and similar to Mr. Belmonte’s e-mail of July 14, 2008.

16. Moreover, Gateway received numerous inquiries by its warranty customers and used truck dealers with regard to Gateway’s insurance status stating that American Guardian was the source of their unease and the instigator of multiple false rumors.

17. In the summer of 2005, John Wagner at Kalamazoo Truck Sales telephoned Larry Palkins, an agent of Gateway Management Services, asking if Gateway was insured. Mr. Wagner stated that an agent of American Guardian had recently been in his office, told him that Gateway was not insured, and indicated that if Gateway went out of business Kalamazoo Truck Sales would be liable for any outstanding claims.

18. When confronted about his false written and oral statements regarding Gateway, Defendant Belmonte repeatedly stated “talk to Bill Fisher”.

19. Agents of American Guardian not only used e-mails to attack the integrity of Gateway but also made personal visits to Gateway's dealers in order to make false statements impugning Gateway's business and business reputation.

20. As a result of the false written and verbal statements of the Defendants Gateway has lost multiple dealers.

21. As a result of the false written and verbal statements of the Defendants Gateway has lost multiple potential warranty sales

22. As a direct result of the actions of Defendant Belmonte, American Guardian, and its agents, Gateway has incurred significant damage to its professional reputation and a significant unnecessary loss of business, resulting in lost profits in excess of \$10,000 but less than \$75,000.

FIRST CLAIM FOR RELIEF
(Slander Per Se against Joe Belmonte)

23. Paragraphs 1-22 are re-alleged and incorporated by reference as though fully set for herein.

24. Defendant Belmonte met with several members of the UTA.

25. Defendant Belmonte met with multiple dealers having executed contracts with Gateway in multiple states, including, but not limited to, Michigan, Nevada, North Carolina, Illinois, and Florida.

26. During these meetings Defendant Belmonte, through spoken statements, which when considered alone without innuendo, disparaged Gateway's methods of doing business, Gateway's trade and professional conduct, as well as other aspects of Gateway's business relations with its customers.

27. The statements made by Defendant Belmonte were false.

28. In addition, Defendant Belmonte, through spoken statements, which when considered alone without innuendo, disparaged Gateway's methods of doing business, Gateway's trade and professional conduct, as well as other aspects of Gateway's business relations with its customers to multiple members of the UTA and multiple dealers having executed contracts with Gateway. These statements were also false.

29. As a result of the actions of Defendant Belmonte, Gateway has suffered a significantly damaged business reputation, which has led to a decline in the number of Gateway's new contracts.

30. Accordingly, Plaintiff Gateway is entitled to recover from Defendant Belmonte damages, as described below in more detail, in an amount in excess of \$10,000, but less than \$75,000.

RESPONDEAT SUPERIOR

(Against American Guardian Warranty Services, Inc.)

31. The allegations contained in paragraphs 1 through 30 are re-alleged and incorporated by reference as though fully set forth herein.

32. Defendant Belmonte was at all relevant times herein an agent and employee of defendant American Guardian Warranty Services, Inc., acting within the course and scope of his duties. American Guardian is, therefore, not only directly liable for but also vicariously liable for the defamatory statements of Defendant Joe Belmonte.

33. As a result, therefore, Defendant American Guardian is responsible for the Slander Per Se committed by its employee, Joe Belmonte, under the doctrine of *respondeat superior*.

34. Accordingly, Plaintiff Gateway is entitled to recover from Defendant American Guardian damages, as described below in more detail, in an amount in excess of \$10,000, but less than \$75,000.

SECOND CLAIM FOR RELIEF

(Slander Per Se against American Guardian Warranty Services, Inc)

35. Paragraphs 1-34 are re-alleged and incorporated by reference as though fully set for herein.

36. Agents of American Guardian met with several members of the UTA.

37. Agents of American Guardian met with multiple dealers having executed contracts with Gateway in multiple states, including, but not limited to, Michigan, Nevada, North Carolina, Illinois, and Florida.

38. During these meetings the agents of American Guardian, through spoken statements, which when considered alone without innuendo, disparaged Gateway's methods of doing business, Gateway's trade and professional conduct, as well as other aspects of Gateway's business relations with its customers.

39. The statements made by the agents of American Guardian were false.

40. In addition, the agents of American Guardian through spoken statements, which when considered alone without innuendo, disparaged Gateway's methods of doing business, Gateway's trade and professional conduct, as well as other aspects of Gateway's business relations with its customers to multiple members of the UTA and multiple dealers having executed contracts with Gateway. These statements were also false.

41. As a result of the actions of Defendant American Guardian, Gateway has suffered a significantly damaged business reputation, which has led to a decline in the number of Gateway's new contracts.

42. Accordingly, Plaintiff Gateway is entitled to recover from Defendant American Guardian damages, as described below in more detail, in an amount in excess of \$10,000, but less than \$75,000.

THIRD CLAIM FOR RELIEF
(Libel Per Se against Joe Belmonte)

43. Paragraphs 1-42 are re-alleged and incorporated by reference as though fully set for herein.

44. Defendant Belmonte e-mailed Gateway's dealers with written statements.

45. In these written statements Defendant Belmonte made false accusations, which when considered alone, without explanatory circumstances and without innuendo, disparaged Gateway's methods of doing business, Gateway's trade and professional conduct, as well as other aspects of Gateway's business relations with its customers and, when considered alone without explanatory circumstances and without innuendo, accused Gateway of engaging in criminal activity.

46. These written statements made by Defendant Belmonte were false.

47. As a result of Defendant Belmonte's actions, Gateway has suffered a significantly damaged business reputation, which has led to a decline in the number of Gateway's new contracts. Accordingly, Plaintiff Gateway is entitled to recover from Defendant Belmonte damages, as described below in more detail, in an amount in excess of \$10,000, but less than \$75,000.

RESPONDEAT SUPERIOR
(Against American Guardian Warranty Services, Inc.)

48. The allegations contained in paragraphs 1 through 47 are re-alleged and incorporated by reference as though fully set forth herein.

49. Defendant Belmonte was at all relevant times herein an agent and employee of defendant American Guardian Warranty Services, Inc., acting within the course and scope of his

duties. American Guardian is, therefore, not only directly liable for but also vicariously liable for the defamatory written statements of Defendant Joe Belmonte.

50. As a result, therefore, Defendant American Guardian is responsible for the Libel Per Se committed by its employee, Joe Belmonte, under the doctrine of *respondeat superior*.

51. Accordingly, Plaintiff Gateway is entitled to recover from Defendant American Guardian damages, as described below in more detail, in an amount in excess of \$10,000, but less than \$75,000.

FOURTH CLAIM FOR RELIEF

(Libel Per Se against American Guardian Warranty Services, Inc.)

52. Paragraphs 1-51 are re-alleged and incorporated by reference as though fully set for herein.

53. Agents of American Guardian e-mailed Gateway's dealers with written statements.

54. In these written statements the agents of American Guardian made false accusations, which when considered alone, without explanatory circumstances, disparaged Gateway's methods of doing business, Gateway's trade and professional conduct, as well as other aspects of Gateway's business relations with its customers and, which when considered alone without explanatory circumstances, accused Gateway of engaging in criminal activity.

55. These statements made by the agents of American Guardian were false.

56. As a result of American Guardian's actions, Gateway has suffered a significantly damaged business reputation, which has led to a decline in the number of Gateway's new contracts.

57. Accordingly, Plaintiff Gateway is entitled to recover from Defendant American Guardian damages, as described below in more detail, in an amount in excess of \$10,000, but less than \$75,000.

FIFTH CLAIM FOR RELIEF

(Unfair and Deceptive Trade Practices against American Guardian Warranty Services, Inc.)

58. Paragraphs 1-56 are re-alleged and incorporated by reference as though fully set for herein.

59. Defendant American Guardian was deceptive, and its deception was a proximate and reasonably foreseeable cause of Gateway's harmed business reputation and loss of business. Defendant American Guardian breached its duty to engage in responsible business practices expected of a corporation.

60. Defendant American Guardian was deceptive in the following non-exclusive manner: (a) it deliberately encouraged its agents to make libelous, false written statements to others regarding Gateway; (b) it deliberately encouraged its agents to make slanderous, false verbal statements to others regarding Gateway; (c) its agents made libelous, false written statements to others regarding Gateway; and (d) its agents made slanderous, false verbal statements to others regarding Gateway.

61. American Guardian's unfair and deceptive practices were the direct and proximate cause of Gateway losing multiple dealers to American Guardian.

62. As a direct and proximate result of the unfair and deceptive trade practices of Defendant American Guardian, Gateway suffered the loss of multiple dealers, as a direct and proximate result of the unfair and deceptive trade practices of Defendant American Guardian, Gateway suffered the loss of multiple potential warranty sales, and as a direct and proximate result of the unfair and deceptive trade practices of Defendant American Guardian, Gateway suffered significant and irreparable damage to its business reputation.

63. Accordingly, Plaintiff Gateway is entitled to recover from Defendant American Guardian damages, as described below in more detail, in an amount in excess of \$10,000, but less than \$75,000.

64. Moreover, under North Carolina General Statute § 75-16, Gateway is entitled to recover from Defendant American Guardian treble damages for Defendant American Guardian's unfair and deceptive business practices based upon its agents and employees' actions of libel per se and slander per se.

COMPENSATORY DAMAGES

65. Paragraphs 1-63 are re-alleged and incorporated by reference as though fully set forth herein.

66. As a direct and proximate result of the actions of Defendant Belmonte, American Guardian, and its agents, Gateway has suffered significant damage to its business reputation, as a direct and proximate result of the actions of Defendant Belmonte, American Guardian, and its agents, Gateway has suffered a significant loss of business from dealers unwilling to renew contracts with Gateway. In addition, as a direct and proximate result of the actions of Defendant Belmonte, American Guardian, and its agents, Gateway has incurred unnecessary expenses for marketing strategies, paperwork, and extra personnel to assess and handle the multiple claims and business perturbations associated with American Guardian's actions and defamatory statements.

67. As a direct, proximate, and reasonably foreseeable result of the actions and erroneous statements of the defendants as herein alleged, Plaintiff is entitled to recover compensatory damages for lost profits and damaged to reputation in an amount in excess of \$10,000, but less than \$75,000.

PUNITIVE DAMAGES

68. Paragraphs 1-67 are re-alleged and incorporated by reference as though fully set forth herein.

69. Upon information and belief, the cavalier approach to the integrity of proper competitive business relations was prompted by American Guardian's desire to increase profits. Defendant Belmonte willfully, wantonly, and maliciously published the false statement with regard to Gateway's business and falsely accused Gateway of criminal activity. Agents of Defendant American Guardian willfully, wantonly, and maliciously published false statements with regard to Gateway's business practices in order to damage Gateway's reputation such that Gateway's dealers would cease to do business with Gateway. The wrongful actions of the defendants were accomplished with such a degree of willfulness and wantonness, and with such reckless disregard for the rights of Gateway, in willful violation of the law, and of acceptable standards of proper professional relations, that the defendants should be held liable for punitive damages in an amount calculated to punish the defendants for their wrongful conduct to deter similar wrongful conduct in the future, all in an amount in excess of \$10,000, but less than \$75,000.

PRAYER FOR JUDGMENT

NOW WHEREFORE Plaintiff respectfully requests the Court to enter Judgment as follows:

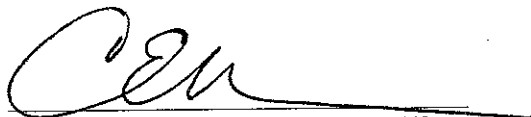
1. That the Defendants be ordered to pay, joint and severally, to the Plaintiff compensatory damages in an amount to be determined by the trier of fact;
2. That the Defendants be ordered to pay, joint and severally, to the Plaintiff punitive damages in an amount to be determined by the trier of fact.

3. That the Defendants be ordered to pay to the Plaintiff all attorney fees as permitted by law.
4. That all costs and expenses of this action be taxed to the Defendants as permitted by law.
5. For any such other and further relief as the Court may deem just and proper.

This the 12th day of January, 2009.

THE RAWLINGS LAW FIRM

By:



CHARLES E. RAWLINGS, M.D.
N.C. State Bar No. 28760

426 Old Salem Road
Winston-Salem, NC 27101
Tel: 336.725.6444
ATTORNEY FOR PLAINTIFF

EXHIBIT 1

Lynn Murphy

From: Wendell Strubhar [wstrubhar@palmtruck.com]
Sent: Monday, July 14, 2008 12:14 PM
To: Lynn Murphy
Subject: FW: Happy Monday Morning
Attachments: Florida DOI Brochure for VIOLATORS 7-14-08 .pdf; Unauthorized Insurer Statute Florida.pdf

Lynn,
I hope everything is going well for you!!

I guess technically I'm not supposed to send this to you, but just thought you'd be interested in seeing what this email looks like that I received from American Guardian. I would appreciate it if you do not let it be known where you got this email from.

Best Regards!!

Wendell Strubhar

Used Truck Manager
Palm Peterbilt-GMC Trucks, Inc.
Phone: 954-584-3200
Cell: 954-579-3370
Fax: 954-584-3228
Email: wstrubhar@palmtruck.com

From: Joe Belmonte [mailto:JBelmonte@agwarranty.com]
Sent: Monday, July 14, 2008 11:54 AM
To: Wendell Strubhar
Cc: kissms@bellsouth.net
Subject: Happy Monday Morning

Hey there Wendell,

I looked at the radar and it looks like a hot one this afternoon. I hate to continue to beat the drum but, I got this email from our Florida counsel this morning. I figure if they are going to the effort to print brochures about unauthorized insurance (which P2000 is without a product to treat) then the dealer is in jeopardy also. I think that the state is going to start looking for violators and begin enforcing the regulations. Generally when a D.O.I. goes to the trouble to produce this type of print material they are serious. Most often they are looking for a dealer and or a warranty company violator to make an example of, please don't be that dealer!

I really don't want to get your business this way. Just like I told you when I saw you before your golf outing, I would rather see you sell NTP and be in compliance than jeopardize the dealers insurance licenses. Remember you always get what you pay for.

If the P2000 folks want to operate legally in the state and you still want to do business with them great. Wendell, if you want our Florida counsel to contact your dealer principal and bring him up to speed on the informal opinion we asked the DOI to review, will be happy to do that for Palm.

I hope your June was reasonably good one. And, may July be better!

Good selling,

Thx,

Joe Belmonte

**Motors ilk Commercial Truck
Program Manager**

Office 630-534-4142
Cell 847-757-2611
Home 847-342-0374
E-Fax 630-534-7142

<<Florida DOI Brochure for VIOLATORS 7-14-08 .pdf>> <<Unauthorized Insurer Statute Florida.pdf>>

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed.

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Any views expressed in this message are those of the individual sender, except where the sender specifies and with authority, states them to be the views of American Guardian Warranty Service, Inc.

Total: 110.00

Clerk: BD

Forsyth County Clerk of Superior Court Civil Receipting

FILING FEES:

File Number(s) 09 CVS 368

Plaintiff (Payor)

Gateway Mgt. Services LTD

TO BE FLAGGED "Y"

CVSC SUPERIOR \$ 110.00

CVDC DISTRICT \$ _____

CVMC MAGISTRATE \$ _____

CVMC (KVLE/MAG) \$ _____

"M" # (LIENS, IRS, NC TAX REV) (21435) \$ _____

TO BE FLAGGED "N"

SPSC \$ _____

CONF. OF JUDGMENT (21400) \$ _____

CDDC (DIVORCE) \$ _____

SP (FORECLOSURE) (21400) \$ _____

TO BE FLAGGED "Y"

JA EXECUTION (21430) \$ _____

JA TRANSCRIPT (21440) \$ _____

SUPPLMNT PROC (21400) \$ _____

TRIAL DE NOVO (24310) \$ _____

ARBITRATION ATTY FEE (26115) \$ _____

TO BE FLAGGED "N"

SUMMARY EJECTMENT RENT BOND (26220)

DEFENDANT NAME: _____

PRORATED RENT \$ _____

TO BE FLAGGED "N"

BK/PG EXECUTION (21400) \$ _____

BK/PG TRANSCRIPT (21400) \$ _____

WRIT OF POSSESSION (21400) \$ _____

NOTICE OF CONTRACT (21400) \$ _____

OTHER MISC (21400) \$ _____

BONDS (26210) SPECIFY _____

AMOUNT \$ _____

FINAL REPORT (21130) \$ _____

BOOKKEEPERS USE

FILE # _____ BK/PG/JA# _____

PLAINTIFF: _____

DEFENDANT: _____

ADDRESS: _____

SS#: _____ PHONE: _____

COMMENTS: _____

TO BE FLAGGED "Y"

22800 BOND FORFEITURES _____

26115 JA JUDGMENTS _____

24610 ATTY FEE _____

TO BE FLAGGED "N"

26310 ESTATES _____

21400 MISCELLANEOUS _____

26120 BK/PG JUDGMENTS _____

22500 SHERIFF _____

26600 DEPOSIT PAYABLE _____

26130 CONDEMNATIONS _____

26700 UP-SET BID _____

STATE OF NORTH CAROLINA

File No. 09 CVS 368

FORSYTH County

FILED 09 JAN 13 PM 4:04

In The General Court Of Justice
District Superior Court Division

Name And Address Of Plaintiff 1
Gateway Management Services LTD.
321 N. Spring Street
Winston-Salem, NC 27101

FORSYTH COUNTY, C.S.C. BY [Signature]

GENERAL

CIVIL ACTION COVER SHEET

INITIAL FILING SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Plaintiff 2

Name And Address Of Attorney Or Party, If Not Represented
Dr. Charles E. Rawlings, Esq.
426 Old Salem Road
Winston-Salem, NC 27101

VERSUS

Name Of Defendant 1
Joseph Belmonte
800 Roosevelt Rd. Suite E-300
Glen Ellyn IL 60137

Telephone No. 336-725-6444 Cell Telephone No.

NC Attorney Bar No. 28760 Attorney E-Mail Address rawlings@rawlingslawfirm.com

Summons Submitted Yes No

Initial Appearance in Case Change of Address

Name Of Defendant 2
American Guardian Warranty Services, Inc.
150 Fayetteville St., Box 1011
Raleigh NC 27601

Name Of Firm The Rawlings Law Firm

FAX No. 336-724-4755

Summons Submitted Yes No

Counsel for All Plaintiffs All Defendants Only

Jury Demanded In Pleading Complex Litigation

Amount in controversy does not exceed \$15,000 Stipulate to arbitration

TYPE OF PLEADING

CLAIMS FOR RELIEF FOR:

- (check all that apply)
Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Answer/Reply (ANSW-Response)
Complaint (COMP)
Confession of Judgment (CNFJ)
Counterclaim vs. (CTCL)
Crossclaim vs. (List on back) (CRSS)
Extend Statute of Limitations, Rule 9 (ESOL)
Extend Time For Answer (MEOT-Response)
Extend Time For Complaint (EXCO)
Rule 12 Motion In Lieu Of Answer (MDLA)
Third Party Complaint (List Third Party Defendants on Back) (TPCL)
Other: (specify)

- (check all that apply)
Administrative Appeal (ADMA)
Appointment of Receiver (APRC)
Attachment/Garnishment (ATTC)
Claim and Delivery (CLMD)
Collection on Account (ACCT)
Condemnation (CNDM)
Contract (CNTR)
Discovery Scheduling Order (DSCH)
Injunction (INJU)
Medical Malpractice (MDML)
Minor Settlement (MSTL)
Money Owed (MNYO)
Negligence - Motor Vehicle (MVNG)
Negligence - Other (NEGO)
Motor Vehicle Lien G.S. 44A (MVLN)
Limited Driving Privilege - Out-of-State Convictions (PLDP)
Possession of Personal Property (POPP)
Product Liability (PROD)
Real Property (RLPR)
Specific Performance (SPPR)
Other: (specify)

NOTE: Small claims are exempt from cover sheets.

Slander, Libel, Unfair and Deceptive Business Practices

Date 1/13/09

Signature Of Attorney/Party [Signature]

NOTE: The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts...

NORTH CAROLINA)
 FORSYTH COUNTY)
)
) 09 JAN 13 PM 4: 03
) GATEWAY MANAGEMENT)
) SERVICES, LTD., FORSYTH COUNTY, C.S.C)
)
) Plaintiff,)
)
) v.)
)
) JOSEPH BELMONTE &)
) AMERICAN GUARDIAN)
) WARRANTY SERVICES, INC.,)
)
) Defendants.)
)

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 09 Cvs 368

PLAINTIFF'S FIRST REQUEST
FOR ADMISSIONS
TO DEFENDANT AMERICAN
GUARDIAN WARRANTY
SERVICES, INC.

Plaintiff GATEWAY MANAGEMENT SERVICES, LTD. ("Gateway" or "Plaintiff Gateway") by and through counsel, serves upon defendant AMERICAN GUARDIAN WARRANTY SERVICES, INC. ("American Guardian" or "Defendant American Guardian") the following requests for admission pursuant to Rule 36 of the NORTH CAROLINA RULES OF CIVIL PROCEDURE. The plaintiff requests that you admit the truth of the following matters within the time required by NORTH CAROLINA RULE OF CIVIL PROCEDURE 36. Your responses to these requests are for purposes of this pending action only.

You shall specifically admit, deny, or set forth in detail the reasons why you cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only part of the matter of which an admission is requested, you shall specify so much as is true and qualify or deny the remainder.

You may not give lack of information or knowledge as a reason for failure to admit or deny, unless you state that you have made a reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny.

If an objection is made, the reasons therefore must be stated. If you consider that a matter, for which an admission has been requested, presents a genuine issue for trial, you may not, on that ground alone, object to the request.

In accordance with N.C.R.Civ P. 26(e), you are requested to supplement, on a timely basis, the responses to all requests for admissions between the time answers are served and the time of trial. The plaintiff requests that you supplement the responses to the requests for admission on a monthly basis, or earlier, if necessary, under the North Carolina Rules of Civil Procedure. The definitions set forth in PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT AMERICAN GUARDIAN WARRANTY SERVICES, INC. shall apply with equal force herein.

REQUESTS FOR ADMISSION

1. Joseph Belmonte ("Defendant Belmonte") was an employee of American Guardian in 2006.

ADMIT OR DENY:

2. Defendant Belmonte was an employee of American Guardian in 2007.

ADMIT OR DENY:

3. Defendant Belmonte was an employee of American Guardian in 2008.

ADMIT OR DENY:

4. Defendant Belmonte is currently an employee of American Guardian.

ADMIT OR DENY:

5. Defendant Belmonte's duties at American Guardian involve recruiting used truck dealers for American Guardian's warranty program.

ADMIT OR DENY:

6. Defendant Belmonte has no knowledge of Gateway's financial stability.

ADMIT OR DENY:

7. Gateway is not in violation of Florida insurance regulations.

ADMIT OR DENY:

8. In Florida a truck used commercially with a gross vehicle weight in excess of ten thousand pounds is not regulated by the Florida Department of Insurance.

ADMIT OR DENY:

9. Palm Peterbilt does not sell vehicles with a gross vehicle weight less than ten thousand pounds.

ADMIT OR DENY:

10. Defendant Belmonte had knowledge of Florida's insurance regulations in 2008.

ADMIT OR DENY:

11. Defendant Belmonte knew that Gateway was not in violation of Florida insurance regulations in 2008.

ADMIT OR DENY:

12. Defendant Belmonte knew that Gateway was not in violation of Florida insurance regulations on July 14, 2008

ADMIT OR DENY:

13. Venue is proper in this case.

ADMIT OR DENY:

14. Service as to Defendant American Guardian is proper in this case.

ADMIT OR DENY:

15. Forsyth County Superior Court has subject matter jurisdiction in this matter.

ADMIT OR DENY:

16. Forsyth County Superior Court has personal jurisdiction in this matter.

ADMIT OR DENY:

17. This action was timely filed.

ADMIT OR DENY:

18. America Guardian is self-insured.

ADMIT OR DENY:

19. Defendant Belmonte has engaged in conversations with Lynn Murphy.

ADMIT OR DENY:

20. Defendant Belmonte sent an e-mail to Wendell Strubhar at Palm Peterbilt on July 14, 2008.

ADMIT OR DENY:

21. The e-mail sent by Defendant Belmonte to Wendell Strubhar at Palm Peterbilt on July 14, 2008 contains false information.

ADMIT OR DENY:

22. The e-mail sent by Defendant Belmonte to Wendell Strubhar at Palm Peterbilt on July 14, 2008 accuses Gateway of criminal activity.

ADMIT OR DENY:

23. The e-mail sent by Defendant Belmonte to Wendell Strubhar at Palm Peterbilt on July 14, 2008 accuses Gateway of criminal business activity under Florida law.

ADMIT OR DENY:

24. Gateway is self-insured.

ADMIT OR DENY:

25. Gateway has not violated any Florida insurance regulations.

ADMIT OR DENY:

26. Defendant Belmonte has spoken to Bill Fisher regarding the e-mail of July 14, 2008.

ADMIT OR DENY:

27. Defendant Belmonte slandered Gateway.

ADMIT OR DENY:

28. Defendant Belmonte libeled Gateway.

ADMIT OR DENY:

29. Defendant Belmonte has told used truck dealers that Gateway is insolvent.

ADMIT OR DENY:

30. Defendant Belmonte has told used truck dealers that Gateway will become insolvent.

ADMIT OR DENY:

31. Defendant Belmonte has told used truck dealers that Gateway is not insured.

ADMIT OR DENY:

32. Defendant Belmonte has told used truck dealers that Gateway will not honor their warranties.

ADMIT OR DENY:

33. Defendant Belmonte has told used truck dealers that Gateway will not be able to honor their warranties.

ADMIT OR DENY:

34. American Guardian is a member of the Used Truck Association ("UTA").

ADMIT OR DENY:

35. Defendant Belmonte is a member of the UTA.

ADMIT OR DENY:

36. The UTA requested that Defendant Belmonte cease slandering Gateway.

ADMIT OR DENY:

37. The UTA requested that Defendant Belmonte cease libeling Gateway.

ADMIT OR DENY:

38. The UTA requested that Defendant American Guardian cease slandering Gateway.

ADMIT OR DENY:

39. The UTA requested that Defendant American Guardian cease libeling Gateway.

ADMIT OR DENY:

40. Bill Fisher requested that Defendant Belmonte send his e-mail of July 14, 2008 to Wendell Strubhar at Palm Peterbilt.

ADMIT OR DENY:

41. Defendant Belmonte has been reprimanded for sending his e-mail of July 14, 2008 to Wendell Strubhar at Palm Peterbilt.

ADMIT OR DENY:

42. Defendant Belmonte has been sanctioned for sending his e-mail of July 14, 2008 to Wendell Strubhar at Palm Peterbilt.

ADMIT OR DENY:

43. Defendant Belmonte continues to work for American Guardian.

ADMIT OR DENY:

44. Bill Fisher is the president of American Guardian.

ADMIT OR DENY:

45. The head of the UTA wrote a letter specifically addressing American Guardian's slandering of Gateway.

ADMIT OR DENY:

46. The head of the UTA wrote a letter specifically addressing American Guardian's libeling of Gateway.

ADMIT OR DENY:

47. Defendant Belmonte has damaged Gateway's reputation.

ADMIT OR DENY:

48. American Guardian has damaged Gateway's reputation.

ADMIT OR DENY:

49. Defendant Belmonte has encouraged used truck dealers to switch to American Guardian sold warranties.

ADMIT OR DENY:

50. Agents of American Guardian have damaged Gateway's reputation.

ADMIT OR DENY:

51. Agents of American Guardian have encouraged used truck dealers to switch to American Guardian sold warranties.

ADMIT OR DENY:

52. Defendant Belmonte has met with certain of Gateway's used truck dealer customers.

ADMIT OR DENY:

53. Agents of American Guardian have met with certain of Gateway's used truck dealer customers.

ADMIT OR DENY:

54. Defendant Belmonte is not a licensed attorney.

ADMIT OR DENY:

55. Defendant Belmonte is not qualified to interpret Florida Insurance regulations.

ADMIT OR DENY:

56. Defendant Belmonte was providing legal advice in his e-mail of July 14, 2008 to Wendell Strubhar at Palm Peterbilt.

ADMIT OR DENY:

57. Defendant Belmonte does not sell NTP warranties.

ADMIT OR DENY:

58. American Guardian is the administrator for Advanced Lubrication Technology's warranty program.

ADMIT OR DENY:

59. American Guardian does not sell NTP warranties.

ADMIT OR DENY:

60. Defendant American Guardian defamed Gateway.

ADMIT OR DENY:

61. Defendant Belmonte defamed Gateway.

ADMIT OR DENY:

This the 12th day of January, 2009.

THE RAWLINGS LAW FIRM:

By:



CHARLES E. RAWLINGS, M.D.
NCSB # 28760

426 Old Salem Road
Winston-Salem, NC 27101
Tel: 336.725.6444
Fax: 336.724.4755

NORTH CAROLINA)
)
FORSYTH COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CvS _____

GATEWAY MANAGEMENT)
SERVICES, LTD.,)

Plaintiff,)

v.)

JOSEPH BELMONTE &)
AMERICAN GUARDIAN)
WARRANTY SERVICES, INC.,)

Defendants.)

CERTIFICATE OF SERVICE

This is to certify that the undersigned attorney for the plaintiff served the foregoing **PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO DEFENDANT AMERICAN GUARDIAN WARRANTY SERVICES, INC.** by including a copy thereof with the Summons and Complaint and served therewith.

This the 12th day of January, 2009.



CHARLES E. RAWLINGS, M.D.

OF COUNSEL:

THE RAWLINGS LAW FIRM
426 Old Salem Road
Winston-Salem, NC 27101

ATTORNEY FOR PLAINTIFF

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FORSYTH COUNTY

09 JAN 13 PM 4:03

09 Cvs 368

GATEWAY MANAGEMENT SERVICES, LTD.,)
FORSYTH COUNTY, C.S.C.)
BY [Signature])

Plaintiff,)

v.)

JOSEPH BELMONTE & AMERICAN GUARDIAN WARRANTY SERVICES, INC.,)

Defendants.)

**PLAINTIFF'S FIRST REQUEST
FOR ADMISSIONS
TO DEFENDANT JOSEPH
BELMONTE**

Plaintiff GATEWAY MANAGEMENT SERVICES, LTD. ("Gateway" or "Plaintiff Gateway") by and through counsel, serves upon defendant JOSEPH BELMONTE ("Defendant Belmonte") the following requests for admission pursuant to Rule 36 of the NORTH CAROLINA RULES OF CIVIL PROCEDURE. The plaintiff requests that you admit the truth of the following matters within the time required by NORTH CAROLINA RULE OF CIVIL PROCEDURE 36. Your responses to these requests are for purposes of this pending action only.

You shall specifically admit, deny, or set forth in detail the reasons why you cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only part of the matter of which an admission is requested, you shall specify so much as is true and qualify or deny the remainder.

You may not give lack of information or knowledge as a reason for failure to admit or deny, unless you state that you have made a reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny.

If an objection is made, the reasons therefore must be stated. If you consider that a matter, for which an admission has been requested, presents a genuine issue for trial, you may not, on that ground alone, object to the request.

In accordance with N.C.R.Civ P. 26(e), you are requested to supplement, on a timely basis, the responses to all requests for admissions between the time answers are served and the time of trial. The plaintiff requests that you supplement the responses to the requests for admission on a monthly basis, or earlier, if necessary, under the North Carolina Rules of Civil Procedure. The definitions set forth in PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT JOSEPH BELMONTE shall apply with equal force herein.

REQUESTS FOR ADMISSION

1. Defendant Belmonte was an employee of American Guardian Warranty Services ("American Guardian") in 2006.

ADMIT OR DENY:

2. Defendant Belmonte was an employee of American Guardian in 2007.

ADMIT OR DENY:

3. Defendant Belmonte was an employee of American Guardian in 2008.

ADMIT OR DENY:

4. Defendant Belmonte is currently an employee of American Guardian.

ADMIT OR DENY:

5. Defendant Belmonte's duties at American Guardian involve recruiting used truck dealers for American Guardian's warranty program.

ADMIT OR DENY:

6. Defendant Belmonte has no knowledge of Gateway's financial stability.

ADMIT OR DENY:

7. Gateway is not in violation of Florida insurance regulations.

ADMIT OR DENY:

8. In Florida a truck used commercially with a gross vehicle weight in excess of ten thousand pounds is not regulated by the Florida Department of Insurance.

ADMIT OR DENY:

9. Palm Peterbilt does not sell vehicles with a gross vehicle weight less than ten thousand pounds.

ADMIT OR DENY:

10. Defendant Belmonte had knowledge aware of Florida's insurance regulations in 2008.

ADMIT OR DENY:

11. Defendant Belmonte knew that Gateway was not in violation of Florida insurance regulations in 2008.

ADMIT OR DENY:

12. Defendant Belmonte knew that Gateway was not in violation of Florida insurance regulations on July 14, 2008

ADMIT OR DENY:

13. Venue is proper in this case.

ADMIT OR DENY:

14. Service as to Defendant Belmonte is proper in this case.

ADMIT OR DENY:

15. Forsyth County Superior Court has subject matter jurisdiction in this matter.

ADMIT OR DENY:

16. Forsyth County Superior Court has personal jurisdiction in this matter.

ADMIT OR DENY:

17. This action was timely filed.

ADMIT OR DENY:

18. America Guardian is self-insured.

ADMIT OR DENY:

19. Defendant Belmonte has engaged in conversations with Lynn Murphy.

ADMIT OR DENY:

20. Defendant Belmonte sent an e-mail to Wendell Strubhar at Palm Peterbilt on July 14, 2008.

ADMIT OR DENY:

21. The e-mail sent by Defendant Belmonte to Wendell Strubhar at Palm Peterbilt on July 14, 2008 contains false information.

ADMIT OR DENY:

22. The e-mail sent by Defendant Belmonte to Wendell Strubhar at Palm Peterbilt on July 14, 2008 accuses Gateway of criminal activity.

ADMIT OR DENY:

23. The e-mail sent by Defendant Belmonte to Wendell Strubhar at Palm Peterbilt on July 14, 2008 accuses Gateway of criminal business activity under Florida law.

ADMIT OR DENY:

24. Gateway is self-insured.

ADMIT OR DENY:

25. Gateway has not violated any Florida insurance regulations.

ADMIT OR DENY:

26. Defendant Belmonte has spoken to Bill Fisher regarding the e-mail of July 14, 2008.

ADMIT OR DENY:

27. Defendant Belmonte slandered Gateway.

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28. Defendant Belmonte libeled Gateway.

ADMIT OR DENY:

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ADMIT OR DENY:

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ADMIT OR DENY:

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ADMIT OR DENY:

32. Defendant Belmonte has told used truck dealers that Gateway will not honor their warranties.

ADMIT OR DENY:

33. Defendant Belmonte has told used truck dealers that Gateway will not be able to honor their warranties.

ADMIT OR DENY:

34. American Guardian is a member of the Used Truck Association ("UTA").

ADMIT OR DENY:

35. Defendant Belmonte is a member of the UTA.

ADMIT OR DENY:

36. The UTA requested that Defendant Belmonte cease slandering Gateway.

ADMIT OR DENY:

37. The UTA requested that Defendant Belmonte cease libeling Gateway.

ADMIT OR DENY:

38. The UTA requested that Defendant American Guardian cease slandering Gateway.

ADMIT OR DENY:

39. The UTA requested that Defendant American Guardian cease libeling Gateway.

ADMIT OR DENY:

40. Bill Fisher requested that Defendant Belmonte send his e-mail of July 14, 2008 to Wendell Strubhar at Palm Peterbilt.

ADMIT OR DENY:

41. Defendant Belmonte has been reprimanded for sending his e-mail of July 14, 2008 to Wendell Strubhar at Palm Peterbilt.

ADMIT OR DENY:

42. Defendant Belmonte has been sanctioned for sending his e-mail of July 14, 2008 to Wendell Strubhar at Palm Peterbilt.

ADMIT OR DENY:

43. Defendant Belmonte continues to work for American Guardian.

ADMIT OR DENY:

44. Bill Fisher is the president of American Guardian.

ADMIT OR DENY:

45. The head of the UTA wrote a letter specifically addressing American Guardian's slandering of Gateway.

ADMIT OR DENY:

46. The head of the UTA wrote a letter specifically addressing American Guardian's libeling of Gateway.

ADMIT OR DENY:

47. Defendant Belmonte has damaged Gateway's reputation.

ADMIT OR DENY:

48. American Guardian has damaged Gateway's reputation.

ADMIT OR DENY:

49. Defendant Belmonte has encouraged used truck dealers to switch to American Guardian sold warranties.

ADMIT OR DENY:

50. Agents of American Guardian have damaged Gateway's reputation.

ADMIT OR DENY:

51. Agents of American Guardian have encouraged used truck dealers to switch to American Guardian sold warranties.

ADMIT OR DENY:

52. Defendant Belmonte has met with certain of Gateway's used truck dealer customers.

ADMIT OR DENY:

53. Agents of American Guardian have met with certain of Gateway's used truck dealer customers.

ADMIT OR DENY:

54. Defendant Belmonte is not a licensed attorney.

ADMIT OR DENY:

55. Defendant Belmonte is not qualified to interpret Florida Insurance regulations.

ADMIT OR DENY:

56. Defendant Belmonte was providing legal advice in his e-mail of July 14, 2008 to Wendell Strubhar at Palm Peterbilt.

ADMIT OR DENY:

57. Defendant Belmonte does not sell NTP warranties.

ADMIT OR DENY:

58. American Guardian is the administrator for Advanced Lubrication Technology's warranty program.

ADMIT OR DENY:

59. American Guardian does not sell NTP warranties.

ADMIT OR DENY:

60. Defendant American Guardian defamed Gateway.

ADMIT OR DENY:

61. Defendant Belmonte defamed Gateway.

ADMIT OR DENY:

This the 2th day of January, 2009.

THE RAWLINGS LAW FIRM:

By:



CHARLES E. RAWLINGS, M.D.
NCSB # 28760

426 Old Salem Road
Winston-Salem, NC 27101
Tel: 336.725.6444
Fax: 336.724.4755

NORTH CAROLINA)
)
FORSYTH COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CvS _____

GATEWAY MANAGEMENT)
SERVICES, LTD.,)

Plaintiff,)

v.)

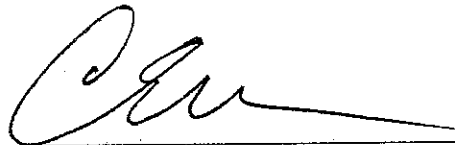
JOSEPH BELMONTE &)
AMERICAN GUARDIAN)
WARRANTY SERVICES, INC.,)

Defendants.)

CERTIFICATE OF SERVICE

This is to certify that the undersigned attorney for the plaintiff served the foregoing **PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO DEFENDANT JOSEPH BELMONTE** by including a copy thereof with the Summons and Complaint and served therewith.

This the 12th day of January, 2009.



CHARLES E. RAWLINGS, M.D.

OF COUNSEL:

THE RAWLINGS LAW FIRM
426 Old Salem Road
Winston-Salem, NC 27101

ATTORNEY FOR PLAINTIFF

NORTH CAROLINA)
)
FORSYTH COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

09 CvS 368

09 JAN 21 PM 4:25

JAN 22 ENT'D

GATEWAY MANAGEMENT)
SERVICES, LTD.,)
)
Plaintiff,)

FORSYTH COUNTY, C.S.C.

BY *Lawyer*

v.)
)
JOSEPH BELMONTE &)
AMERICAN GUARDIAN)
WARRANTY SERVICES, INC.,)
)
Defendants.)

AFFIDAVIT OF SERVICE

(Joseph Belmonte)

NOW COMES the Affiant Charles E. Rawlings, M.D. and under penalty of perjury hereby testifies and avers as follows:

1. I am Charles E. Rawlings, M.D. I am duly licensed to practice law in the State of North Carolina. I am counsel of record for the Plaintiffs in this action, and I am competent to serve process under N.C.R.Civ.P. 4;

2. I deposited a copy of the Civil Summons, Complaint, and the following discovery requests: (1) Plaintiff's First Set of Interrogatories to Defendant Joseph Belmonte; (2) Plaintiff's First Request for Production of Documents to Defendant Joseph Belmonte; (3) Plaintiff's First Requests for Admission to Defendant Joseph Belmonte; (4) Plaintiff's First Set of Interrogatories to Defendant American Guardian Warranty Services, Inc.; (5) Plaintiff's First Request for Production of Documents to Defendant American Guardian Warranty Services, Inc.; and (6) Plaintiff's First Requests for Admission to Defendant American Guardian Warranty Services, Inc. (collectively, "Documents") into the post office for mailing by Certified Mail, Return

Receipt Requested, addressed to Defendant Joseph Belmonte, at his place of employment: 800 Roosevelt Rd., Suite E-300; Glen Ellyn, IL 60137.

3. Defendant Joseph Belmonte in fact, received the Documents on January 16, 2009, as evidenced by the return receipt from the certified mail package, a copy of which is attached hereafter as **EXHIBIT A**.

THE AFFIANT SAYS NOTHING MORE.

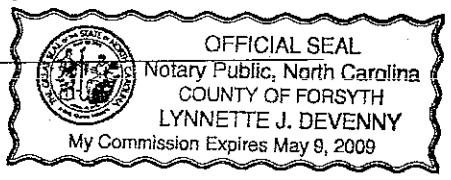

CHARLES E. RAWLINGS, M.D.

STATE OF: North Carolina
COUNTY OF: Forsyth

Subscribed, sworn, and acknowledged before me by Charles Rawlings this the 21st day of January, 2009.


NOTARY PUBLIC

My Commission Expires: _____



2. Article Number
(Transfer from service label)

7008 1830 0000 0925 8434

1. Article Addressed to:
Mr. Joseph Belmonte
800 Roosevelt Rd, St. E-300
Glen Ellyn, IL 60137

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]*
 Agent
 Addressee

B. Received by (Printed Name) *Ted Moxemur*
 C. Date of Delivery *1-16-09*

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail
 Express Mail
 Registered
 Insured Mail
 C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

JAN 29 2009

NORTH CAROLINA)
)
FORSYTH COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CvS 368

GATEWAY MANAGEMENT)
SERVICES, LTD.,)
)
Plaintiff,)

v.)

JOSEPH BELMONTE &)
AMERICAN GUARDIAN)
WARRANTY SERVICES, INC.,)
)
Defendants.)

AFFIDAVIT OF SERVICE
(American Guardian Warranty Services, Inc.)

FILED
09 JAN 28 AM 10:34
FORSYTH COUNTY, C.S.C.

NOW COMES the Affiant Charles E. Rawlings, M.D. and under penalty of perjury hereby testifies and avers as follows:

1. I am Charles E. Rawlings, M.D. I am duly licensed to practice law in the State of North Carolina. I am counsel of record for the Plaintiffs in this action, and I am competent to serve process under N.C.R.Civ.P. 4;

2. I deposited a copy of the Civil Summons, Complaint, and the following discovery requests: (1) Plaintiff's First Set of Interrogatories to Defendant American Guardian Warranty Services, Inc.; (2) Plaintiff's First Request for Production of Documents to Defendant American Guardian Warranty Services, Inc.; (3) Plaintiff's First Requests for Admission to Defendant American Guardian Warranty Services, Inc.; (4) Plaintiff's First Set of Interrogatories to Defendant Joseph Belmonte; (5) Plaintiff's First Request for Production of Documents to Defendant Joseph Belmonte; and (6) Plaintiff's First Requests for Admission to Defendant Joseph Belmonte (collectively, "Documents") into the post office for mailing by Certified Mail, Return Receipt Requested, addressed to CT Corporation System, the Registered Agent for

American Guardian Warranty Services, Inc. at American Guardian Warranty Services, Inc.
Registered Mailing Address, as listed with the North Carolina Secretary of State.

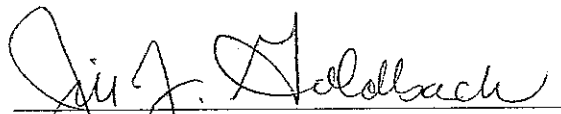
3. Defendant American Guardian Warranty Services, Inc. in fact, received the Documents on January 16, 2009, as evidenced by the return receipt from the certified mail package, a copy of which is attached hereafter as **EXHIBIT A**.

THE AFFIANT SAYS NOTHING MORE.

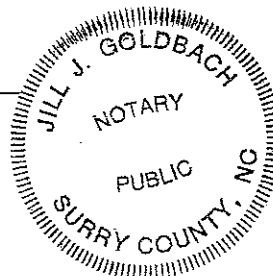

CHARLES E. RAWLINGS, M.D.

STATE OF: North Carolina
COUNTY OF: Forsyth

Subscribed, sworn, and acknowledged before me by Charles Rawlings this the 28th day of January, 2009.


NOTARY PUBLIC

My Commission Expires: 6-11-2012



2. Article Number (Transfer from service label) 7008 1830 0000 0925 8427

3. Service Type
 Certified Mail
 Express Mail
 Registered
 Return Receipt for Merchandise
 Insured Mail
 C.O.D.

4. Restricted Delivery? (Extra Fee)

1. Article Addressed to:
 American Guard on Warrant Services
 Inc C/O CT Corporation System
 as Registered Agent
 157 Fayetteville St., Box 1011
 Raleigh, NC 27601

D. Is delivery address different from item 1? Yes No
 (If YES, enter delivery address below:)

A. Signature Agent Addressee
Holly Frost

B. Received by (Printed Name)

C. Date of Delivery

SENDER: COMPLETE THIS SECTION **COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

STATE OF NORTH CAROLINA
FORSYTH COUNTY

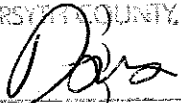

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

09 FEB 13 PM 1:42

09 CVS 368

GATEWAY MANAGEMENT FORSYTH COUNTY, C.S.C.
SERVICES, LTD.,

BY 
Plaintiff, 

**MOTION FOR EXTENSION OF
TIME TO ANSWER COMPLAINT
(EXTM)**

v.

JOSEPH BELMONTE and AMERICAN
GUARDIAN WARRANTY SERVICES,
INC.,
Defendants.

Pursuant to Rule 6(b) of the North Carolina Rules of Civil Procedure, defendants Joseph Belmonte and American Guardian Warranty Services, Inc. ("American Guardian"), respectfully move the Court for an order extending the time within which they may answer or otherwise respond to the allegations contained in plaintiff's complaint.

In support thereof, defendants show the following:

1. Copies of the summons and complaint were served on them on January 16, 2009;
2. The time for answering or otherwise responding has not yet expired;
3. Defendants need additional time within which to consult with counsel and formulate answers or other responsive pleadings; and
4. Plaintiff will not be prejudiced by the extension of time sought.

WHEREFORE, defendants respectfully request that the Court grant their motion and extend the time to answer or otherwise respond to and including March 17, 2009. A proposed order is submitted with this motion.

This the 13th day of February, 2009.

ELLIS & WINTERS LLP

Stephen D. Feldman by Leslie C. O'Toole

Leslie C. O'Toole

N.C. State Bar No. 13640

Stephen D. Feldman

N.C. State Bar No. 34940

P. O. Box 33550

Raleigh, North Carolina 27636

Telephone: (919) 865-7000

Facsimile: (919) 865-7010

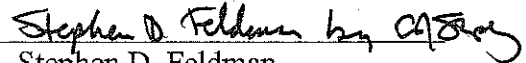
*Attorneys for defendants Joseph Belmonte and
American Guardian Warranty Services, Inc.*

CERTIFICATE OF SERVICE

I do hereby certify that on this date I served a copy of the foregoing Defendants' Motion for Extension of Time to Respond to Plaintiff's Complaint upon counsel of record by having employees of Ellis & Winters LLP acting at my direction deposit a copy in the United States mail, postage prepaid and addressed as follows:

Charles E. Rawlings, M.D.
The Rawlings Law Firm
426 Old Salem Road
Winston-Salem, NC 27101
Facsimile: (336) 334-5162

This 13th day of February, 2009.



Stephen D. Feldman

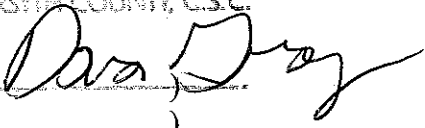
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STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
FORSYTH COUNTY SUPERIOR COURT DIVISION

FORSYTH COUNTY, C.S.C.

09 CVS 368

GATEWAY MANAGEMENT
SERVICES, LTD.,



Plaintiff,

v.

JOSEPH BELMONTE and AMERICAN
GUARDIAN WARRANTY SERVICES,
INC.,

Defendants.

ORDER

Pursuant to Rule 6(b) of the North Carolina Rules of Civil Procedure, and for good cause shown, defendants' motion requesting an extension of time to answer or otherwise plead is ALLOWED. It is ORDERED that defendants are given until, through, and including March 17, 2009 to serve their answer or other responsive pleading.

This the 13 day of February, 2009.

Serri Fisher, Asst
Clerk of the Superior Court