

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT  
AUSTIN DIVISION

STATE OF TEXAS  
Plaintiff

V.

CREDEXX CORPORATION, DBA AUTO  
ONE WARRANTY, AUTO ONE  
WARRANTY SPECIALISTS, AND DAVID  
J. TABB, INDIVIDUALLY,  
Defendants

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Civil Action No. \_\_\_\_\_

**PLAINTIFF'S ORIGINAL COMPLAINT**

**TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:**

Plaintiff the STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, files this Original Complaint against CREDEXX CORPORATION, dba Auto One Warranty, Auto One Warranty Specialists, and DAVID J. TABB, individually (Defendants) and for cause of action would respectfully show as follows:

**JURISDICTION AND VENUE**

1. This action is brought by Attorney General Greg Abbott, through his Consumer Protection & Public Health Division in the name of the STATE OF TEXAS and in the public interest, pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227(f)(4) ("TCPA"), the Texas Telemarketing Disclosure and Privacy Act, Tex. Bus. & Com. Code § 304.001 *et seq.* (West 2009 & Supp. 2011) ("Texas No Call Act"), and the Texas Deceptive Trade Practices–Consumer Protection Act, Tex. Bus. & Com. Code § 17.41 *et. seq.* (West 2011) ("DTPA").
2. This Court has jurisdiction over the subject matter of the claims under TCPA pursuant to 28

U.S.C. § 1331 and has pendant jurisdiction over the subject matter of the Texas No Call Act and DTPA claims pursuant to 28 U.S.C. § 1367. This action arises under 15 U.S.C. § 45(a).

3. Venue of this suit lies in the Western District of Texas, Austin Division pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim alleged herein occurred within the Western District of Texas, as more specifically alleged below, and pursuant to 28 U.S.C. § 1395(a) because this is a civil proceeding for the recovery of a pecuniary fine, penalty or forfeiture.

#### **DEFENDANTS**

4. Defendant CREDEXX CORPORATION, dba Auto One Warranty, Auto One Warranty Specialists ("Credexx"), is a foreign corporation which is registered in the State of California. Credexx's principal office is located at 310 Commerce, Irvine, California 92602. The Defendant may be served with process by serving its registered agent for service of process, Incorp Services, Inc., at 815 Brazos Street, Suite 500, Austin, Texas 78701.

5. Defendant DAVID J. TABB ("Tabb") is an individual who may be served with process at his principal place of residence, 23 Vista Tramonto, Newport Coast, CA 92657, or wherever he may be found. Defendant TABB is the President and sole shareholder of Credexx. Defendant TABB is a nonresident of Texas and does not maintain a regular place of business in Texas, but has conducted business in Texas.

#### **ACTS OF AGENTS**

6. Whenever it is alleged in this petition that Defendants did any act, it is meant that the Defendants performed or participated in the act or that Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

## **TRADE AND COMMERCE**

7. The Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by § 17.45(6) of the DTPA.

## **PUBLIC INTEREST**

8. Plaintiff, STATE OF TEXAS, has reason to believe that Defendants have engaged in, and will continue to engage in a pattern of unlawful practices set forth below. Plaintiff also has reason to believe that Defendants have caused, and will continue to cause injury, loss and damage to the STATE OF TEXAS, and will also cause adverse effects to legitimate business enterprise which lawfully conduct trade and commerce in this State.

## **STATEMENT OF FACTS**

9. Defendants advertised and sold vehicle service contracts to consumers from across the country, including to consumers in or around Travis County, Texas, Williamson County, Texas, and Caldwell County, Texas.

10. In the advertising and sale of vehicle service contracts Defendants represented to consumers that they were providing them with an opportunity to extend or reinstate their original “bumper to bumper” warranty coverage. However, Defendant’s were not offering consumers an extension or reinstatement of the original vehicle warranty they received from the vehicle manufacturer when the automobiles they purchased were new or remained under warranty. In fact, the products that Defendants were offering were service contracts subject to numerous material restrictions and limitations that were materially different from and inferior to the original warranty provided by the vehicle manufacturer.

11. Defendants utilized direct mailers and telemarketing campaigns to advertise their service

contracts.

12. Defendants' telemarketing campaign included calling thousands of consumers whose telephone numbers were on the Texas No Call list and the Federal No Call list.

13. Defendants' direct mail campaign regularly utilized misleading mailers like the one attached as Exhibit A, which Defendants mailed to Texas consumers. In this mailer, the Defendants caused confusion by representing that the solicitation was the consumer's "Final Notice to extend or reinstate your bumper to bumper warranty coverage." In fact, the mailer was actually a solicitation to sell a vehicle service contract, not to sell an extended warranty.

14. The mailer also was deceptive by what it did not disclose. For instance, the mailer represented to the consumer that coverages were available "up to 250,000 miles." What the mailer failed to disclose was that there were material restrictions and limitations to the vehicle service contracts offered by the Defendants. For instance, two of the major material limitations which would have affected consumers with older vehicle were as follows:

- a. The service contracts sold by Defendants limit the value of any repair to the actual cash value of the car at the time of the repair; and
- b. The service contracts sold by Defendants further limit the sum of the value of all repairs under the contract to the value of the vehicle.

15. Whether consumers were solicited by one of Defendant's direct mailers or via a telemarketing call, the consumer would eventually speak with one of the Defendants' sales agents who would then make a sales pitch to the consumer. Defendants' sales agent failed to disclose to consumers all the limitations and exclusions to the vehicle service contracts. In fact, consumers could not read the material limitations before making a purchase because Defendants provided the

contract to consumers only after they had agreed to purchase the service contracts and had paid the initial fee with a credit or debit card. Defendants represented to consumers who were reluctant to make the purchase that it would be easy for them to cancel and receive a refund if they were not satisfied with the vehicle service contract.

16. In fact, consumers who purchased a vehicle service contract from Defendants but later decided to cancel the contract often encountered extreme difficulty in obtaining refunds. Numerous Texas consumers cancelled the vehicle service contract they purchased from Defendants and requested refunds, but Defendants have failed to provide many of these refunds. Consumers who have called Defendants about the status of their refunds have been told that the refund was in process or that the consumer would receive the refund in a couple of weeks. Many consumers have complained that despite these representations, Defendants have failed to make these refunds.

17. Defendants represented to consumers that purchasing the vehicle service contract agreement would provide the consumers with "peace of mind" from expensive vehicle repairs. As many Texas consumers learned when they filed claims and were informed about the material restrictions and limitations of the service contracts offered by Defendants, these service contracts provided anything but "peace of mind."

18. Defendant Credexx is owned and operated by Defendant Tabb. Defendant Tabb controlled the business operations of Defendant Credexx and was involved in the day-to-day operations and activities of the business including the acts complained of in this complaint.

**FIRST CAUSE OF ACTION  
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

19. Plaintiff re-alleges paragraphs one through eighteen and incorporates them herein as if set

forth here in full.

20. The TCPA, 47 U.S.C. 227, *et seq.*, was enacted to, among other things, protect the privacy interests of residential and wireless telephone subscribers from invasive telemarketing practices. Among other things, the TCPA provided the Federal Communications Commission the authority to establish a federal do-not-call registry. 47 U.S.C. § 227(c)(3). In 2003, the Federal Communications Commission implemented regulations adopting a do-not-call registry. The regulations provide that “no person or entity shall initiate any telephone solicitation...to...a residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry...” 47 C.F.R. § 64.1200(c)(2).

21. The Defendants have violated § 64.1200(c)(2) by making calls to residential telephone numbers that are registered on the national do-not-call registry.

22. The TCPA further provides that it “shall be unlawful for any person within the United States...to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned to a ... cellular telephone.” 47 U.S.C. 227(b)(1)(A)(iii). Defendant has violated the TCPA, 47 U.S.C. 227 (b)(1)(A)(iii) by making unsolicited telephone calls to Texas consumers’ cell phones using an automatic telephone dialing system.

**SECOND CAUSE OF ACTION  
VIOLATIONS OF THE TEXAS TELEMARKEETING DISCLOSURE  
AND PRIVACY ACT**

23. Plaintiff re-alleges paragraphs one through twenty two and incorporates them herein as if set

forth here in full.

24. The Texas Telemarketing Disclosure and Privacy Act ("Texas No Call Act") makes it unlawful for a telemarketer to make a telemarketing call to a telephone number that has been published on the then-current Texas no-call list for more than 60 days. Tex. Bus. & Com. Code § 304.052. The Defendants have violated the Texas No Call Act by making calls to telephone numbers on the then-current Texas no-call list for longer than 60 days.

**THIRD CAUSE OF ACTION  
VIOLATIONS OF TEXAS DECEPTIVE TRADE PRACTICES ACT**

25. Plaintiff incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition;

26. Defendants, as alleged and detailed above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices as declared unlawful in § 17.46(a) of the DTPA;

27. Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(2) of the DTPA by causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

28. Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(5) of the DTPA by representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

29. Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(7) of the DTPA by representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

30. Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(12) of the DTPA by representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

31. Defendants, as alleged and detailed above, have in the course of trade and commerce violated § 17.46(b)(24) of the DTPA by failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

#### **PRAYER**

32. By reason of the acts and practices described herein above, Defendant have violated and will continue to violate the federal and state laws set forth unless this Honorable Court enjoins them from doing so.

33. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued on the terms set forth below; and that upon final hearing, a permanent injunction be issued, restraining and enjoining Defendant, its officers, agents, servants, employees, attorneys, and any other person in active concert or participation with Defendants, from:

- a. Representing to consumers that the Defendants are offering for sale or offering to sell an “extended warranty,” a “warranty,” or any product that has the words “warranty” as part of its name;
- b. Offering to sell or selling to consumers a vehicle service contract without disclosing to consumers, prior to the consumer making any form of payment,

- all the material terms and limitations of such service contracts and further disclosing that these service contracts are not a warranty;
- c. Offering to sell or selling to consumers a vehicle service contract without providing consumers an opportunity to review the service contract prior to asking consumers for payment information such as consumers' credit card or debit card information;
  - d. Advertising a vehicle service contract without clearly and conspicuously disclosing the material limitations and exclusions contained in the service contract;
  - e. Misrepresenting the characteristics, uses, or benefits of a vehicle service contract;
  - f. Failing or refusing to cancel a vehicle service contract that a consumer has asked to be cancelled if the consumer is entitled to cancel the contract pursuant to the terms of the contract;
  - g. Failing or refusing to provide a consumer a full refund when he/she has cancelled a vehicle service contract, if the consumer is entitled to the refund pursuant to the contract;
  - h. Failing to disclose to a consumer, prior to the consumer making any form of payment or agreeing to purchase the service contract, that Defendants will not be the party making the decision as to whether or not a request for repair will be paid, but that the decision is made by a third-party;
  - I. Placing any telephone call or causing any telephone call to be placed to any

Texas telephone number that has been placed on the Federal do-not-call registry or the Texas no-call registry;

- j. Placing any telephone call or causing any telephone call to be placed to any Texas telephone number without transmitting the accurate telephone number and caller identification information to any caller identification service in use by the called party; and
- k. Placing any telephone call or causing any telephone call to be placed to any Texas telephone number while using "spoofed" caller ID information.

34. In addition, Plaintiff, the State of Texas, respectfully prays that this Court adjudge against Defendant civil penalties in favor of Plaintiff State of Texas in the following amounts for violations of the TCPA:

- a. Five Hundred and No/100 Dollars (\$500.00) for each violation of 47 U.S.C § 227 and 47 C.F.R. § 64.1200; and
- b. One Thousand Five Hundred and No/100 Dollars (\$1,500.00) for each such violation that was committed knowingly or willfully.

35. In addition, Plaintiff, the STATE OF TEXAS, respectfully prays that this Court adjudge against Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in the following amounts for violations of the Texas No Call Act:

- a. One Thousand and No/100 Dollars (\$1,000.00) for each violation of the Texas No Call Act; and
- b. Three Thousand and No/100 Dollars (\$3,000.00) for each such violation that was committed knowingly or willfully.

36. Plaintiff State of Texas respectfully prays that this Court adjudge against Defendant civil penalties of up to \$20,000.00 per violation of the DTPA.

37. Plaintiff State of Texas further prays that this Court order Defendants to pay all costs of Court, costs of investigation, and reasonable attorneys' fees pursuant to Tex. Gov't Code § 402.006 (c).

38. Plaintiff further prays that the Court grant all other relief to which the Plaintiff may show itself entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

BILL COBB  
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA  
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# Exhibit A

ADMINISTRATIVE OFFICES  
EXTENDED COVERAGE DIVISION  
1-866-573-7414

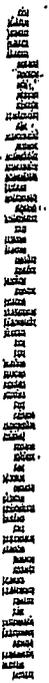
**SPECIAL INSTANT REBATE OF \$350** off the price of our extended coverage to help our customers with the overwhelming prices of gas. Offer expires by deadline date on the postcard. **Must mention rebate to the agent at the start of the call.**

PRST HRST CLASS  
US POSTAGE  
PAID  
FT. LAUDERDALE, FL  
PERMIT 792

<b>Customer ID No:</b> [REDACTED]	<b>Registered Owner:</b> [REDACTED]	<b>Status:</b> PENDING
<b>Deadline Date:</b> JANUARY 22, 2010	<b>Pre-Approval Code:</b> AP201004	<b>Vehicle Year/Make:</b> 2008 FORD

# FINAL WARRANTY NOTICE

EXPIRED VEHICLE FACTORY WARRANTY



201

James

HOUSTON, TX [REDACTED]

\*Life will be open on Jan. 18th, AM K Jr. Day's regular business hours.

# FINAL WARRANTY NOTICE

This is your **FINAL NOTICE** to extend or reinstate your bumper to bumper warranty coverage. You have been pre-selected for this exclusive program. Please call us immediately with your exact mileage and VIN # to take advantage of this **FINAL OFFER!**

- 0% Interest Free Financing
- Low Monthly Installments Available
- Coverages Available Up To 250,000 Miles

301

**\$200 DISCOUNT**  
*on first call activation!*

## 1-866-573-7414

Monday - Friday: 8 am - 9 pm CST / Saturday: 9 am - 6 pm CST



3009