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COMMON PLEAS DIVISION

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PAVAN PARIKH
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Hamilton County, Ohio
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OHIO ATTORNEY GENERAL

A 2503188

VS.

BENJAMIN HERNDON

**FILING TYPE: INITIAL FILING (OUT OF COUNTY) WITH NO JURY
DEMAND**

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EFR200

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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| STATE OF OHIO, ex rel. |) | |
| ATTORNEY GENERAL DAVE YOST |) | CASE NO. |
| Consumer Protection Section |) | JUDGE |
| 30 E. Broad St., 14 th Floor |) | |
| Columbus, Ohio 43215 |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| WEAPON X MOTORSPORTS, INC. |) | <u>COMPLAINT AND REQUEST FOR</u> |
| C/O Benjamin Herndon, Statutory Agent |) | <u>DECLARATORY AND INJUNCTIVE</u> |
| 2105A Schappelle Ln. |) | <u>RELIEF, CONSUMER DAMAGES, CIVIL</u> |
| Cincinnati, Ohio 45420 |) | <u>PENALTIES, AND OTHER APPROPRIATE</u> |
| |) | <u>RELIEF</u> |
| and |) | |
| |) | |
| BENJAMIN HERNDON |) | |
| 5762 Saddleridge Rd. |) | |
| Cincinnati, Ohio 45247 |) | |
| |) | |
| Defendants. |) | |
| |) | |

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio, Dave Yost, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq.
2. The actions of Defendants, hereinafter described, have occurred in Hamilton County as well as other counties around the State of Ohio, and are in violation of the CSPA, R.C. 1345.01 et seq., and its Substantive Rules, Ohio Adm.Code 109:4-3-01 et seq.

3. This Court has jurisdiction over the subject matter of this action pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ.R. 3(C)(1) in that Defendants reside or have their principal place of business in Hamilton County.

DEFENDANTS

5. Defendant Benjamin Herndon is an individual residing at 5762 Saddleridge Rd., Cincinnati, OH 45420.
6. Defendant Weapon X Motorsports, Inc. is an Ohio Corporation registered to do business in Ohio since August 12, 2020.
7. Defendant Weapon X Motorsports maintains a facility at 2105A Schappelle Ln., Cincinnati, Ohio 45240, which is not open to the public.
8. Defendants sell aftermarket parts and accessories for vehicles on their website www.weaponxmotorsports.com.
9. Defendants Benjamin Herndon and Weapon X Motorsports, Inc. are each a “supplier” as the term is defined in R.C. 1345.01(C) of the CSPA because, at all times relevant herein, they engaged in the business of effecting “consumer transactions,” by offering goods or services for purposes that were primarily for personal, family, or household use, as defined in R.C. 1345.01(A).

STATEMENT OF FACTS

10. Defendants offered goods and services to consumers in Ohio. Specifically, Defendants solicited, sold, and delivered aftermarket parts and accessories for motor vehicles to individuals nationwide for consumers' personal, family, or household use.
11. Defendants solicited and sold their goods to consumers in Ohio and nationwide by accepting orders placed on online storefronts, including www.weaponxmotorsports.com.
12. Often, Defendants accepted money from consumers for parts and accessories and then allowed more than eight weeks to elapse without providing the items consumers ordered.
13. When Defendants failed to deliver the items, they did not refund consumers.
14. When Defendants failed to deliver the items, they did not offer to furnish similar goods of equal or greater value.
15. When consumers contacted Defendants to inquire about the status of their order, Defendants repeatedly promised delivery and pushed the delivery date out.
16. Defendants misrepresented that consumers would receive the goods, even when Defendants knew the delivery of the goods would not be imminent.
17. In some instances, consumers waited over a year for delivery and still never received the ordered item.
18. When consumers requested to cancel their order, after months of delay, they were told that their order was nonrefundable.
19. Sometimes, Defendants accepted money from consumers for parts and accessories and then delivered the wrong item or a damaged item.
20. When consumers contacted Defendants to complain that they received the wrong item or a damaged item, Defendants failed to offer a refund or offer to furnish similar goods of equal

or greater value to the goods the consumers purchased.

21. Defendants entered into contracts with consumers which included cancellation and refund terms that were substantially one-sided in favor of the Defendants.
22. For example, consumers were permitted one business day from purchase to contact Defendants to cancellation their order or potentially not be able to cancel or receive a refund.
23. Defendants' cancellation policy gave Defendants discretion to approve or decline a consumer's request to cancel.
24. Defendants' cancellation policy reserved the right to charge consumers up to a 25% cancellation and restocking fee on non-custom-manufactured items.
25. Defendants' cancellation policy reserved the right to deny cancellation requests or charge up to a 50% cancellation and restocking fee on custom-manufactured items.
26. Defendants' cancellation policy offered no cancellation, refund, or return options on custom wheel orders, regardless of delays in delivery.
27. Defendants' refund policy reserved the right to charge consumers up to a 20% restocking fee unless the item was returned unopened in the original packaging.
28. Consumers were subject to the above cancellation policy even if the reason for cancellation was that Defendants had not delivered the product in a reasonable time frame.
29. Consumers were damaged by Defendants' conduct and many consumers filed complaints with the Ohio Attorney General or the Better Business Bureau because Defendants had not provided their items, a refund, or similar goods of equal or greater value.

PLAINTIFF'S CAUSE OF ACTION:
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT I
FAILURE TO DELIVER

30. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in each of the previous paragraphs of this Complaint.
31. Defendants have committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, Ohio Adm.Code 109:4-3-09(A), and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods and services and then permitting more than eight weeks to elapse without making shipment or delivery of the goods or services ordered, making a full refund, advising the consumers of the duration of an extended delay and then offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

COUNT II
POOR CUSTOMER SERVICE

32. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in each of the previous paragraphs of this Complaint.
33. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to properly respond to consumer complaints or provide adequate customer service.
34. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III
MISREPRESENTATION OF ORDER STATUS

35. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in

each of the previous paragraphs of this Complaint.

36. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by misrepresenting the status of consumers' orders and refunds.
37. The acts and practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT IV
LIQUIDATED DAMAGES

38. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in the preceding paragraphs of this Complaint.
39. Defendants committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), by including in their contracts a liquidated damages provision that automatically entitled the seller to damages without court proceedings.
40. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. ISSUE A DECLARATORY JUDGMENT** declaring that each act or practice complained of herein violates the CSPA, R.C. 1345.01 et seq., and its Substantive Rules, Ohio Adm.Code 109:4-3-01 et seq., in the manner set forth in the Complaint;
- B. ISSUE A PERMANENT INJUNCTION** enjoining Defendants, under these or any other names, their agents, representatives, salesmen, employees, successors or assigns, and all persons acting in concert or participation with Defendants, directly or indirectly, from

engaging in the acts or practices of which Plaintiff complains and from any further violations of the CSPA, R.C. 1345.01 et seq., or its Substantive Rules, Ohio Adm.Code 109:4-3-01 et seq;

- C. **ASSESS, FINE, AND IMPOSE** upon Defendants civil penalties of up to \$25,000.00 for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D);
- D. **ORDER** Defendants to reimburse all consumers found to have been damaged by Defendants' unlawful actions in violation of the CSPA, pursuant to R.C. 1345.07(B);
- E. **GRANT** Plaintiff its costs in bringing this action, including, but not limited to, the costs of collecting any judgment awarded;
- F. **ORDER** Defendants to pay all court costs; and
- G. **GRANT** such further relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

DAVE YOST
OHIO ATTORNEY GENERAL

/s/ Christopher Ramdeen
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