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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

DONALD PUCKETT, an Oregon resident, on
behalf of himself and all similarly situated
persons,

Plaintiff,

v.

MICHELIN NORTH AMERICA, INC., a New
York Corporation,

Defendant.

Case No.

**CLASS ACTION
ALLEGATION
COMPLAINT**

- (1) Fraud**
- (2) State Unlawful Trade
Practices, Unfair
Competition, and
False Advertising
Laws.**

JURY TRIAL DEMANDED

Plaintiff individually and on behalf of the Class described below, through counsel alleges as follows:

NATURE OF THE CASE

1. This is a proposed class action. Plaintiff, on behalf of himself and all similarly situated persons, and in the public interest brings this action seeking injunctive relief based on Defendant Michelin North America, Inc.'s ("Michelin's") acts and omissions. This includes relief for a nationwide class based on fraud, a subclass for residents of the state of Oregon for violations of Oregon's Unlawful Trade Practices law, and likely other state subclasses in the future.

2. These claims relate to misrepresentations by Defendant made to intermediate purchasers, vehicle manufacturers, and tire resellers, and on a class-wide basis to purchasers of certain models of Michelin tires and/or purchasers of new vehicles equipped with certain models of Michelin tires.

3. For each model tire, Michelin made material representations related to the tread depth, and therefore the longevity of the tire during use.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1367(a) and §1332, because: (a) plaintiff Puckett is a resident of Oregon and Defendant Michelin North America, Inc. is a New York corporation with its principal

place of business in Greenville, South Carolina and; (b) the damage claims exceed \$75,000 in the aggregate.

5. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §1332(d)(2), the “Class Action Fairness Act.” On information and belief, there are thousands of Class Members, the amount in controversy will exceed \$5,000,000. On information and belief, the sales of the tires at issue in each state of the United States are roughly in proportion to the number of vehicles in each state. Accordingly, based on the combined vehicle populations of New York and South Carolina (approximately 15 million) compared to the balance of the United States (approximately 250 million), approximately 94 percent of all sales in the United States are likely in states other than New York and South Carolina. Accordingly, substantially most of the class members likely reside in states other than New York or South Carolina. Plaintiff and most members of the Class are, therefore, citizens or residents of different states than Defendant.

6. This Court has personal jurisdiction over Defendant because it does business in the state of Oregon and this District and a substantial portion of the wrongdoing alleged in this complaint took place here. Defendant has intentionally availed itself to markets and customers in the state of Oregon and this District through the presence of marketing and promotion using locally televised advertisements, and sales of products into Oregon and this District. Defendant has

contacts with Oregon and District sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions fair play and substantial justice.

7. Venue is proper within this District pursuant to 29 U.S.C. §1391(b)(1) and (2).

THE PARTIES

8. Plaintiff / Class Representative Donald Puckett (“Puckett”) is an individual who resided in the state of Oregon and purchased one or more of the subject Michelin tires in Oregon during the applicable class period.

9. Defendant Michelin North America, Inc. (“Michelin”) is a New York corporation with its principal place of business within South Carolina.

DEFENDANT’S CONDUCT

10. During the class period, Defendant produced, among other things, tires made for passenger vehicles. These included the Michelin Pilot Super Sport, Ultra High Performance tire in various sizes (“PSS Tire”). These are marketed as ultra-high performance tires, and are standard equipment on many luxury sports cars, such as the Chevrolet Corvette, BMW, and Mercedes Benz vehicles.

11. In connection with the sales and marketing of the PSS Tires, Defendant supplies marketing and sales documents, and advertising material containing technical data and specifications for the tires (“Specification Documents”).

12. Among the representations made on the Specification Documents are figures and measurements related to tread depth on the tires.

13. Tread depth is a vertical measurement between the top of the tread rubber to the bottom of the tire's deepest grooves. In the United States, tread depth is measured in increments of one thirty second of an inch ($1/32^{\text{nd}}$ inch). Tread depth is typically measured with a tire tread depth gauge.

14. New tires used on passenger cars typically start with between $9/32''$ to $11/32''$ of original tread depth, depending on the brand and model. Tires are legally "worn out" and should be replaced in most States when they reach $2/32''$ of remaining tread depth. For example, a typical tire that starts with $10/32''$ of original tread depth has only $8/32''$ of useable tread depth. Its useable tread depth is calculated by subtracting a worn out tire's $2/32''$ from the new tire's original depth of $10/32''$.

15. The final $2/32''$ of a tire's tread depth is not part of the equation for calculating tread depth percentages because the tire is already legally worn out with just $2/32''$ of remaining tread depth. For example, a tire that started with $10/32''$ of original tread depth and has worn off $4/32''$ (down to $6/32''$ of remaining tread depth) is 50% worn, and has lost 50% of its usable tread depth.

16. A tire that starts with $10/32''$ of original tread depth has 12.5% wear (or 12.5% loss of usable tread) for each $1/32''$ that is worn away, and a tire that starts with $12/32''$ of original tread depth, has 10% wear (or 10% loss of usable tread) for each $1/32''$ that is worn away.

17. Tread depth for the tires at issue in this lawsuit, including the tires purchased by Plaintiff are consistently at least $1/32''$ less than the tread depth

represented by Defendant Michelin in its Specification Documents. Because of that, Plaintiff and Class Members have received approximately 10% to 12.5% less tread depth and usable tread, and therefore an equivalent reduction in tire mileage, use, and value compared to the same tire with tread depth as actually represented by Defendant,

18. The misrepresentations contained in Michelin's Specification Documents - the variation between published figures for tread depth and actual tread depth of the PSS tires - have been consistent throughout the class period.

INDIVIDUAL ALLEGATIONS

Puckett

19. At all times relevant to this action, Plaintiff / Representative Puckett was an Oregon resident. Within the class period, Puckett purchased a General Motors, Chevrolet Division Corvette with Michelin PSS tires.

20. Soon after purchasing the Corvette, and before any measurable wear occurred to its tires, Puckett checked the tread depth of the Michelin tires, and discovered that the tread depth was 1/32 inch less than the figure set forth in the Specification Documents and other representations made by Defendant about the tires. Puckett then checked a number of other Michelin PSS tires, and discovered that each was similarly deficient in tread depth.

CLASS ALLEGATIONS

21. Plaintiff / Class Representative Puckett brings this action for himself, and on behalf of all similarly situated persons who purchased any Michelin PSS tire and any other Michelin tire within the United States with overstated tread depth, and any Subclass States as the Court may determine appropriate for class certification treatment pursuant to Federal Rules of Civil Procedure 23(a) and 23(b).

22. The Class of persons that Plaintiffs seek to represent are initially defined as:

(a) The “Nationwide Class” defined as:

all persons who, at any time during the applicable class period purchased Michelin PSS tire and any other Michelin tire within the United States with overstated tread depth.

(c) The “Oregon Subclass” defined as:

all Oregon residents who, at any time during the applicable class period purchased Michelin PSS tire and any other Michelin tire within the United States with overstated tread depth

23. Excluded from participation in this class action are: (a) any Defendant, person, firm, trust, corporation, officer, director, or other individual or entity in which Defendant has a controlling interest or which is related to or affiliated with Defendant, and any current employee of Defendant; (b) all persons who make a timely election to be excluded from the proposed Class; (c) the judge(s) whom this case is assigned

and any immediate family members thereof; and (d) the legal representatives, heirs, successors-in-interest or assigns of any excluded party.

24. Plaintiffs' fraud claim is appropriate for class-wide certification and treatment because each class representative can prove the elements of their claim on a class-wide basis using the same evidence that would be used to prove those elements in individual actions alleging the same claims.

25. Plaintiffs' claims based on Oregon state law are appropriate for class-wide certification and treatment on a nationwide basis because each class representative can prove the elements of their claim on a class-wide basis using the same evidence that would be used to prove those elements in individual actions alleging the same claims.

26. Numerosity Under Rule 23(a)(1). Members of the nationwide Class are so numerous that joinder of all members individually into one action, or into individual state-subclass actions, or otherwise, is impractical. On information and belief, the nationwide Class consists of substantially more than 5,000 members.

27. Commonality and Predominance under Rule 23(a)(2) and (b)(3). Common questions of law and fact are shared by Plaintiffs and members of the nationwide Class which predominate over any individual issues.

28. Common issues of law and fact as to the Nationwide class include:

- a. Did Defendant make a material misrepresentation regarding the specifications or characteristics of its Michelin PSS and other tires?
- b. What is the proper measure of damages caused by Defendant's conduct?
- c. Is injunctive / equitable relief appropriate?

29. For the Oregon State Subclass common questions of law and fact include each of the above common questions of law and fact applicable to the Nationwide Class, and in addition:

- a. Did Defendant violate ORS §646.608(e) by representing that goods have characteristics, benefits, quantities or qualities that the goods do not have?
- b. Did Defendant violate ORS §646.608(g) by representing that goods are of a particular standard, quality, or grade, if the goods or services are of another.
- c. Should the court grant equitable relief under ORS §646.638(8)(c)?;
- d. What types of equitable relief are appropriate under Oregon law?
- e. Was notice to Defendant required under ORCP 32H, and if so, was proper notice provided by the representative of the Oregon Subclass?

- f. Were Defendant's violations of ORS 646.608 reckless or through knowing use or employment of a method, act, or practice declared unlawful by ORS §646.608?
- g. Are Puckett and Oregon State Subclass Members entitled to an award of actual damages or statutory damages of \$200 for each violation under ORS §646.638(8)(a)?
- h. What is the amount of actual damages per violation?
- i. Are punitive damages appropriate against Defendant pursuant to ORS §646.638(8)(b)?
- j. If punitive damages are appropriate, what is the proper amount?

30. Each of the Puckett's claims are typical of the claims of the members of the Nationwide Class. Each Nationwide Class claim arises from the same type events, practices, and course of conduct by Defendant – misrepresentations related to the tread depth of its Michelin PSS tires. The legal theories asserted by Puckett are the same as the legal theories that will be asserted on behalf of the Nationwide Class -- money damage claims for fraud.

31. Each of Puckett's claims are typical of the claims other members of that State Subclass. Each state statutory law claim arises from the same type events, practices, and course of conduct by Defendant -- misrepresentations related to the tread depth of its Michelin PSS tires. The legal theories asserted by Puckett are the same as the legal theories that will be asserted on behalf of the other members of the

Oregon State Subclass – i.e. claims based on Oregon’s consumer protection statutes.

32. Plaintiff / Class Representative Puckett is willing and prepared to serve the Court and proposed Nationwide Class and the Oregon State Subclass in a representative capacity with all of the required material obligations and duties. Plaintiff will fairly and adequately protect the interests of the Nationwide Class, and the Oregon State Subclass, and has no interests adverse to or which directly or irrevocably conflict with the other members of the Nationwide Class or the Oregon State Subclass.

33. The self-interests of Plaintiff / Class Representative Puckett is co-extensive with, and not antagonistic to those of the absent members of the Nationwide Class and members of the Oregon State Subclass. Puckett will represent and protect the interests of the absent Nationwide Class, and the Oregon State Subclass.

34. Plaintiffs have engaged the services of the following counsel and law firms: Rick Klingbeil, PC; Robert Curtis and Foley Bezek Behle & Curtis, LLP; and Brady Mertz, PC. Counsel are experienced in litigation, complex litigation, and class action cases, and will protect the rights of and otherwise effectively represent the named class representatives, absent Nationwide Class Members, and Oregon State Subclass.

35. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. The operative facts relating to Plaintiff and members of the Nationwide Class and Oregon State Subclass are the same, the damages suffered by individual Class and Subclass Members are relatively small, the expense and burden of individual litigation makes it inefficient and ineffective for members of the Class and Subclass to individually redress the wrongs done to them, and proceeding as a class action will resolve thousands of claims in a manner that is fair to Defendant and Class / Subclass Members. There will be no difficulty in the management of this case as a class action with a Nationwide class consisting of members from 50 states, and Oregon State Subclass consisting of members from Oregon.

36. Class Members may be notified of the pendency of this action by several means, including notice on promotional websites and social media related vehicle and tire sales, directly based information provided to Defendant through its product registration system (<http://www.michelinman.com/US/en/register.html>), directly based on information provided to Defendant through its online sales system (<https://shop.michelinman.com/>), and if deemed necessary or appropriate by the Court, through published notice.

37. Further, upon information and belief, Michelin recorded details about retail distributors of its tires, and purchases and resale of its tires by vehicle manufactures, and many of the individual purchasers in an electronic form, which

provides a direct method of notifying a substantial percentage of Nationwide Class and Oregon State Subclass Members.

38. The prosecution of separate actions by individual Class and Subclass Members would create a risk of inconsistent or varying adjudications with respect to individual members, which would establish incompatible standards of conduct for Defendant. Defendant has acted on grounds that apply generally to the nationwide Class and the Oregon State Subclass making equitable relief and damages appropriate to the Class as a whole.

FIRST CLAIM FOR RELIEF

(Nationwide Class)

(Intentional Fraud / Deceit)

39. On behalf of himself and the Members of the Nationwide Class, Plaintiff / Class Representative Puckett realleges paragraphs 1 through 38, and further alleges:

40. Defendant represented to tire dealerships, vehicle manufacturers, resellers, Plaintiff, and to each Class Member that its Michelin PSS tires had a certain tread depth.

41. Defendant's misrepresentation was material because the information bears directly on: (1) the tire's position within the marketplace and desirability when compared to other competing tires, (2) the typical price charged for the tire, and (3) the expected longevity and durability of the tire.

42. Defendant knew or reasonably should have known that its representations concerning the tread depth of its Michelin PSS tires was false.

43. Defendant intended that its misrepresentation regarding the Michelin PSS tires be acted on and/or relied upon by tire dealerships and vehicle manufacturers, resellers, and by Plaintiff and by Members of the Nationwide Class.

44. Plaintiff and Members of the Nationwide Class were not aware of the variation between the stated and actual tread depth, and reasonably relied on the truth of Defendant's misrepresentations.

45. As a direct and proximate result Plaintiff and Members of the Nationwide Class suffered an ascertainable loss of money.

46. Puckett and each Member of the Nationwide Class is entitled to injunctive relief as necessary to cause Defendant to stop all fraudulent conduct associated with the sales of its Michelin PSS tires.

47. Plaintiff / Class Representative Puckett hereby gives notice that if Defendant does not take timely remedial or curative action in accordance with Oregon Rules of Civil Procedure 32(H) and (I), he intends to amend this Complaint to add claims for actual damages consisting of the difference between the value of the Michelin PSS tire as specified and as supplied, and for costs and reasonable attorney fees incurred in bringing this lawsuit

SECOND CLAIM FOR RELIEF

(Oregon State Subclass)

(ORS §646.608 - Unlawful Trade Practices)

48. On behalf of himself and members of the Oregon State Subclass, Plaintiff / Oregon State Subclass Representative Puckett realleges paragraphs 1 through 38, and further alleges:

49. Defendant violated:

- a. ORS §646.608(e) by representing that goods had characteristics, benefits, quantities or qualities that the goods did not have;
- b. ORS §646.608(g) by representing that goods were of a particular standard, quality, or grade, when the goods or services were of another.

50. Subclass Representative Puckett and each Member of the Oregon State Subclass are entitled to injunctive relief to prevent future violations of ORS §646.608.

51. Plaintiff / Class Representative Puckett hereby gives notice that if Defendant does not take timely remedial or curative action in accordance with Oregon Rules of Civil Procedure 32(H) and (I), he intends to amend this Complaint to add damage claims for each violation of ORS §646.608 consisting of award of actual damages based on the difference between the value of the Michelin PSS tire as specified and as supplied or statutory damages pursuant to ORS §646.638(1); for reasonable attorney fees incurred in bringing this lawsuit pursuant to ORS §646.638(3) and ORCP 32M; for reimbursement of the reasonable costs,

disbursements, and litigation expenses necessary to obtain relief under ORS §646.608 pursuant to ORCP 32M; and for punitive damages against Defendant in an amount to be determined by the jury, but sufficient to prevent the same or similar conduct by Defendant and others in the future, pursuant to ORS §646.638(1).

REQUEST FOR RELIEF

Case Management

52. On behalf of himself, the Nationwide Class, the Oregon State Subclass, and any future Subclasses, Plaintiff / Class and Subclass Representative Puckett seeks an Order from this Court:

- a. Certifying this action as a class action as set forth above, or as a class action or issue class as otherwise deemed appropriate by the Court pursuant to a Motion to Certify Class Action to be filed by Plaintiff in this case;
- b. Appointing Plaintiff Puckett as Representative for the Nationwide Class and the Oregon State Subclass.
- c. Approving counsel listed herein as class counsel for the Nationwide Class and the Oregon State Subclasses, and any future State Subclasses.
- d. Setting a trial by jury for all issues so triable.

Damages

Nationwide Class – Fraud Claims

(First Claim for Relief)

- 1) Injunctive relief requiring Defendant to cease all fraudulent conduct.

State of Oregon Subclass – Oregon Statutory Claims

(Second Claim for Relief)

- 1) Injunctive relief as necessary to prevent future violations of ORS §646.608.

Dated: January 13, 2017.

Rick Klingbeil, PC

/s/ Rick Klingbeil

Rick Klingbeil, OSB #933326
107 SE Washington St., Ste. 233
Portland, Oregon 97214
O: 503-473-8565
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rick@klingbeil-law.com

Additional Attorneys:

Brady Mertz, OSB #970814
Robert Curtis, Foley Bezek Behle & Curtis, LLP
Kevin D. Gamarnik, Foley Bezek Behle & Curtis, LLP

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Donald Puckett

(b) County of Residence of First Listed Plaintiff Columbia County, OR
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rick Klingbeil, 107 SE Washinton St., #233, Portland, OR 97214
503-490-6763; Brady Mertz, 345 Lincoln St., SE, Salem, OR 97302

DEFENDANTS

Michelin North America, Inc.

County of Residence of First Listed Defendant Greenville County, SC
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1367(a) and 1332

Brief description of cause:
Class Action alleging consumer fraud for national class, and Unlawful Trade Practices under state law.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** 0.00 **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 01/13/2017 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon



DONALD PUCKETT, an individual on behalf of himself and a class of similarly situated persons,

Plaintiff(s)

v.

MICHELIN NORTH AMERICA, INC., a New York Corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MICHELIN NORTH AMERICA, INC. c/o CT CORPORATION SYSTEM 111 EIGHTH AVENUE NEW YORK, NEW YORK, 10011

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

RICK KLINGBEIL RICK KLINGBEIL, PC 107 SE WASHINGTON ST., #233 PORTLAND, OR 97214

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
District of Oregon



DON PUCKETT, and individual,)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
MICHELIN NORTH AMERICA, INC.)	
<i>Defendant</i>)	

WAIVER OF THE SERVICE OF SUMMONS

To: Rick Klingbeil
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 01/20/2017, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 01/13/2017

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.