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25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

26 **COUNTY OF SAN DIEGO**

27 BRIAN JEFFERY FRATILLA a/k/a JEFF
28 FRATILLA, BOB FRANCHINO, and ROES 2
through 10, individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

BIG O TIRES LLC, a Nevada corporation, and
DOES 1 through 130,

Defendants.

Case No.: 37-2013-00028542-CU-BT-CTL

CLASS ACTION (Plaintiff Class)
[Cal. Code Civ. Proc. § 382, Cal. Bus. Prof.
Code § 17203, Cal. Civ. Code § 1781]

**THIRD AMENDED COMPLAINT FOR
DAMAGES AND EQUITABLE RELIEF**

1. Unfair Competition (Cal. Bus. Prof.
Code §§ 17200, *et seq.*)
2. Consumer Legal Remedies Act (Cal.
Civ. Code §§ 1750, *et seq.*)

1 Plaintiffs, by and through their attorneys, allege as follows:

2 **THE PARTIES**

3 1. Plaintiffs Brian Jeffrey Fratilla a/k/a Jeff Fratilla and Bob Franchino are individuals.
4 Plaintiffs are citizens of the State of California. Plaintiffs bring this action on their own behalf and
5 as class representatives of all others similarly situated, pursuant to Cal. Code Civ. Proc. § 382, Cal.
6 Bus. Prof. Code § 17203, and Cal. Civ. Code. § 1781. Plaintiff Bob Franchino was formerly named
7 as ROE 1 and is hereby substituted for ROE 1 as an additional class representative.

8 2. Plaintiffs ROES 2 through 10 are citizens of the State of California, who, though not
9 yet identified, are similarly situated to the above-named plaintiff and may serve as additional class
10 representatives. The true names of plaintiffs ROES 2 through 10 will be added to this Complaint
11 when their identities become known.

12 3. Defendant Big O Tires LLC ("**Big O**") is, upon information and belief, a Nevada
13 corporation doing business in the State of California. Upon information and belief, defendant Big
14 O does business as, *inter alia*, CA Big O Tires E06 / Big O Tires Store No. 005782 and CA Big O
15 Tires B46 / Big O Tires Store No. 5816. Upon information and belief, Big O both operates retail
16 locations and has numerous franchisees in the State of California. As used herein, the term "Big O"
17 does not include defendant Big O's franchisees, whose conduct is beyond the scope of the claims
18 asserted herein.

19 4. Upon information and belief, defendants DOES 1 through 130, inclusive, are
20 individuals, corporations, limited liability companies, general partnerships, limited partnerships,
21 limited liability partnerships, trusts, unincorporated associations, and/or other entities of any kind or
22 character, that have incurred liability to any one or more of the plaintiffs (and/or to any one or more
23 members of the Plaintiff Class) in relation to the transactions and/or occurrences which are the
24 subject of this Complaint, and/or have any interest in the subject of this Complaint. Plaintiffs are
25 currently unaware of the true names, capacities, and nature and extent of participation in the course
26 of conduct alleged herein of the persons sued as DOES 1 through 130. Plaintiffs are currently
27 unaware of the nature and extent of any interest which the persons sued as DOES 1 through 130,

1 inclusive, may have in the subject of this Complaint. Plaintiffs, therefore, sue these defendants by
2 such fictitious names. Plaintiffs will amend this Complaint to allege the true names and capacities
3 of defendants DOES 1 through 130 when ascertained.

4 JURISDICTION AND VENUE

5 5. This Court has jurisdiction over this action because plaintiffs bring action under the
6 laws of the State of California, plaintiffs request equitable relief, and the monies sought to be
7 recovered by plaintiffs total in excess of the jurisdictional minimum of this Court.

8 6. This Court has jurisdiction over defendants because defendants reside, do business in,
9 and/or otherwise have the requisite minimum contacts with the State of California to support
10 jurisdiction. The Court further has jurisdiction over defendant Big O because it is registered with the
11 California Secretary of State to conduct business in the State of California.

12 7. Venue is proper in this Court pursuant to Cal. Code Civ. Proc. § 395.5.

13 CLASS ALLEGATIONS

14 8. Defendant Big O's business includes, but is not limited to, the sale of tires at numerous
15 retail locations throughout California. Defendant Big O routinely sells new tires to California
16 residents and consumers.

17 9. Upon the sale of a new tire that is not a proprietary Big O brand, defendant Big O
18 offers for sale a service contract entitled "Tire Protection Plan" (the "TPP"). The TPP appears on
19 the back of defendant Big O's invoices. A true and correct copy of a Big O invoice, including the
20 TPP, is attached hereto as Attachment A. Upon information and belief, Attachment A is
21 representative of the invoice and TPP utilized by defendant Big O since at least January of 2009.

22 10. The TPP includes the following:
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1 **Option Tire Protection Package (TPP)**

2 **Optional 3-Year Full Free Repair or Replacement Warranty:** If
3 purchased separately along with your new non-Big O brand tire, or to
4 provide warranty coverage on any new replacement tire, and noted on the
5 front of the documentation attached hereto, any such tire that becomes
6 unserviceable within three (3) years of the purchase or replacement date
7 due to defects in workmanship or materials or a road hazard will be
8 repaired or replaced free of charge (subject to the General Conditions and
9 Limitations) at any Big O Tires, Tire Kingdom, Merchant's Tire, or NTB
10 store. If you receive a replacement tire under the terms of this warranty,
11 the replacement tire will be covered by the warranty Big O Tires, Tire
12 Kingdom, Merchant's Tire or NTB gives that tire. The Tire Protection
13 Plan (TPP) will need to be purchased separately to cover the replacement
14 tire.

15 **Limited Lifetime Prorated Repair or Replacement:** After the (3) three year
16 free repair or replacement period has expired, any such tire that fails due
17 to defects in workmanship or materials or a road hazard will be replaced
18 with any equivalent new tire of the same or comparable brand at the then
19 current retail price, including applicable taxes, less an allowance based on
20 the remaining useful life of the tire at the time of its damage or failure
21 (subject to the General Conditions and Limitations). For example: 50%
22 usable tread remaining times the then current retail price of \$50 equals an
23 allowance of \$25.

24 **Service Package -** In addition to warranty coverage above, this optional
25 Tire Protection Plan proves you with the following:

- 26 * Free rotation and rebalance every 5000 miles for the useful life of
27 the tire
- 28 * Free flat repair of the useful life of the tire
- * Roadside Assistance Service for 3-years (1-800-351-8545)

See Attachment A.

11. The TPP also may incorporate additional terms contained on the reverse side of
defendant Big O's invoices, including, *inter alia*, the following exclusions:

 Limitations and Exclusions - The above warranties apply only to tires
purchased from Big O Tires. The do not apply to any replacement tires
installed under this warranty.

 The above warranties do not cover incidental or consequential damage
of any kind, including damages for loss of time, inconvenience, loss of
use of vehicle, towing charges and replacement transportation costs. If
the same tire is not available or has been discontinued, a suitable
replacement tire will be substituted.

Any liability is limited to repairing or replacing the tire at a Big O Tires, Tire Kingdom, Merchant's Tire or NTB store in accordance with the terms set forth above. Tires that become unserviceable due to accident, abuse, neglect, fire, theft, chain damage, vandalism, racing, aftermarket siping, improper balance or alignment (uneven or irregular wear), lack of or improper rotation, improper repair, improper inflation pressure, repairable punctures, overloading, flat spots as a result of panic stops, vehicle obstruction and similar types of damage are excluded from warranties set forth above. Ozone or weather cracking (superficial cracking) will not be covered by warranty after five (5) years from the date of purchase or for the mileage or time period specified on the front of the invoice or on the documentation attached hereto, whichever comes first. No adjustments or replacements for problems of appearance shall apply after 90 days from date of purchase. No adjustments or replacements for ride disturbance shall apply after the first 2/32nds of an inch of tread wear. ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. Some states do not allow the exclusion or limitation of incidental or consequential damages or disclaimer of implied warranties, so these exclusions or disclaimers may not apply to you. All Big O Tires warranties provide specific legal rights, and there may be other rights, which vary from state to state.

Nitrogen Filled Tires - Not all Big O Tires, Tire Kingdom, Merchant's Tire or NTB store have the equipment to inflate a tire with nitrogen. The above warranties do not cover the inflating of tires with nitrogen.

See Attachment A.

12. In addition, defendant Big O's website contains the following statement of the TPP:

OPTIONAL TIRE PROTECTION PLAN (TPP): AVAILABLE FOR PURCHASE WITH ANY NEW NON-BIG O BRAND TIRE THAT BIG O SELLS

- 3-Year Full Free Repair or Replacement Road Hazard Warranty
- 3-Year Full Free Replacement Materials and Workmanship Warranty
- 3-Year 24/7 Roadside Assistance
- Free Tire Rotation Every 5,000 Miles for the Life of the Tire*
- Free Rebalance Every 5,000 Miles for the Life of the Tire*
- Free Flat Repair Coverage for the Life of the Tire*
- After 3-year free period expires, Prorated Repair or Replacement Warranty for Road Hazards or Materials and Workmanship for the Life of the Tire up to six (6) years*

* "Life of the tire" means more than 2/32nds of an inch remaining tread groove depth or six (6) years from the date of original tire purchase, whichever comes first. At 2/32nds of an inch of remaining tread groove depth or six years from the date of the original tire purchase, whichever occurs first, the tire is considered worn out and no longer warranted. Big O Tires Warranties are honored at all Big O Tires stores and

1 all Tire Kingdom, Merchant's and NTB locations.

2 A true and correct copy of the referenced page from defendant Big O's website is attached hereto as
3 **Attachment B.**

4 13. The TPP constitutes a "vehicle service contract" under Cal. Ins. Code
5 §12800(c)(4)(A), because it is "an agreement that promises the repair or replacement of a tire or
6 wheel necessitated by wear and tear, defect, or damage caused by a road hazard."

7 14. Defendant Big O is an "obligor" under Cal. Ins. Code §12800(c)(4)(A), because it is
8 "legally obligated under the terms of a service contract."

9 15. Pursuant to Cal. Ins. Code § 12830, an obligor under a vehicle service contract must
10 file with the Commissioner of Insurance, and receive the Commissioner's approval to use, a copy of
11 an insurance policy covering 100 percent of the obligor's vehicle service contract obligations, and
12 said policy must meet the requirements of Cal. Ins. Code § 12830. Pursuant to Cal. Ins. Code §
13 12836, in lieu of complying with Cal. Ins. Code § 12830, an obligor or its parent company may
14 establish to the Commissioner's satisfaction that it possesses a net worth of one hundred million
15 dollars (\$100,000,000).

16 16. The TPP violates numerous subdivisions of Cal. Ins. Code § 12820, which, *inter alia*,
17 sets forth requirements for vehicle service contracts. Said violations of Cal. Ins. Code § 12820 may
18 not be limited to those set forth herein, and plaintiffs reserve the right to amend this Complaint upon
19 the discovery of further violations.

20 17. The TPP violates Cal. Ins. Code § 12820(b)(1), because it fails to set forth the
21 disclosure required when the obligor has complied with either Cal. Ins. Code § 12830 or Cal. Ins.
22 Code § 12836.

23 18. The TPP violates Cal. Ins. Code § 12820(b)(2), because any language therein that
24 excludes coverage, or imposes duties upon the purchaser, is not conspicuously printed in boldface
25 type no smaller than the surrounding type.

26 19. The TPP violates Cal. Ins. Code § 12820(b)(3)(A), because it does not state "the
27 obligor's full corporate name or a fictitious name approved by the commissioner, the obligor's
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1 mailing address, the obligor's telephone number, and the obligor's vehicle service contract provider
2 license number."

3 20. The TPP violates Cal. Ins. Code § 12820(b)(3)(B), because it does not "state the name
4 of the purchaser and the name of the seller."

5 21. The TPP violates Cal. Ins. Code § 12820(b)(3)(C), because it does not
6 "[c]onspicuously state the vehicle service contract's purchase price."

7 22. The TPP violates Cal. Ins. Code § 12820(b)(3)(D), because it does not comply with
8 Cal. Civ. Code § 1794.4 and Cal. Civ. Code § 1794.41, which set forth requirements for vehicle
9 service contracts. Said failures to comply with Sections 1794.4 and 1794.41 may not be limited to
10 those set forth herein, and plaintiffs reserve the right to amend this Complaint upon the discovery of
11 further violations.

12 23. The TPP violates Cal. Civ. Code § 1794.4(c)(1), because it does not contain a "clear
13 description and identification of the covered product."

14 24. The TPP violates Cal. Civ. Code § 1794.4(c)(5), because it does not contain a "step-
15 by-step explanation of the procedure that the buyer should follow in order to obtain performance of
16 any obligation under the service contract", including, but not limited to, the full legal and business
17 name of the service contractor, the mailing address of the service contractor, the person or class of
18 persons authorized to perform service, the method of giving notice to the service contractor of the
19 need for service, whether the cost of transporting the product for service or repairs will be paid by
20 the service contractor, the place where the product may be delivered for service or repairs or a toll-
21 free telephone number the buyer may call to obtain that information, and all fees, charges and other
22 costs that the buyer must pay to obtain service.

23 25. The TPP violates Cal. Civ. Code § 1794.4(c)(7), because it does not contain a
24 "description of any right to cancel the contract if the buyer returns the product or the product is sold,
25 lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement
26 of the fact."
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1 26. The TPP violates Cal. Civ. Code § 1794.41(a)(1), because it does not contain the
2 disclosures specified in Cal. Civ. Code § 1794.4 and, further, does not disclose, in the manner
3 described in Cal. Civ. Code § 1794.4, the buyer's cancellation and refund rights provided by Cal. Civ.
4 Code § 1794.41, including that the TPP may be cancelled by the purchaser within the first sixty (60)
5 days after receipt of the contract.

6 27. The business practice of selling the TPP, which violates Cal. Ins. Code § 12820, Cal.
7 Civ. Code § 1794.4, and Cal. Civ. Code § 1794.41, all as set forth above, constitutes unfair
8 competition under Cal. Bus. Prof. Code §§ 17200, *et seq.*, because, *inter alia*, said business practice
9 is unlawful and unfair.

10 28. The business practice of selling the TPP without making all of the disclosures required
11 by law, as set forth above, constitutes unfair competition under Cal. Bus. Prof. Code §§ 17200, *et*
12 *seq.*, because, *inter alia*, said business practice is unlawful, fraudulent and unfair.

13 29. The business practice of selling the TPP, which violates Cal. Ins. Code § 12820, Cal.
14 Civ. Code § 1794.4, and Cal. Civ. Code § 1794.41, all as set forth above, violates the Consumer
15 Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, through, *inter alia*, (1) inserting unconscionable
16 provisions in contracts, and (2) representing that transactions involve rights, remedies or obligations
17 which they do not have or involve, or which are prohibited by law.

18 30. The business practice of selling the TPP without making all of the disclosures required
19 by law, as set forth above, violates the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et*
20 *seq.*, because, *inter alia*, it (1) represents that a transaction confers or involves rights, remedies or
21 obligations which it does not have or involve, or which are prohibited by law, (2) represents that
22 goods or services have characteristics, ingredients, uses, benefits or qualities which they do not have,
23 and (3) represents that goods or services are of a particular standard, quality or grade when they are
24 actually of another.

25 31. Regardless of whether or not a consumer purchases the TPP, all new tires purchased
26 from Big O that are not a proprietary Big O brand come with a "Service Package" that includes: (1)
27 "Free rotation every 5,000 miles for the useful life of the tire"; and (2) "Free flat repair for the useful
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1 life of the tire”.

2 32. Regardless of whether or not a consumer purchases the TPP, all new tires purchased
3 from Big O that are not a proprietary Big O brand are warranted against failure due to defects in
4 workmanship or materials down to 2/32nds of an inch remaining tread groove depth and Big O is
5 obligated to honor such coverage.

6 33. Big O misleads consumers regarding the benefits allegedly conferred upon them by
7 virtue of their purchase of the TPP. In addition to its failure to provide adequate notice and legally
8 required disclosures under Cal. Ins. Code § 12820, Cal. Civ. Code § 1794.4, and Cal. Civ. Code §
9 1794.41, as set forth above, Big O, *inter alia*: (1) misrepresents that the TPP provides consumers with
10 free tire rotations, when, in actuality, Big O is obligated to provide free tire rotations to all of its new
11 tire customers regardless of their purchase of the TPP; (2) misrepresents that the TPP provides
12 consumers with free flat repair, when, in actuality, Big O is obligated to provide free flat repair to all
13 of its new tire customers regardless of their purchase of the TPP; (3) misrepresents that the TPP
14 provides consumers with a warranty against defects in workmanship and materials, when, in
15 actuality, all new tires sold by Big O are already covered by a warranty against such defects; and (4)
16 fails to provide the terms and numerous limitations of its “Roadside Assistance Service” along with
17 the TPP itself, which “Roadside Assistance Service” has little, if any, value to the consumer.

18 34. Big O uniformly and systematically trains its employees and franchisees to emphasize
19 the supposed “benefits” of the TPP that, in reality, are not provided by the TPP at all. For example,
20 and not by way of limitation, Big O’s training documents teach salespeople to focus on the free flat
21 repair and free tire rotation supposedly provided by the TPP, when, in actuality, Big O is obligated
22 to provide free flat repair and free tire rotations to all of its new tire customers regardless of their
23 purchase of the TPP.

24 35. The business practice of misleading consumers regarding the benefits allegedly
25 conferred upon them by virtue of their purchase of the TPP, as set forth above, constitutes unfair
26 competition under Cal. Bus. Prof. Code §§ 17200, *et seq.*, because, *inter alia*, said business practice
27 is unlawful, fraudulent and unfair.

1 36. The matters alleged in Paragraphs 8 through 35 are equally applicable to thousands
2 of Californians who have purchased the TPP. Such matters arise out of defendant Big O's regular
3 standardized business practices and transactional documents applicable to all members of the public
4 who purchased the TPP.

5 37. Plaintiffs bring this action, pursuant to Cal. Code Civ. Proc. § 382, Cal. Bus. Prof.
6 Code § 17203, and Cal. Civ. Code. § 1781, on behalf of themselves and all others similarly situated.
7 The proposed class is defined as: **All persons who are citizens of the State of California and who,**
8 **at any time after January 2, 2009, purchased the TPP from defendant Big O (the "Plaintiff**
9 **Class").**

10 38. This action may properly be brought and maintained as a class action:

11 a. **Ascertainability:** The Plaintiff class, as defined above, is easily
12 ascertainable;

13 b. **Numerosity:** Plaintiffs are currently unaware of the exact number of persons
14 in the Plaintiff Class, but are informed and believe that defendant Big O has sold over
15 280,000 unlawful TPP plans to members of the Plaintiff Class for over \$4,500,000,
16 and that the Plaintiff Class is sufficiently numerous to satisfy the requirements for a
17 class action;

18 c. **Community of Interest:** The question of whether defendant Big O's business
19 acts and practices violate the law, as set forth herein, is one of a common or general
20 interest, and there is a well-defined community of interest between the members of
21 the Plaintiff Class;

22 d. **Common Questions Predominate:** Common questions of law and fact exist
23 as to all members of the Plaintiff Class and predominate over any questions which
24 affect only individual members of the class. These common questions of law and fact
25 include, without limitation:

26 (i) Whether the TPP satisfies the requirements of applicable law,
27 including Cal. Ins. Code § 12820, Cal. Civ. Code § 1794.4 and Cal. Civ.
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Code § 1794.41. Discovery has indicated that the terms of the TPP did not change from January 2, 2009 to the present;

(ii) Whether defendant Big O has either the insurance required by Cal. Ins. Code § 12830 or the net worth required by Cal. Ins. Code § 12836 to sell the TPP, which discovery thus far has indicated it does not;

(iii) Whether the TPP's failures to make disclosures required by Cal. Ins. Code § 12820, Cal. Civ. Code § 1794.4 and Cal. Civ. Code § 1794.41 constitute false representations under Cal. Bus. Prof. Code §§ 17200, *et seq.*, and Cal. Civ. Code §§ 1750, *et seq.*;

(iv) Whether defendant Big O's business practices regarding its sale of the TPP, including, *inter alia*, the terms of the TPP itself, mislead consumers regarding the benefits allegedly conferred upon them by virtue of their purchase of the TPP or otherwise violate Cal. Bus. Prof. Code §§ 17200, *et seq.*; and

(v) The appropriate nature of class-wide relief.

e. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Plaintiff Class. Upon information and belief, plaintiffs and each member of the Plaintiff Class sustained injuries and damages arising out of defendant Big O's common course of conduct in violation of law, as set forth herein, and said injuries and damages of each member of the Plaintiff Class were caused directly by defendant's violations of law.

f. **Adequacy of Representation:** Plaintiffs will fairly and adequately protect the interest of the members of the Plaintiff Class. Upon information and belief, plaintiffs do not have any interests which are adverse to the interests of absent class members.

g. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy, because, *inter alia*: (1) Individual

1 joinder of all members of the class is impracticable; (2) The cost to the courts of
2 adjudicating the claims of each member of the Plaintiff Class individually would be
3 substantial; (3) Individualized litigation would present the potential for inconsistent
4 or contradictory judgments; (4) The expense and burden of individual litigation might
5 make it difficult or impossible for individual members of the class to redress the
6 wrongs done to them; and (5) Important public interests will be served by addressing
7 the matter as a class action, namely the protection of consumers and defendants'
8 compliance with the law in selling the TPP to the public.

9 39. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
10 management of this action that would preclude its maintenance as a class action.

11 40. On July 15, 2013, plaintiff Fratilla, on his own behalf and on behalf of all members
12 of the Plaintiff Class, issued a notice and demand to defendant Big O, which set forth defendant's
13 violations of law and demanded immediate remedial action (the "**Notice and Demand**"). The Notice
14 and Demand was sent via certified mail with return receipt requested, and complied in all respects
15 with Cal. Civ. Code § 1782(a). A true and correct copy of the Notice and Demand is attached hereto
16 as "**Attachment C**".

17 41. Defendant Big O responded to the Notice and Demand on August 14, 2013 (the
18 "**Response**"). The Response does not identify any "appropriate correction, repair, replacement or
19 other remedy" given or agreed to be given to plaintiff or the Plaintiff Class, as required by Cal. Civ.
20 Code § 1782(b). As of the date of this Complaint, no such correction, repair, replacement or other
21 remedy has been given or agreed to be given to plaintiff or the Plaintiff Class. Upon information and
22 belief, defendant Big O has failed to take any of the remedial actions set forth in Cal. Civ. Code §
23 1782(c).

24 **FIRST CAUSE OF ACTION**
25 **(Unfair Competition)**
(Cal. Bus. Prof. Code §§ 17200 *et seq.*)

26 42. Plaintiffs incorporate by reference the allegations set forth in Paragraphs 1 through
27 41 of this Complaint as though fully set forth in this cause of action.

43. Plaintiffs bring this cause of action against defendant Big O.

44. Plaintiff Jeff Fratilla purchased tires from defendant Big O (doing business as Big O Tires Store No. 005782) in San Diego County on June 5, 2012. As part of the transaction, plaintiff Fratilla was charged for the TPP, which appeared on the invoice as "ServiceCentralRoadHazard." Plaintiff Fratilla purchased tires and the TPP from defendant Big O for personal, family, or household purposes. A true and correct copy of defendant Big O's invoice to plaintiff Fratilla, which includes the TPP on the back of Page 2, is attached as Attachment A.

45. Plaintiff Bob Franchino purchased tires from defendant Big O (doing business as Big O Tires Store No. 005816) in Orange County on December 5, 2012 and March 23, 2013. As part of the transactions, plaintiff Franchino was charged for the TPP, which appeared on the invoices as "ServiceCentralRoadHazard." Plaintiff Franchino purchased tires and the TPP from defendant Big O for personal, family, or household purposes. A true and correct copy of the front pages of defendant Big O's invoices to plaintiff Franchino are attached hereto as Attachment D and Attachment E.

46. Upon information and belief, thousands of California citizens purchased tires from defendant Big O and were charged for the TPP.

47. Cal. Bus. Prof. Code § 17200 defines "unfair competition" to mean and include "any unlawful, unfair or fraudulent business act or practice."

48. The business practice of selling the TPP, which violates Cal. Ins. Code § 12820, Cal. Civ. Code § 1794.4, and Cal. Civ. Code § 1794.41, as set forth above, constitutes unfair competition under Cal. Bus. Prof. Code §§ 17200, *et seq.*, because such a business practice is unlawful and unfair.

49. The business practice of selling the TPP without making all of the disclosures required by law, as set forth above, constitutes unfair competition under Cal. Bus. Prof. Code §§ 17200, *et seq.*, because said business practice is unlawful, fraudulent and unfair.

50. The business practice of misleading consumers regarding the benefits allegedly conferred upon them by virtue of their purchase of the TPP, as set forth above, constitutes unfair competition under Cal. Bus. Prof. Code §§ 17200, *et seq.*, because, *inter alia*, said business practice

1 is unlawful, fraudulent and unfair.

2 51. Plaintiffs and members of the Plaintiff Class have each suffered injury in fact and have
3 lost money and/or property as a result of the unfair competition alleged herein for reasons including,
4 *inter alia*: (1) Plaintiffs and members of the Plaintiff Class suffered concrete, particularized, and
5 actual invasions of one or more interests legally protected by Cal. Ins. Code § 12820, Cal. Civ. Code
6 § 1794.4, and Cal. Civ. Code § 1794.41, (2) Plaintiffs and members of the Plaintiff Class were misled
7 as to the benefits conferred by virtue of their purchase of the TPP; (3) the injuries suffered by
8 Plaintiffs and members of the Plaintiff Class are economic, because they paid for unlawful vehicle
9 service contracts that defendant Big O was not legally allowed to sell and paid for benefits under the
10 TPP that they had already paid for and were already entitled to receive, (4) as a result of defendant
11 Big O's illegal sale of the unlawful TPP, Plaintiffs and the members of the Plaintiff Class did not
12 receive the benefits of the consumer protections imposed by the law and, therefore, received less than
13 they would have had defendant Big O's business practices and the TPP complied with the law, (5)
14 as a result of Big O's misleading of Plaintiffs and members of the Plaintiff Class regarding the
15 benefits conferred by virtue of their purchase of the TPP, Plaintiffs and members of the Plaintiff Class
16 received less by virtue of their purchase of the TPP than they paid for; (6) as a result of the material
17 non-disclosures, plaintiffs and members of the Plaintiff Class were defrauded out of their legal right
18 to cancel within the first sixty (60) days after receipt of the contract, and (7) Plaintiffs would not have
19 purchased the TPP if they had known the true facts.

20 52. Pursuant to Cal. Bus. Prof. Code § 17203, Plaintiffs and members of the Plaintiff Class
21 are entitled to restitution of all monies acquired by means of the acts of unfair competition set forth
22 herein, including restitution of all amounts collected for the sale of the TPP.

23 53. WHEREFORE, Plaintiffs and members of the Plaintiff Class are entitled to and seek,
24 on this cause of action:

- 25 a. Preliminary and permanent injunctive relief against defendant Big O
26 prohibiting further acts of unfair competition;
27 b. Such orders or judgments, including the appointment of a receiver, as may be
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1 necessary to prevent the use or employment by defendant Big O of any practice which
2 constitutes unfair competition;

3 c. Such orders or judgments, including the appointment of a receiver, as may be
4 necessary to restore to plaintiffs and the Plaintiff Class any money or property, real
5 or personal, which may have been acquired by means of the unfair competition set
6 forth herein;

7 d. Restitution of all amounts collected from the sale of the TPP;

8 e. Costs of this action;

9 f. Reasonable attorneys' fees, to the extent authorized by law, including, but not
10 limited to, Cal. Code Civ. Proc. § 1021.5; and

11 g. Such other and further relief as the Court deems just and appropriate.

12 **SECOND CAUSE OF ACTION**
13 **(Consumer Legal Remedies Act)**
(Cal. Civ. Code §§ 1750 *et seq.*)

14 54. Plaintiffs incorporate by reference the allegations set forth in Paragraphs 1 through
15 53 of this Complaint as though fully set forth in this cause of action.

16 55. Plaintiffs bring this cause of action against defendant Big O.

17 56. The Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, prohibits, *inter*
18 *alia*, the following unfair methods of competition and unfair or deceptive acts or practices undertaken
19 by any person in a transaction intended to result or which results in the sale or lease of goods or
20 services to any consumer: (1) Representing that a transaction confers or involves rights, remedies or
21 obligations which it does not have or involve, or which are prohibited by law; (2) Inserting an
22 unconscionable provision in the contract; (3) Representing that goods or services have characteristics,
23 ingredients, uses, benefits, or qualities which they do not have; and/or (4) Representing that goods
24 or services are of a particular standard, quality or grade if they are of another. *See* Cal. Civ. Code
25 §1770.

26 57. By stating the terms of the TPP in vehicle service contracts with purchasers, which
27 terms do not comply with Cal. Ins. Code § 12820, Cal. Civ. Code § 1794.4, and Cal. Civ. Code
28

1 §1794.41, defendant Big O represents that a transaction confers or involves rights, remedies or
2 obligations which it does not have or involve, or which are prohibited by law, in violation of the
3 Consumer Legal Remedies Act.

4 58. By including the provisions of the TPP in vehicle service contracts with purchasers,
5 which provisions do not comply with Cal. Ins. Code § 12820, Cal. Civ. Code § 1794.4, and Cal. Civ.
6 Code § 1794.41, defendant Big O inserts unconscionable provisions in contracts, in violation of the
7 Consumer Legal Remedies Act.

8 59. By selling the TPP without making all of the disclosures required by law, as set forth
9 above, defendant Big O represents that a transaction confers or involves rights, remedies or
10 obligations which it does not have or involve, or which are prohibited by law.

11 60. By selling the TPP without making all of the disclosures required by law, as set forth
12 above, defendant Big O represents that goods or services have characteristics, ingredients, uses,
13 benefits or qualities which they do not have.

14 61. By selling the TPP without making all of the disclosures required by law, as set forth
15 above, defendant Big O represents that goods or services are of a particular standard, quality or grade
16 when they are actually of another.

17 62. Plaintiffs and the members of the Plaintiff Class have each suffered damage as a result
18 of the use and/or employment of the above described acts and practices prohibited by the Consumer
19 Legal Remedies Act for reasons including, *inter alia*: (1) Plaintiffs and members of the Plaintiff Class
20 suffered concrete, particularized, and actual invasions of one or more interests legally protected by
21 Cal. Ins. Code § 12820, Cal. Civ. Code § 1794.4, and Cal. Civ. Code § 1794.41, (2) the injuries
22 suffered by Plaintiffs and members of the Plaintiff Class are economic, because they paid for
23 unlawful vehicle service contracts that defendant Big O was not legally allowed to sell, (3) as a result
24 of defendant Big O's illegal sale of the unlawful TPP, Plaintiffs and the members of the Plaintiff
25 Class did not receive the benefits of the consumer protections imposed by the law and, therefore,
26 received less than they would have had defendant's business practices and the TPP complied with
27 the law, (4) as a result of the material non-disclosures, Plaintiffs and members of the Plaintiff Class
28

1 were defrauded out of their legal right to cancel within the first sixty (60) days after receipt of the
2 contract, and (5) Plaintiffs would not have purchased the TPP if he had known that it did not comply
3 with the law.

4 63. WHEREFORE, Plaintiffs and members of the Plaintiff Class are entitled to and seek,
5 on this cause of action:

- 6 a. Actual damages, in an amount subject to proof, including, but not limited to,
7 recovery of the amounts plaintiffs and the members of the Plaintiff Class paid for the
8 TPP, but in no case less than one thousand dollars (\$1,000), pursuant to Cal. Civ.
9 Code § 1780(a)(1);
- 10 b. Preliminary and permanent injunctive relief against defendant Big O from
11 further methods, acts and practices prohibited by the Consumer Legal Remedies Act,
12 pursuant to Cal. Civ. Code § 1780(a)(2);
- 13 c. Restitution of all amounts collected by defendant Big O from the sale of the
14 TPP, pursuant to Cal. Civ. Code § 1780(a)(3);
- 15 d. Punitive damages, pursuant to Cal. Civ. Code § 1780(a)(4);
- 16 e. Court costs and attorney's fees, pursuant to, *inter alia*, Cal. Civ. Code
17 §1780(e) and Cal. Code Civ. Proc. § 1021.5; and
- 18 f. Any other relief that the Court deems proper, pursuant to, *inter alia*, Cal. Civ.
19 Code § 1780(a)(5).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs and the Plaintiff Class pray for judgment and relief on all causes
22 of action, as more specifically detailed in each Cause of Action, as follows:

- 23 1. Preliminary and permanent injunctive relief against defendants from further acts of
24 unfair competition, pursuant to Cal. Bus. Prof. Code § 17203;
- 25 2. Such orders or judgments, including the appointment of a receiver, as may be
26 necessary to prevent the use or employment by defendants of any practice which constitutes unfair
27 competition, pursuant to Cal. Bus. Prof. Code § 17203;

1 3. Such orders and judgments, including the appointment of a receiver, as may be
2 necessary to restore to Plaintiffs and the Plaintiff Class any money or property, real or personal,
3 which may have been acquired by means of the unfair competition set forth herein, pursuant to Cal.
4 Bus. Prof. Code § 17203;

5 4. Restitution of all amounts collected from the sale of the TPP, pursuant to Cal. Bus.
6 Prof. Code § 17203 and Cal. Civ. Code § 1780(a)(3);

7 5. Actual damages, in an amount subject to proof, including, but not limited to, recovery
8 of the amounts Plaintiffs and the members of the Plaintiff Class paid for the TPP, but in no case less
9 than one thousand dollars (\$1,000), pursuant to Cal. Civ. Code § 1780(a)(1);

10 6. Preliminary and permanent injunctive relief against defendants from further methods,
11 acts and practices prohibited by the Consumer Legal Remedies Act, pursuant to Cal. Civ. Code §
12 1780(a)(2);

13 7. Punitive damages, pursuant to Cal. Civ. Code § 1780(a)(4);

14 8. Costs of this action;

15 9. Reasonable attorneys' fees, to the extent authorized by law, including, *inter alia*, Cal.
16 Civ. Code § 1780(e) and Cal. Code Civ. Proc. § 1021.5;

17 10. For a jury trial on all claims and issues so triable; and

18 11. Such other and further relief as the Court deems just and appropriate, pursuant to, *inter*
19 *alia*, Cal. Civ. Code § 1780(a)(5).

20 Dated: March 9, 2016

Respectfully submitted by,

21 TEEPLE HALL, LLP

22 

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25 San Diego, CA 92121
26 Telephone: (858) 622-7878
27 Email: greg@teeplehall.com

28 MEGAN A. RICHMOND, APC
Megan A. Richmond

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Telephone: (714) 349-0555
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Attorneys for Plaintiffs

ATTACHMENT A

ATTACHMENT A

BIG O TIRES.

THE TEAM YOU TRUST

CA BIG O TIRES E06
BIG O TIRE STORE # 5782
1286 W SAN MARCOS BLVD #100
SAN MARCOS CA 92078-4074
(760) 471-6576

* FINAL BILL - INVOICE**
Invoice# 59446005 - RI
Order Num 31417659 - WI
Date/Time In..... 06/05/12 15:29:04
Date/Time Promised.. 06/05/12 17:02:36
CAL00335325
ARD256210
2010 LEXUS RX450H
Tag: 6NMD389, St: CA Mileage: 22394
Engine: VIN# JTJZB1BA8A2403076

Page 1

Customer: 30150860 PO#:

Ship To:

FRATILLA, JEFF

1441 MISTY SEA WAY

SAN MARCOS CA 92078

Opening Salesperson 12960328

Home# 760-798-3760 Work#

Email:

Item Number	Item Description	Qty	Price Each	Extended
NT05923559VX	Nitto Crosstek CUV	4	229.99	919.96
DOT #:R8OK FTS 1012 4				
452120	235/55R19 105V,452120			
	50,000			
Tire Disposal Fee	Tire Disposal Fee		12.00	12.00
California New Tire	California New Tire Fee		7.00	7.00
ServiceCentralRoadHa	ServiceCentralRoadHazard		137.99	137.99
SCS	Service Central Tire Install	4	16.99	67.96
VSR	RUBBER VALVE STEM	4		
SCB	LIFETIME WHEEL BAL	4		
KMTSL	MOUNT AND INSTALL	4		
	12987286 CARTER, DAVID C.			
LTRF	LIFETIME TIRE ROTATE SVC	4		
WA1	1 YR WHEEL ALIGNMENT PROGRAM	1	119.99	119.99
	12990134 KASDAN, RONNIE			
PA	Price Adjustment	1-		
tb3g1f	Buy 3 tires, get 1 FREE	1-	460.00	460.00-
B2B2 SALE- EARLY INSTALL				
RECSHOCKS	RECOMMEND SHOCK REPAIRS	1		
REAR SHOCKS				
CAP	CHECK AIR PRESSURE TIRE	4		
Tire pressure adjusted to Vehicle specifications in PSI				
FRONT 32 REAR 32				
VISA	Visa			857.44-
	CARD NUMBER 9648 APPR 06977D			

IF YOU HAVE A QUESTION OR CONCERN PLEASE SPEAK
TO OUR STORE MANAGER, Brandon Romanowski
AT (760) 471-6576

DUE TO DISCOUNT PROVIDED AT POINT OF PURCHASE THIS
INVOICE IS NOT ELIGIBLE FOR MAIL-IN REBATE.

CUSTOMER COPY

BIG O TIRES.

THE TEAM YOU TRUST™

CA BIG O TIRES E06
BIG O TIRE STORE # 5782
1286 W SAN MARCOS BLVD #100
SAN MARCOS CA 92078-4074
(760) 471-6576

* FINAL BILL -INVOICE**
Invoice# 59446005 - RI
Order Num 31417659 - WI
Date/Time In..... 06/05/12 15:29:04
Date/Time Promised.. 06/05/12 17:02:36
CAL00335325
ARD256210
2010 LEXUS RX450H
Tag: 6NMD389 St: CA Mileage: 22394
Engine: VIN# JTJZB1BA8A2403076

Page 2

Customer: 30150860 PO#:
FRATILLA, JEFF
1441 MISTY SEA WAY
SAN MARCOS CA 92078

Ship To:

Opening Salesperson 12960328
Email:

Home# 760-798-3760 Work#

Item Number	Item Description	Qty	Price Each	Extended
-------------	------------------	-----	------------	----------

Subtotal Parts 1,137.91 Subtotal Labor 119.99

Special Credit:
Total Charges.. 1,257.90
Total Credits.. 460.00-
Sub-Total..... 797.90
New Tire Fees** 7.00
Shop Fees(*) .00
All Taxes..... 52.54
Payments..... 857.44-

Net Amount..... .00
PLEASE PAY ABOVE AMOUNT.
THANK YOU! Closer:12960328

I acknowledge notice and oral approval of an increase in the original estimated price.
I have received the goods and services as represented on this invoice. If this is a credit card
purchase I agree to pay and comply with the cardholders agreement with the issuer. *This charge
represents costs and profits to the vehicle repair facility for miscellaneous Shop Supply or
Waste Disposal.

Customer Signature

BIG O TIRES.

THE TEAM YOU TRUST.

Big O Broad Tires - Limited Warranty: Your new Big O broad tire with the Big O name and serial number on the sidewall and not marked "taken", purchased at a Big O Tires store, carries the following warranties:

3-Year Full Tire Repair or Replacement Warranty: Any such Big O brand tire noted on the front of the documentation attached hereto that becomes unserviceable within three (3) years of the purchase date due to defects in workmanship or materials at a road hazard will be repaired or replaced free of charge (subject to the General Conditions and Limitations) at any Big O Tires, Tire Kingdom, Merchant's Tire or NTB store. The term "road hazard" does not include sidewall damage from scuffing curbs.

Limited Lifetime Punctured Repair or Replacement Warranty: After the (3) year repair or replacement period has expired, any such tire that fails due to defects in workmanship or materials at a road hazard will be replaced with an equivalent new tire of the same or comparable brand at the then current retail price, including applicable taxes, less an allowance based on the remaining useful life of the tire at the time of its damage or failure (subject to the General Conditions and Limitations).

Service Package: In addition to the warranty coverage above, your new Big O brand tire comes with the following:

- * Free rotation and rebalance every 5000 miles for the useful life of the tire
- * Free flat repair for the useful life of the tire
- * Roadside Assistance Service for 3 years (1-800-351-8545)

Other New Tires-Non Big O Broad - Limited Warranties

Your new tire (without the Big O name on the sidewall) purchased from a Big O Tires store carries the following warranties:

Manufacturer Limited Warranty: Every new tire purchased at a Big O Tires store is warranted by the manufacturer against failure due to defects in the workmanship or materials under 2 1/2 years of its tread remaining (tread groove depth. Additional warranties may apply to some tires. Big O Tires, Tire Kingdom, Merchant's Tire and NTB will honor the manufacturer's warranty on any such tire, and any such tire which fails under the terms of the manufacturer's warranty will be repaired or replaced in accordance with the manufacturer's warranty program. You must comply with the conditions of the manufacturer's warranty program to receive this warranty coverage.

Service Package: In addition to the warranty coverage above, your new (no) (without the Big O name on the sidewall) comes with the following:

- * Free rotation every 5000 miles for the useful life of the tire
- * Free flat repair for the useful life of the tire

Optional Tire Protection Package (TPP)

Optional 3-Year Full Tire Repair or Replacement Warranty: If purchased separately along with your new non-Big O brand tire, or is provided separately along with any new replacement tire, and noted on the front of the documentation attached hereto, any such tire that becomes unserviceable within three (3) years of the purchase or replacement date due to defects in workmanship or materials at a road hazard will be repaired or replaced free of charge (subject to the General Conditions and Limitations) at any Big O Tires, Tire Kingdom, Merchant's Tire, or NTB store. If you receive a replacement tire under the terms of this warranty, the replacement tire will be covered by the warranty Big O Tires, Tire Kingdom, Merchant's Tire or NTB gives that tire. The Tire Protection Plan (TPP) will need to be purchased separately to cover the replacement tire.

Limited Lifetime Punctured Repair or Replacement: After the (3) three year tire repair or replacement period has expired, any such tire that fails due to defects in workmanship or materials at a road hazard will be replaced with any equivalent new tire of the same or comparable brand at the then current retail price, including applicable taxes, less an allowance based on the remaining useful life of the tire at the time of its damage or failure (subject to the General Conditions and Limitations). For example, 50% usable tread remaining times the then current retail price of \$50 equals an allowance of \$25.

Service Package: In addition to warranty coverage above, this optional Tire Protection Plan provides you with the following:

- * Free rotation and rebalance every 5000 miles for the useful life of the tire
- * Free flat repair for the useful life of the tire
- * Roadside Assistance Service for 3 years (1-800-351-8545)

Limited Mileage Warranty:

(For Big O Brand and Non-Big O Brand Tires)

If a mileage warranty is noted on the front of the documentation attached hereto, such tire whose remaining tread groove depth is reduced to 2/32nds of an inch or less prior to the tire receiving the specified mileage will be replaced with an equivalent new tire of the same or comparable brand at the then current retail price, including applicable taxes, less an allowance based on the actual mileage received at the time presented to a Big O Tires, Tire Kingdom, Merchant's Tire or NTB store compared to the specified mileage. Mileage warranty claims will only be honored within 6 years of the date of original tire purchase and before the tire delivers the maximum mileage. The following tires are excluded from the Limited Mileage Warranty: Rotation slant, commercial use tires, performance tires 18" and larger rim diameters, 45 series and lower profiles, tires worn from excessively aggressive driving conditions such as racing and tires worn from improper maintenance such as lack of rotation, improper tire pressure, alignment or mechanical wear.

Used Tires:

BIG O TIRES MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND REGARDING USED TIRES PURCHASED AT A BIG O TIRES STORE. ALL USED TIRES ARE SOLD "AS-IS" WITH ALL FAULTS.

General Conditions and Limitations - Tires:

Definitions: "Useful life of the tire" means more than 2/32nds of an inch remaining tread groove depth or six (6) years from the date of original tire purchase. At 2/32nds of an inch of remaining tread groove depth or six (6) years from the date of original tire purchase, whichever occurs first, the tire is considered worn out and no longer warranted.

General Conditions: The limited warranties set forth herein will be honored at any Big O Tires, Tire Kingdom, Merchant's Tire or NTB store. In some locations, Big O tires franchisees may offer other warranties in addition to those set forth herein. These additional warranties may not be accepted at all Big O Tires, Tire Kingdom, Merchant's Tire or NTB stores. In all cases, the failed tire must be returned to a store honoring the warranty with the original sales invoice. All Big O warranties are non-transferable and apply to the original purchaser only and only if the tire is on the vehicle on which it was originally installed.

Some manufacturers of all wheel drive (AWD) or 4 wheel drive vehicles recommend that all tires be replaced at the same time to ensure a balanced set. The warranties set forth above apply only to the affected tire and not to the remaining tires on any matched set.

Proper Tire Maintenance:

As a condition of the Limited Mileage Warranties set forth above, the purchaser is required to have consecutive service checks performed at a participating Big O Tires, Tire Kingdom, Merchant's Tire or NTB store not less than every 5,000 miles, and if deemed necessary by the participating Big O Tires, Tire Kingdom, Merchant's Tire or NTB dealer, the tire mounted and any other condition revealed by the service check. Record of the required service checks and rotation schedules have been performed will void the Limited Mileage warranty.

Proper Tire Repair and Repairable Tire: All tires will be repaired or replaced in accordance with guidelines established by the RMA's (Rubber Manufacturers Association) Puncture Repair Procedures for Passenger and Light Truck Tires. Whether a tire is repaired or replaced under this warranty depends on the nature of the damage or failure.

Under the RMA's guidelines, which provide that if a tire suffers a puncture or penetration in the tread area not to exceed 1/4 of an inch at its widest point, it will be repaired and a replacement tire will not be provided.

Damage resulting from repairs performed by a non-Big O Tire, Tire Kingdom, Merchant's Tire or NTB store or tire failure due to such improper repair are excluded from the warranties set forth above.

Warranty Adjustment Charges: For any tire replaced under warranty, you may be responsible for applicable taxes and/or government fees, installation charges (mounting, balancing, and valve stems), and/or an additional extended road hazard warranty, if applicable. Please contact your local Big O Tires, Tire Kingdom, Merchant's Tire or NTB store for details. At Big O Tires' discretion, a printed cash refund of all of the original purchase price can be substituted.

Limitations and Exclusions: The above warranties apply only to tires purchased from Big O Tires. The do not apply to any replacement tires installed under this warranty.

The above warranties do not cover accidental or consequential damage of any kind, including damages for loss of time, inconvenience, loss of use of vehicle, towing charges and replacement transportation costs. If the same tire is not available or has been discontinued, a suitable replacement tire will be substituted.

Any liability is limited to repairing or replacing the tire at a Big O Tires, Tire Kingdom, Merchant's Tire or NTB store in accordance with the terms set forth above. Tires that become unserviceable due to accident, abuse, angled, fire, theft, chain damage, vandalism, racing, off-road use, stalling, improper balance or alignment (jounce or irregular wear), lack of or improper rotation, improper repair, improper inflation pressure, repairable punctures, overloading, flat spots as a result of panic stops, vehicle obstruction and similar types of damage are excluded from warranties set forth above. Ozone or weather cracking (superficial cracking) will not be covered by warranty after five (5) years from the date of purchase or for the mileage or time period specified on the front of the invoice or on the documentation attached hereto, whichever comes first. No adjustments or replacements for problems of appearance shall apply after 90 days from date of purchase. No adjustments or replacements for ride disturbance shall apply after the first 2/32nds of an inch of tread wear. ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. Some states do not allow the exclusion or limitation of incidental or consequential damages or of disclaimer of implied warranties, so these exclusions or disclaimers may not apply to you. All Big O Tires warranties provide specific legal rights, and there may be other rights, which vary from state to state.

Nitrogen Filled Tires: Not all Big O Tires, Tire Kingdom, Merchant's Tire or NTB store have the equipment to inflate a tire with nitrogen. The above warranties do not cover the inflating of tires with nitrogen.

Wheels

You must comply with the conditions of the manufacturer's warranty program to receive coverage from the wheel manufacturer. Big O Tires makes no warranties of any kind or description for wheels.

CAUTION REGARDING LUG NUTS! - Lug nuts put on new custom or mag wheels could become loose during the first 200 miles of driving. All lug nuts should be checked for tightness after the first 25 miles of driving and again at 200 miles. Big O Tires will check the lug nuts on new custom or mag wheels free of charge. Big O Tires assumes no responsibility for damage or injury that could occur if customer fails to have the lug nuts checked as recommended.

Big O Tires Nationwide Limited Repair

Warranty - 12 Months / 12,000 Miles

WHO MAKES THIS LIMITED WARRANTY?

This limited warranty is extended only to you, the original purchaser, and not to anyone who may purchase your vehicle from you during the term of the warranty. This Limited Warranty is made by the Independent Repair Facility ("Facility") that is so named on the original repair invoice and performed the service/repairs on your vehicle. This limited warranty may be honored by other facilities participating in this program, or other authorized non-participating facilities anywhere in the United States.

This limited warranty is not a warranty of Big O Tires, LLC or Automotive Business Solutions, Inc. ("ABS"), their affiliates, subsidiaries or any of their employees, or other companies. In addition, ABS serves as the administrator only.

WHAT IS COVERED BY THE LIMITED WARRANTY?

This warranty covers the following types of repairs and services:

- Air conditioning, heating and climate control systems.
- Engine cooling systems.
- Engine performance, drivability, services and repair.
- Exhaust control system.
- Fuel systems.
- Electronic engine management system and other air-bowl computer systems, (engine, body, brake and suspension computer).
- Cruise control systems.
- Brake control system.
- Brake system.
- Steering and clamping systems.
- Electrical system.
- Exhaust system.
- Ignition system.
- Steering/suspension systems, wheel bearings, CV joints/A-arms, ball joints and drive shafts.
- Other minor repairs.

The Independent Repair Facility warrants that the above repairs and services performed at their location will be free from defects in materials and workmanship for 12 months or 12,000 miles of use, whichever comes first, measured from the date of the first repair and the odometer reading shown on the original repair invoice. Services performed not listed above carry a 3-month or 4000 mile warranty at the Independent Repair Facility providing said services but are not covered under the Nationwide Limited Repair Warranty.

Roadside Assistance provided with purchase of Big O branded tires or Tire Protection Package. Call 800-351-8545.

Free Flat Tire Changing Assistance up to \$75

and

Reimbursable benefits up to \$75

* Towing

* Jump Start

* Lock-out Service

* Fuel, Oil, Fluid and Water Delivery

Visit www.bigroadside.com or provided back of Warranty

Certificate for reimbursement instruction and program details.

This warranty is conditioned on the vehicle being subjected only to normal, non-commercial use, and receiving reasonable and necessary maintenance during the warranty period. Warranty repair costs shall in no case exceed the costs of the original repair or service. If there is a defect in either the materials or workmanship within the warranty period, the Independent Repair Facility has the option to, perform non-emergency service work at no charge to you, replace the defective warranty parts) without charge to you or refund the entire charge for the warranted repair, minus any previous repairs.

A buyer of covered products or services has the right to have warranty service performed during the warranty period. The warranty period will be extended for the number of whole days that the vehicle has been out of the buyer's hands for warranty repairs. If a defect exists within the warranty period, the warranty will not expire until the defect has been fixed. The warranty period will also be extended if the warranty repairs have not been performed due to delays caused by circumstances beyond control of the buyer, or if the warranty repairs did not remedy the defect and the buyer notifies the Warranty Administrator of the failure of the repairs within 60 days after they were completed. If, after a reasonable number of attempts, the defect has not been fixed, the buyer may return his vehicle for a replacement of parts, if applicable, or a refund, in either case, subject to deduction of a reasonable charge for usage. This time extension does not affect the protections or remedies the buyer has under any law. Parts listed are new unless noted otherwise.

WHERE YOU MUST GO TO OBTAIN LIMITED WARRANTY SERVICE: If you are less than 25 miles away from the original repair facility, you must return your vehicle to the facility location where the warranted service was performed and present your copy of the repair order to the Dealer. If you are more than 25 miles from the original facility, then you must call the Warranty Administrator prior to any repair work being performed, at 1-800-351-8545, from 8:00 a.m. to 6:00 p.m. Monday through Friday, 7:00 a.m. to 4:00 p.m. Saturday (Mountain Time), excluding holidays. The Warranty Administrator will direct you to the nearest participating facility.

WHAT YOU MUST DO TO OBTAIN LIMITED WARRANTY SERVICE: You must keep a copy of the original repair invoice (or legible copy) and present it when seeking service under this warranty. If warranty work is performed, you must temporarily surrender possession of the repair invoice (or legible copy). If there are no participating locations in your area, you may take your vehicle to a non-participating repair facility in your area. If this non-participating repair facility will not accept payment from the Warranty Administrator, you must pay for the warranty service and submit your original repair invoice (or legible copy) and subsequent warranty repair invoice (or legible copy) to the Warranty Administrator for review, within 90 days of the date of repair. If your vehicle is inoperable, and you are further than 25 miles from the original facility, you may be eligible for certain towing benefits, to a maximum of \$75.00. You may also be eligible for Rental Car benefits if your vehicle cannot be repaired the same day due to circumstances beyond your control. The maximum benefit would be for 2 days at a maximum of \$45.00 per day, as determined by the Warranty Administrator.

WHAT IS NOT COVERED BY THIS LIMITED WARRANTY? You must pay for any non-warranty service you order to be performed in the same time as the warranty service. This limited warranty will not apply to: your repaired vehicle if it has been damaged by abnormal use, misuse, neglect, accident, or "tampering with" (by other than the facility or facility employee). The facility's employees and/or agents do not have authority to modify the terms of this limited warranty nor to make any promises in addition to those contained in this limited warranty.

THIS LIMITED WARRANTY DOES NOT IN ANY WAY INCLUDE INCIDENTAL OR CONSEQUENTIAL DAMAGES (ADDITIONAL EXPENSES THAT YOU MAY INCUR AS THE RESULT OF FAULTY REPAIR OR SERVICE). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

AUTOMOTIVE REPAIRS EXCLUDED FROM LIMITED WARRANTY: This warranty does not cover repairs or replacement(s) except as listed in the section, "What is covered by this Warranty", even though the facility may offer other services. SPECIFICALLY EXCLUDED ARE ANY ENGINE, TRANSMISSION, CLUTCH, OR DIFFERENTIAL REPAIRS, ASSOCIATED GASKETS AND SEALS, OR ASSEMBLY REPLACEMENT OF THE SAME. ALSO EXCLUDED ARE ALTOBODY PART, MOLDING, TIRES, GLASS REPAIRS AND USED PARTS COMMERCIAL VEHICLES (INCLUDING, BUT NOT LIMITED TO, ANY VEHICLE USED IN COMMERCE TO TRANSPORT PERSONS OR PROPERTY) ARE EXCLUDED.

ATTACHMENT B

ATTACHMENT B



TIRES

WHEELS

SERVICES

LOCATIONS

SAVINGS

RACING

CREDIT

[All About Tires](#)[Tire Warranty](#)

Tweet / 1

Like 314 +1 0

Tire Warranty

Our team stands behind every tire we sell!

At Big O Tires, we're committed to your complete satisfaction. That's why we provide you with the most comprehensive and affordable warranty protection available today.

BIG O BRAND TIRES

- 3-Year Full Free Repair or Replacement Road Hazard Warranty
- 3-Year Full Free Replacement Materials and Workmanship Warranty
- 3-Year Free 24/7 Roadside Assistance
- Free Tire Rotation Every 5,000 Miles for the Life of the Tire*
- Free Rebalance Every 5,000 Miles for the Life of the Tire*
- Free Flat Repair Coverage for the Life of the Tire*
- After 3-year free period expires, Prorated Repair or Replacement Warranty for Road Hazards or Materials and Workmanship for the Life of the Tire up to six (6) years*

[View Warranty Details for Big O brand tires](#)

ALL OTHER NEW TIRES PURCHASED AT BIG O TIRES

- Prorated Workmanship and Materials Warranty per Terms and Conditions Specified by the Manufacturer
- Free Rotations every 5,000 miles for the Life of the Tire*
- Free Flat Repair coverage for the Life of the Tire*

OPTIONAL TIRE PROTECTION PLAN (TPP): AVAILABLE FOR PURCHASE WITH ANY NEW NON-BIG O BRAND TIRE THAT BIG O SELLS

- 3-Year Full Free Repair or Replacement Road Hazard Warranty
- 3-Year Full Free Replacement Materials and Workmanship Warranty
- 3-Year 24/7 Roadside Assistance
- Free Tire Rotation Every 5,000 Miles for the Life of the Tire*
- Free Rebalance Every 5,000 Miles for the Life of the Tire*
- Free Flat Repair Coverage for the Life of the Tire*
- After 3-year free period expires, Prorated Repair or Replacement Warranty for Road Hazards or Materials and Workmanship for the Life of the Tire up to six (6) years*

**"Life of the tire" means more than 2/32nds of an inch remaining tread groove depth or six (6) years from the date of original tire purchase, whichever comes first. At 2/32nds of an inch of remaining tread groove depth or six years from the date of the original tire purchase, whichever occurs first, the tire is considered worn out and no longer warranted. Big O Tires Warranties are honored at all Big O Tires stores and all Tire Kingdom, Merchant's and NTB locations.*

FIND MY VEHICLE

No saved vehicle.

[Add Vehicle](#)

FIND MY STORE

City & State or Zip Code

Within: 15 miles

[Tires](#) [Wheels](#) [Services](#) [Auto Education](#)
[Specials and Savings](#) [About Big O Tires](#) [Careers](#) [Site Map](#) [Contact Us](#)

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SIGN UP AND SAVE

Receive special offers, product information and coupons from Big O Tires.

[Sign Up](#)

[SIGN UP](#)

ATTACHMENT C

ATTACHMENT C

July 15, 2013

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Legal
Big O Tires, LLC
Big O Tire Store # 5782
1286 West San Marcos Boulevard, Suite 100
San Marcos, California 92078-4074

**Re: Fratilla, et al. v. Big O Tires, et al.
Consumer Legal Remedies Act Class Action Demand Letter**

Dear Sir or Madam:

Please be advised that this office represents Mr. Brian Jeffrey Fratilla. This letter is written on behalf of Mr. Fratilla, as well as all others similarly situated (collectively the "Plaintiff Class"), pursuant to Cal. Civ. Code §1782(a).

Mr. Fratilla and the other members of the Plaintiff Class purchased one or more tires from Big O Tires, LLC or one of its franchisees (collectively "Big O") in California. In connection therewith, Big O's business practices violated the California Consumer Legal Remedies Act, Cal. Civ. Code §§1750, *et seq.* (the "CLRA"), as set forth below. This letter, sent pursuant to Cal. Civ. Code §1782, is to inform Big O of its violations and demand immediate remedial action.

Big O's Illegal Collection of Sales Tax on Services

Big O charged and unlawfully collected sales tax from members of the Plaintiff Class on the *services* listed on its invoices as "Tire Disposal Fee", "Service Central Road Hazard", and "Service Central Tire Install" (the "Tax on Services").¹ Pursuant to Cal. Rev. Tax. Code §6051, Big O is only authorized to collect sales tax on goods, not services.

¹ The "Tire Disposal Fee" is a fee charged by Big O for the service of disposing of tires. "Service Central Tire Install" is a fee charged by Big O for the service of installing tires. "Service Central Road Hazard", discussed more fully below, is a vehicle service contract.

By unlawfully collecting the Tax on Services, Big O employs or commits methods, acts or practices declared unlawful by the CLRA in Cal. Civ. Code §1770. Such violations of Cal. Civ. Code §1770 include:

1. Representing that its transactions with members of the Plaintiff Class confer or involve rights, remedies or obligations which they do not have or involve, or which are prohibited by law, in violation of Cal. Civ. Code §1770(a)(14); and
2. Inserting unconscionable provisions in its contracts with members of the Plaintiff Class, in violation of Cal. Civ. Code §1770(a)(19).

Big O's Improper Sale of Illegal Vehicle Service Contract

Big O sold a vehicle service contract to members of the Plaintiff Class, which is listed on the front of Big O's invoices as "ServiceCentralRoadHazard" and set forth on the back of the invoices under the heading "Option Tire Protection Package (TPP)" (hereinafter the "TPP"). The TPP fails to comply with numerous subdivisions of Cal. Ins. Code §12820, which sets forth requirements for vehicle service contracts.² The TPP's failures to comply with Cal. Ins. Code §12820 include:

1. The TPP violates Cal. Ins. Code §12820(b)(1), because it fails to set forth the disclosure required when the obligor has complied with either Cal. Ins. Code §12830 or Cal. Ins. Code §12836;³
2. The TPP violates Cal. Ins. Code §12820(b)(2), because the language therein that excludes coverage, or imposes duties upon the purchaser, is not conspicuously printed in boldface type no smaller than the surrounding type;

² The TPP constitutes a "vehicle service contract" under Cal. Ins. Code §12800(c)(4)(A), because it is "an agreement that promises the repair or replacement of a tire or wheel necessitated by wear and tear, defect, or damage caused by a road hazard."

³ Pursuant to Cal. Ins. Code §12830, an obligor under a vehicle service contract must file with the Commissioner of Insurance, and receive the Commissioner's approval to use, a copy of an insurance policy covering 100 percent of the obligor's vehicle service contract obligations, and said policy must meet the requirements of Cal. Ins. Code §12830. Pursuant to Cal. Ins. Code §12836, in lieu of complying with Cal. Ins. Code §12830, an obligor or its parent company may establish to the Commissioner's satisfaction that it possesses a net worth of one hundred million dollars (\$100,000,000).

3. The TPP violates Cal. Ins. Code §12820(b)(3)(A), because it does not state “the obligor’s full corporate name or a fictitious name approved by the commissioner, the obligor’s mailing address, the obligor’s telephone number, and the obligor’s vehicle service contract provider license number”;
4. The TPP violates Cal. Ins. Code §12820(b)(3)(B), because it does not “state the name of the purchaser and the name of the seller”;
5. The TPP violates Cal. Ins. Code §12820(b)(3)(C), because it does not “[c]onspicuously state the vehicle service contract’s purchase price”;
6. The TPP violates Cal. Ins. Code §12820(b)(3)(D), because it does not comply with Cal. Civ. Code §1794.4 and Cal. Civ. Code §1794.41, as set forth below;
7. The TPP does not comply with Cal. Civ. Code §1794.41(a)(1), because it does not contain the disclosures specified in Cal. Civ. Code §1794.4 and, further, does not disclose, in the manner described in Cal. Civ. Code §1794.4, the buyer’s cancellation and refund rights provided by Cal. Civ. Code §1794.41, including that the ATPP may be cancelled by the purchaser within the first sixty (60) days after receipt of the contract;
8. The TPP violates Cal. Civ. Code §1794.4(c)(1), because it does not contain a “clear description and identification of the covered product”;
9. The TPP violates Cal. Civ. Code §1794.4(c)(5), because it does not contain a “step-by-step explanation of the procedure that the buyer should follow in order to obtain performance of any obligation under the service contract,” including, but not limited to, the full legal and business name of the service contractor, the mailing address of the service contractor, the person or class of persons authorized to perform service, the method of giving notice to the service contractor of the need for service, whether the cost of transporting the product for service or repairs will be paid by the service contractor, the place where the product may be delivered for service or repairs or a toll-free telephone number the buyer may call to obtain that information, and all fees, charges and other costs that the buyer must pay to obtain service; and,

10. The TPP violates Cal. Civ. Code §1794.4(c)(7), because it does not contain a “description of any right to cancel the contract if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of the fact.”

By selling the TPP, which violates Cal. Ins. Code §12820, Cal. Civ. Code §1794.4, and Cal. Civ. Code §1794.41, all as set forth above, Big O employs or commits methods, acts or practices declared unlawful by the CLRA in Cal. Civ. Code §1770. Such violations of Cal. Civ. Code §1770 include:

1. **Representing that goods or services sold to members of the Plaintiff Class have characteristics, ingredients, uses, benefits or qualities which they do not have, in violation of Cal. Civ. Code §1770(a)(5);**
2. **Representing that goods or services sold to members of the Plaintiff Class are of a particular standard, quality or grade when they are actually of another, in violation of Cal. Civ. Code §1770(a)(7);**
3. **Representing that its transactions with members of the Plaintiff Class confer or involve rights, remedies or obligations which they do not have or involve, or which are prohibited by law, in violation of Cal. Civ. Code §1770(a)(14); and**
4. **Inserting unconscionable provisions in its contracts with members of the Plaintiff Class, in violation of Cal. Civ. Code §1770(a)(19).**

Demand for Remedial Action

Demand is hereby made that Big O correct, repair, replace or otherwise rectify all of the foregoing violations of Cal. Civ. Code §1770. Demand is further made, pursuant to the CLRA, Cal. Civ. Code §1782(c), that Big O do the following within thirty (30) days:

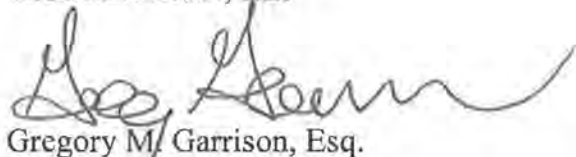
1. Identify all consumers similarly situated to Mr. Fratilla, namely all persons in who meet either of the following criteria:
 - a. from whom, on or after January 2009, Big O collected the Tax on Services; and/or
 - b. who, on or after January 9, 2009, purchased the TPP.

2. Notify Mr. Fratilla and all consumers similarly situated that Big O will correct, repair, replace, or otherwise rectify its foregoing violations of the CLRA, Cal. Civ. Code §1770; and
3. Cease engaging in the continuing violation of the CLRA, Cal. Civ. Code §1770.

If Big O fails to take the actions described above within thirty (30) days, my client will amend his complaint in his pending litigation against Big O to pursue all available remedies under the CLRA, on behalf of himself and all others similarly situated, including, but not limited to, for the recovery of actual damages, restitution, punitive damages, and attorney fees and costs. *See* Cal. Civ. Code §1780.⁴

Very truly yours,

TEEPLE HALL, LLP



Gregory M. Garrison, Esq.

GMG/

cc: Jonathan Solish, Esq. (via email: jonathan.solish@bryancave.com)
Kristy Murphy, Esq. (via email: kristy.murphy@bryancave.com)

⁴ Nothing herein concerns any right of Mr. Fratilla or members of the Plaintiff Class to bring claims against Big O for injunctive relief under the CLRA or to bring other claims, including, but not limited to, a claim for unfair business practices (Cal. Bus. Prof. Code § 17200 *et seq.*)

ATTACHMENT D

ATTACHMENT D



THE TEAM YOU TRUST

CA BIG O TIRES B46
BIG O TIRE STORE # 5816
927 EL CAMINO REAL
SAN CLEMENTE CA 92672-4650
(949)492-5543

How did we do? Receive a \$10 off oil change coupon on
your next visit. Please, complete the survey at
www.tkcares.com Use password 37170746 00001

* FINAL BILL -INVOICE** Page 1
Invoice# 64169425 - RI
Order Num 37170746 - WI
Date/Time In..... 12/05/12 16:18:08
Date/Time Promised.. 12/05/12 17:00:06
CAL000086416
ARD260220
1995 CHEVROLET PICKUP S10/
Tag: 5B03561 St: CA Mileage: 115492
Engine: VIN# 1GCCS1448S8151800

Customer: 24320058 PO#:
FRANCHINO, BOB
200 AVE SAN CARLOS
SAN CLEMENTE CA 92672
Opening Salesperson 12956631
Email:

Ship To:

Home# 949-492-0549 Work#

Item Number	Item Description	Qty	Price Each	Extended
CP01921755W	Cooper Trendsetter SE	4	79.99	319.96
DOT #:U9HF C2T 3212 4				
01311	P215/75R15 100S,01311			
	50K-ECONOMY RADIALS			
California New Tire	California New Tire Fee		7.00	7.00
ServiceCentralRoadHa	ServiceCentralRoadHazard		64.00	64.00
Tire Disposal Charge	Tire Disposal Charge		12.00	12.00
SCS	Service Central Tire Install	4	16.99	67.96
VSR	RUBBER VALVE STEM	4		
SCB	LIFETIME WHEEL BAL	4		
KMTSL	MOUNT AND INSTALL	4		
	12960322 SORGENFRIE, MATTHEW			
LTRF	LIFETIME TIRE ROTATE SVC	4		
PA	Price Adjustment	1-		
cctc	TIRE CONCESSION CREDIT	1-	79.99	79.99-

CAP CHECK AIR PRESSURE TIRE 4
Tire pressure adjusted to Vehicle specifications in PSI
FRONT 30 REAR 30

VISA Visa 420.69-
CARD NUMBER 8678 APPR 000020

IF YOU HAVE A QUESTION OR CONCERN PLEASE SPEAK
TO OUR STORE MANAGER, DENNIS J. DUSSO
AT (949) 492-5543

PURCHASE IS NOT VALID FOR MICHELIN OR BFGOODRICH
REBATE DUE TO IN-STORE DISCOUNT.

Subtotal Parts 463.92 Subtotal Labor

Special Credit:

ATTACHMENT E

ATTACHMENT E



THE TEAM YOU TRUST

CA BIG O TIRES B46
BIG O TIRE STORE # 5816
927 EL CAMINO REAL
SAN CLEMENTE CA 92672-4650
(949) 492-5543

* FINAL BILL -INVOICE**
Page 1
Invoice# 66749706 - RI
Order Num 40297271 - WI
Date/Time In..... 03/23/13 15:34:25
Date/Time Promised.. 03/23/13 16:51:28
CAL000086416
ARD260220
2002 JAGUAR X-TYPE
Tag: 4WXX277 St: CA Mileage: 119646
Engine: VIN# SAJEA51D12XC65882

Customer: 24320058 PO#:
FRANCHINO, BOB
200 AVE SAN CARLOS
SAN CLEMENTE CA 92672
Opening Salesperson 12956631
Email:

Ship To:

Home# 949-492-0549 Work#

Item Number	Item Description	Qty	Price Each	Extended
TN27520556H	Aspen Touring A/S	2	72.99	145.98
DOT #:7T8K 3MA1 5112 2				
APN42	205/55R16 91H,APN42			
	60,000			
California New Tire	California New Tire Fee		3.50	3.50
ServiceCentralRoadHa	ServiceCentralRoadHazard		21.00	21.00
Tire Disposal Charge	Tire Disposal Charge		6.00	6.00
SCS	Service Central Tire Install	2	16.99	33.98
VSR	RUBBER VALVE STEM	2		
SCB	LIFETIME WHEEL BAL	2		
KMTSL	MOUNT AND INSTALL	2		
	32001297 Wheeler, Danny			
LTRF	LIFETIME TIRE ROTATE SVC	2		
PA	Price Adjustment	1-		
cctc	TIRE CONCESSION CREDIT	1-	10.00	10.00-
WAP	PROGRAM WHEEL ALIGNMENT	1		
	12959436 HERRERA-ZAVA, ALFREDO			
	12960279 Cuellar, Delfino			

CAP CHECK AIR PRESSURE TIRE 4
Tire pressure adjusted to Vehicle specifications in PSI
FRONT 38 REAR 35

MASTERCARD MasterCard 216.22-
CARD NUMBER 9514 APPR 015874

IF YOU HAVE A QUESTION OR CONCERN PLEASE SPEAK
TO OUR STORE MANAGER, DENNIS J. DUSSO
AT (949) 492-5543

Subtotal Parts 206.96 Subtotal Labor

Special Credit:

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name and Address)</i> Grant G. Teeple, Esq. SBN 144760 Gregory M. Garrison, Esq. SBN 165215 Frederick M. Reich, Esq. SBN 157028 TEEPLE HALL, LLP 9255 Towne Centre Drive, Suite 500 San Diego, CA 92121 (858) 622-7878 ATTORNEYS FOR <i>(Name)</i> : Brian Jeffery Fratilla	FOR COURT USE ONLY
<p style="text-align: center;">SAN DIEGO SUPERIOR COURT HALL OF JUSTICE 303 West Broadway, San Diego, CA 92101</p>	
PLAINTIFF(S)/PETITIONER(S): Brian Jeffery Fratilla	DEPT: C-62
DEFENDANT(S)/RESPONDENT(S): Big O Tires, LLC	DATE: TIME:
<p style="text-align: center;">DECLARATION OF SERVICE</p>	CASE NUMBER: 37-2013-00028542-CU-BT-CTL

I, Uziel Carbajal, declare that: I am over the age of 18 years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California, where the services set forth below occurs; and my business address is: TEEPLE HALL, LLP, 9255 Towne Centre Drive, Suite 500, San Diego, California 92121.

I further declare that on April 1, 2016, I served the foregoing documents described as:

- 1. Third Amended Complaint for Damages and Equitable Relief; and**
- 2. Declaration of Service.**

On the party or parties indicated on the **Attached Service List**, as follows:

(BY MAIL) I am readily familiar with the employer's business practice for collection and processing of documents and correspondence for mailing with the United States Postal Services; by ordinary business practice, placing a true copy of the above-described document(s) enclosed in a sealed envelope, for collection and mailing with the United States Postal Service where it would be deposited for first-class delivery, postage fully prepaid, with the United States Postal Service in the City of San Diego, State of California, that same day in the ordinary course of business, addressed to each addressee, respectively, as follows: **see Attached Service List.**

(BY EMAIL) In addition to regular mail, I transmitted the above-described documents via e-mail, as listed on the **Attached Service List.**

SHORT TITLE:

Fratilla v. Big O Tires, LLC

CASE NUMBER:

37-2013-00028542-CU-BT-CTL

(BY FACSIMILE) In addition to regular mail, pursuant to agreements of the parties as confirmed in writing, I transmitted the above-described documents via facsimile machine, as listed on the **Attached Service List**, pursuant to California Rules of Court, Rule 2008. The facsimile machine I used complies with Rule 2003, the transmission was reported as complete, and no error was reported by the machine. Pursuant to Rule 2008, the transmitting facsimile machine properly issued a transmission report, a copy of which is attached to this Declaration.

XX (VIA ONE LEGAL) by transmitting, via www.onelegal.com, the above-described documents on the party or parties indicated on the **Attached Service List**.

(BY PERSONAL SERVICE, CCP § 1011) I am readily familiar with the employer's business practice for sending out documents for personal service. Pursuant to this practice, the above-described document(s) were personally delivered by an agent of CORPORATE COURIER, to the office of the addressee as indicated on the **Attached Service List**.

(BY OVERNIGHT COURIER) I am readily familiar with the employer's business practice for collection and processing of documents and correspondence for mailing with Federal Express, by ordinary business practice, placing a true copy of the above-described document(s) enclosed in an envelope or package designated by Federal Express with delivery fees paid or provided for, properly sealed, with proper label affixed thereto, for collection and mailing. Pursuant to this practice, the aforementioned correspondence and/or documents were deposited in a box or facility regularly maintained by Federal Express in the ordinary course of business addressed to each addressee, respectively, as indicated on the **Attached Service List**, on the date of this Declaration, for overnight delivery.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on April 1, 2016.

Signature: _____

Print Name: Uziel Carbajal

Service List:

Jonathan Solish, Esq.
Kristy A. Murphy, Esq.
BRYAN CAVE, LLP
120 Broadway, Suite 300
Santa Monica, CA 90401-2386
Tel. (310) 576-2100
Fax: (310) 576-2200
E-mail: jonathan.solish@bryancave.com
krysty.murphy@bryancave.com