

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General,
Lori Swanson,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

AutoAssure, LLC, d/b/a Vehicle Services
Department,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson (“State or “AGO”), for its Complaint against AutoAssure, LLC, hereby states and alleges as follows:

INTRODUCTION

1. AutoAssure, LLC, d/b/a Vehicle Services Department (“AutoAssure”), solicited Minnesota consumers to buy “motor vehicle service contracts” providing coverage for certain car repairs. But it did so by falsely warning consumers of the supposed expiration of their manufacturer warranty coverage—despite some consumers having multiple years of coverage remaining. AutoAssure compounded this deception by also portraying itself as consumers’ vehicle manufacturers or dealers, calling itself the “Vehicle Services Department,” and offering to “extend” or “update” their earlier coverage. In sales calls, AutoAssure further misrepresented that the service contracts it sold would cover, for example, “everything from the front of your [vehicle], all the way to the rear.” In truth, AutoAssure was not associated with any vehicle manufacturer or dealer, and sold third-party repair coverage that was effective only if the repair

did not fall within one of as many as over 40 paragraphs of exclusions. AutoAssure's business practices were deceptive and misleading, and the State of Minnesota, by its Attorney General, Lori Swanson, brings this enforcement action to stop these unlawful practices and enforce Minnesota's consumer protection laws.

PARTIES

2. Lori Swanson, Attorney General of the State of Minnesota, is authorized under Minnesota Statutes chapter 8, the Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43–.48, the Consumer Fraud Act, Minn. Stat. §§ 325F.68–.70, Minnesota Statutes section 325F.71, and has common law authority, including *parens patriae* authority, to bring this action to enforce Minnesota's laws, to vindicate the State's sovereign and quasi-sovereign interests, and to remediate all harm arising out of—and provide full relief for—violations of Minnesota's laws.

3. AutoAssure, LLC, was organized as a Texas limited liability company in September 2010. AutoAssure's principal place of business is 6400 Pinecrest Drive, Suite 400, Plano, Texas 75024. AutoAssure lists its registered office address as c/o Cogency Global, Inc., 1601 Elm Street, Suite 4360, Dallas, Texas 75201. AutoAssure is not and never has been registered with the Minnesota Secretary of State's office to transact business in Minnesota.

JURISDICTION

4. This Court has subject matter jurisdiction over this action pursuant to Minnesota Statutes sections 8.01, 8.31, 8.32, 325D.45, 325F.70, 325F.71, and common law.

5. This Court has personal jurisdiction over AutoAssure because AutoAssure has purposefully and knowingly transacted business in Minnesota and with Minnesota residents, and

has committed acts inside and outside Minnesota causing injury to the Minnesota public and in violation of Minnesota law.

VENUE

6. Venue in Hennepin County is proper under Minnesota Statutes section 542.09 because the cause of action arose, in part, in Hennepin County. AutoAssure has done business in Hennepin County, and AutoAssure's unlawful acts have affected Hennepin County residents, among others.

FACTUAL BACKGROUND

I. AUTOASSURE MARKETS AND SELLS MOTOR VEHICLE SERVICE CONTRACTS IN MINNESOTA AND NATIONWIDE.

7. Despite often being referred to as "extended warranties," motor vehicle service contracts (hereafter "service contracts") are not manufacturer warranties or extensions of manufacturer warranties. They are separate agreements under which the purchaser is indemnified from certain vehicle repair costs for a set amount of time and vehicle mileage. Service contracts may be provided by third parties unaffiliated with a vehicle manufacturer, and typically do not provide the same scope and quality of coverage as a manufacturer warranty.

8. Service contracts may be sold by a third-party company that acts solely as a sales agent and does not provide or administer coverage under such service contracts. AutoAssure acted solely as a seller of service contracts provided by others.

9. AutoAssure has marketed and sold service contracts to consumers across the country, including in Minnesota.

10. AutoAssure's marketing and sale of service contracts typically began with direct mail it sent to potential customers' residences, including potential Minnesota customers. AutoAssure has used different mailers over the years to market the service contracts it sold.

AutoAssure also had a website, *www.autoassure.com*, through which it advertised service contracts and provided consumers with phone numbers and email addresses that they could use to contact AutoAssure.

11. AutoAssure's mailers urged recipients to call AutoAssure. AutoAssure then made a further sales pitch over the telephone. If the customer decided to purchase a service contract through AutoAssure, the customer provided his or her credit or debit card information over the phone to complete the sale. If the payment was less than the full amount due, AutoAssure arranged a monthly payment plan with a "payment plan administrator," sometimes through a sister company of AutoAssure's called PaymentAssure. All of this often took place before customers saw the terms and conditions of the service contract they had purchased. Such customers' knowledge of the contract at the time of sale was thus based solely on AutoAssure's direct mail materials and the representations it made over the phone.

12. AutoAssure sold different versions of service contracts, which can be generally grouped into two types: (1) "named component" service contracts, which only covered the parts identified in the terms of the contract, and (2) "exclusionary" service contracts, which only covered the parts and repairs not excluded by the terms of the contract. Regardless of what the service contracts claimed were "covered" parts, however, all versions of the contracts AutoAssure provided to the AGO contained pages-long sections listing the numerous different exclusions under which otherwise-covered repairs would not be covered.

13. For instance, one type of service contract AutoAssure sold contained 41 paragraphs (including subparagraphs) of exclusions that took up more than 25% of the service contract's pages, while none contained fewer than 15 paragraphs of exclusions. Indeed, although AutoAssure has marketed the "exclusionary" service contracts as "new car" plans that were the

“best coverage” it sold, these contracts listed a significant number of parts that were not eligible for repair coverage, including things such as the exhaust and emissions systems, carburetors and throttle bodies, manual transmission clutch components, brake rotors and drums, hoses, belts, bumpers and other sheet metal, body panels and components, airbags and other safety/restraint systems, and struts and shock absorbers.

14. Even if a part in need of repair fell within the list of parts covered by a given service contract, the contract would still not cover such a repair if one of the contract’s numerous coverage exclusions applied. This was true whether the service contract was for supposed “new car” coverage, or of lesser quality. These exclusions included, for example, repairs covered by a manufacturer’s warranty or prior service contract; repairs attributable to “normal operation and use” that gradually reduces operating performance; conditions deemed to have existed prior to the effective date of the contract; repairs of covered parts caused by problems with non-covered parts; repairs necessitated by a lack of regular maintenance or failure to maintain proper levels of vehicle fluids; and the cost of teardown and diagnosis of a repair issue if the repair was ultimately not covered by the service contract.

15. AutoAssure has sold service contracts to Minnesota consumers before they had a chance to view the language of the contract. It typically did not inform such consumers of the full scope and consequences of the non-covered parts and other coverage exclusions in its mailings or on the phone. Indeed, as discussed further below, AutoAssure has instead at times affirmatively misrepresented the coverage the service contracts would provide.

16. The service contracts AutoAssure sold cost about \$3,200 on average and can cost as much as \$6,245.

17. AutoAssure has sold more than 950 service contracts in Minnesota since April 9, 2012. These Minnesota consumers have paid more than \$1.5 million toward the service contracts sold to them by AutoAssure. Minnesotans have paid some of this money to AutoAssure directly, and other portions to companies involved in the service contract industry with which AutoAssure has relationships.¹

18. The AGO previously sued another service contract seller, United Auto Defense (“UAD”), for alleged false and deceptive marketing practices. UAD’s CEO, Gary Primm, was a general manager at AutoAssure before he founded UAD. When asked by the AGO about his role at AutoAssure, Primm said that he was hired by AutoAssure to “save the company” and make it profitable. He also stated that AutoAssure taught him the “basic fundamentals of business” and marketing that he used at UAD. In October 2016, UAD agreed to a permanent ban on doing business in Minnesota and to pay \$270,000 in civil penalties and restitution based on its allegedly deceptive sales practices. *See State, by its Attorney General, Lori Swanson v. United Auto Defense, LLC*, No. 19HA-CV-16-480 (Minn. 1st Jud. Dist. Feb. 22, 2016).

II. AUTOASSURE USED CONFUSING MAILERS TO SELL SERVICE CONTRACTS IN MINNESOTA.

A. AutoAssure Began Sending Solicitation Mailings into Minnesota in 2011.

19. AutoAssure began marketing and selling service contracts in Minnesota in 2011. An early AutoAssure solicitation mailing, which it styled as an “**IMPORTANT NOTICE**,” contained recipients’ personal and vehicle information, including year, make, and model. The

¹ The dollar figures in this paragraph are based on customer list and payment information that AutoAssure produced to the AGO. The list does not indicate the purchase price of each contract or if it had been paid in full, and AutoAssure has not yet provided the AGO the requested and necessary information to verify the accuracy of the financial information contained in the spreadsheet.

mailing warned of "AUTOMOTIVE COVERAGE EXPIRATION" and that the warranty on the recipient's vehicle "IS EXPIRING OR HAS EXPIRED." The mailer then instructed the recipient to "CALL TODAY" in order to "OBTAIN EXTENDED COVERAGE." It directed the recipient to "RESPOND WITHIN 5 DAYS," and contained a date on which the "COVERAGE OFFER EXPIRE[D]."

20. Some Minnesotans were confused and thought these type of mailings were from their vehicle manufacturers. For example, a 72-year-old retiree, **P.H.**, thought that her fall 2012 mailing from AutoAssure had actually come from the maker of her vehicle, Hyundai. She even took the letter to her Hyundai dealership, which had to use a magnifying glass to show her that AutoAssure's name appeared in fine print on the bottom.

21. AutoAssure used a different style of mailers starting sometime in 2013. These new mailings now identified AutoAssure as the "Vehicle Services Department." The mailing again contained recipients' personal and vehicle information, and warned them that their "factory warranty is about to expire or may have already expired." The mailer claimed that "[o]ur records indicate that you have not contacted us to have your vehicle service contract updated," and that an "IMMEDIATE RESPONSE TO THIS NOTICE [IS] REQUESTED" in order to "activate a service contract." The mailing further said that the sender "reserve[d] the right to revoke your eligibility for service coverage after 5 days," that "[n]o other notices will be sent," and that this would be the "only attempt to contact you about your factory warranty which may be expiring."

22. Multiple Minnesotans—including 76-year-old **R.M.**, 74-year-old **E.C.**, and 66-year-old **L.H.**—received these solicitation mailers from AutoAssure in 2013 and 2014, although their cars were still covered by manufacturer warranties and/or prior service contracts at the time.

Some Minnesota consumers were confused by these mailings and thought they came from their car's manufacturer or dealership. For example, 80-year-old retiree **R.H.** thought AutoAssure's September 2013 solicitation mailer to him was from his car's dealership or manufacturer, which led him to purchase an AutoAssure service contract that he later canceled after learning his car was already covered. **L.T.**, a 79-year-old retiree, received an AutoAssure mailing in or around November 2014 that he similarly thought was from Toyota.

23. At some point in 2015, AutoAssure removed certain elements of its 2013-14 mailer, but otherwise continued to send substantially similar mailings into Minnesota. **C.K.**, whose Kia Soul was covered by the manufacturer basic warranty through August 2016 and by the manufacturer powertrain warranty through August 2021, received this type of solicitation from AutoAssure in February 2015. The mailer falsely warned C.K. that "your factory warranty may have already expired, or is about to expire," notwithstanding that the warranty was in effect for six more years.

24. AutoAssure's mailers told customers that their vehicles' manufacturer warranty—depending on the version—"has expired," "is expiring," "is about to expire," or "may have already expired." But AutoAssure was not the vehicle manufacturer that provided the warranty, nor did it possess any customer-specific information about length of warranty coverage, vehicle purchase date, and miles driven that would allow it to actually notify recipients of warranty expiration. In fact, AutoAssure told the AGO that it "did not itself choose who received an offer from the company," yet made explicit, authoritative claims about the expiration of recipients' vehicles' warranty nonetheless. These marketing and sales practices by AutoAssure were confusing and unlawful.

25. AutoAssure's mailers confusingly suggested that it was associated with recipients' vehicle manufacturers and/or dealerships, including by calling itself the "Vehicle Services Department." However, neither AutoAssure—nor any of the other companies that administer and provide the service contracts AutoAssure has sold in Minnesota—were vehicle manufacturers or dealerships, or had any association with vehicle manufacturers or dealerships. These marketing and sales practices by AutoAssure created a likelihood of confusion among Minnesota consumers.

26. In the same vein, AutoAssure's mailers purported to offer Minnesota consumers the chance to "extend[]" or "update" the prior repair coverage on their vehicles. But none of the service contracts sold by AutoAssure that consumers and AutoAssure have provided to the AGO are an extension of, or provide the same level of coverage as, a manufacturer-issued warranty, nor were they "updates" or "extensions" of service contracts consumers had previously purchased. These marketing and sales practices by AutoAssure also confusingly and unlawfully suggested that AutoAssure was a vehicle manufacturer or dealership, or associated with these entities.

27. The Better Business Bureau of Texas raised concerns about AutoAssure's use of this type of language, noting that AutoAssure was "mislead[ing] consumer[s] by making the statement in its letters that the consumer has not contacted them to have their vehicle service contract 'updated,' when the consumer never had a vehicle services contract with AutoAssure" in the first place.

28. AutoAssure's mailers contained language creating a false sense of urgency of the recipient's window of opportunity to act. The mailers, for example, stated that AutoAssure "reserve[d] the right to revoke your eligibility for service coverage after 5 days." But

AutoAssure has sold service contracts to consumers regardless of whether they call before or after the given deadline in the mailer. In one instance, for example, a consumer called AutoAssure nearly two months after the "respond by" date on his mailing, and AutoAssure sold the person a service contract. AutoAssure told another consumer that his mailing had expired, but then said that "even if [the mailing] had expired, we'd be able to get that re-activated for you."

29. Minnesota consumers have purchased service contracts through AutoAssure based in part on the deceptive, misleading, and confusing representations and the deceptive, misleading, and confusing material omissions contained in its solicitation mailings.

B. AutoAssure Told the Attorney General's Office in 2015 That It Had Ceased Selling Service Contracts in Minnesota, Then Marketed and Sold Numerous Service Contracts in Minnesota into Early 2016.

30. By late 2015, after the AGO had begun investigating AutoAssure, the company told the AGO that it had stopped marketing to Minnesota consumers "numerous months" beforehand and "does not issue service contracts to Minnesota residents" any longer.

31. This representation was false. AutoAssure sent multiple solicitation mailers into Minnesota in early 2016, which led to the AGO receiving additional complaints from Minnesota recipients of these mailings.

32. The mailings continued to represent that AutoAssure was the "Vehicle Services Department," and claimed on the envelope that inside was an "IMPORTANT VEHICLE NOTICE" for the recipient's vehicle's year, make, and model. These mailings again contained representations that AutoAssure was seeking to "update" the recipient's repair coverage, that the recipient's warranty "may have already expired, or is about to expire," and that the recipient had an urgent need to call before eligibility for coverage was revoked.

33. Multiple Minnesotans received these mailings in 2016, including 79-year-old L.T., a previous recipient of an AutoAssure mailing, who received this mailer even though the car identified in it had been totaled in an accident 13 months earlier, and 71-year-old P.F., who received the AutoAssure mailer, but thought it actually came from Volkswagen until he called his dealership and learned it was not in fact from Volkswagen.

III. AUTOASSURE MADE MISREPRESENTATIONS TO POTENTIAL MINNESOTA CUSTOMERS OVER THE PHONE WHEN PEOPLE CALLED IN RESPONSE TO AUTOASSURE'S MAILERS.

34. During sales calls² with Minnesota consumers, AutoAssure telemarketers falsely and deceptively reinforced the nonexistent association of AutoAssure with mailer recipients' vehicle manufacturers and dealerships, and misrepresented the nature of the vehicle coverage actually being sold, among other deceptions.

A. AutoAssure Has Deceptively Told Consumers They Lack Current Repair Coverage.

35. Reinforcing the warnings of expiring vehicle coverage found in its mailings, AutoAssure instructed its telemarketers to tell potential customers that their vehicles were no longer under manufacturer warranty, regardless of whether this was true.

36. AutoAssure's telephone sales scripts directed telemarketers to tell consumers that their manufacturer warranty coverage has expired if a vehicle has more than 36,000 miles of use:

² The AGO issued pre-complaint discovery to AutoAssure requesting call recordings of its telemarketing calls. AutoAssure refused to provide these recordings. The AGO was thus forced—twice—to move the district court to compel AutoAssure to produce the recordings. This motion practice significantly extended the AGO's investigation. AutoAssure was ultimately ordered to produce call recordings related to 1,000 of its Minnesota customers. *See In the Matter of AutoAssure, LLC, d/b/a Vehicle Services Department*, No. 27-CV-16-6739 (Minn. 4th Jud. Dist. May 4, 2016). Nevertheless, it still has produced only about 350 call recordings to the AGO, the majority of which were cancellation, customer service, and other non-sales calls.

- **Less than 36k** = Hmmm. Is everything running ok?
- **36k-50k** = Ooh! Looks like you're out of factory warranty. What problems have you started to experience?
 - **None:** You're lucky, this is typically when things start to break.
 - **Yes:** How much have those set you back so far? Is everything running ok now?

37. For some consumers, this was an inaccurate portrayal of the length of coverage provided by their vehicle's manufacturer warranties. Some manufacturers, including Hyundai and Kia, generally provide basic warranties that last for five years or 60,000 miles. Volvo and Buick vehicles generally come with four-year, 50,000 mile basic warranties. Other manufacturers generally offer at least a five-year, 60,000 mile powertrain warranty on their vehicles, with some even offering 10-year, 100,000 mile powertrain warranties.

38. AutoAssure's call recordings confirm that it has not asked consumers if they still have warranty or prior service contract coverage remaining; instead, representatives have simply told consumers that they lack coverage and therefore need to purchase a service contract from AutoAssure. For instance, it told customers K.W. and S.H., whose experiences are detailed further below, that they needed to purchase coverage for vehicles that still had significant remaining warranty or prior service contract coverage, based on years and mileage.

39. For customers with newer vehicles, AutoAssure's call recordings reflect that it sometimes would omit mentioning prior coverage altogether, meaning its mailer discussing the expiration of repair coverage continued to be last word on the subject for these persons. For example, in 2014 AutoAssure sold a service contract to a customer with a 2012 Lexus GX-series with 17,575 miles. In a call from 2014, AutoAssure sold a service contract to a customer with a 2012 Chevrolet Cruze with 22,246 miles of use. At no point during these calls did the representatives mention or ask whether the vehicles were still covered by manufacturer warranties. In another call from 2014, AutoAssure sold a service contract for a 2012 Toyota Rav4 that had only 15,932 miles by, in part, telling the customer that her "vehicle is coming

close to being outside that factory coverage based on the years.” In fact, the customer’s vehicle still had more than a year of basic warranty coverage left, and more than three years of powertrain warranty coverage left.

40. When consumers asked AutoAssure about their current repair coverage, the company has avoided giving a straight answer. In one phone call, for instance, a Minnesota consumer indicated she had bought a service contract when she purchased her car and may still have coverage under it. In response, the telemarketer claimed that “nine times out of ten, if you received something from the Vehicle Services Department, whatever you had in place is expired.”

41. In another call, a Minnesota consumer with a nearly brand-new 2016 vehicle with only 618 miles asked AutoAssure, “What kind of coverage have I got on that 2016 anyway? Do I need [to buy coverage] for a while?” The telemarketer responded, “Well yeah, if you wanna extend it you’ve gotta do it now.” In a different call, another Minnesota consumer with a nearly brand-new 2016 vehicle with less than 3,000 miles asked, “So are we doubling up on what we have with the car, [it] being a new car?” The representative responded, “This is going to go . . . for the next 6 years, and up to 125,000. So you guys have the long-term coverage on the truck now.”

42. AutoAssure similarly misled Minnesota consumers who knew they already had coverage about their need to purchase yet additional coverage. For example, when one of the customers above called AutoAssure back in an effort to cancel after he discovered that he already had five more years of manufacturer repair coverage, the representative told him that his existing warranty only covered “five percent” of repairs, while AutoAssure took care of “95 percent.”

43. These representations and omissions were deceptive, confusing, misleading, and unlawful because some of the service contracts sold by AutoAssure excluded coverage for repairs covered by the manufacturer warranty or another service contract, as discussed further below. For some AutoAssure Minnesota customers, this meant paying thousands of dollars toward coverage they did not need and could not use.

B. AutoAssure Has Made Deceptive Representations to Consumers About Its Association with Their Manufacturers and Dealerships.

44. AutoAssure's call recordings also reflect that, after receiving one of its solicitation mailers and calling in response, some Minnesotans were confused about AutoAssure's identity and purpose. For example, one Minnesotan called AutoAssure asking it to assist her with a manufacturer recall, and another asked if the company could provide her with a new vehicle title.

45. AutoAssure's problematic telemarketing exacerbated this confusion. Its sales representatives would often fail to identify the company as "AutoAssure" at the beginning of the call. Instead, representatives have either utilized the "Vehicle Service Department" name contained in its mailings or have failed to provide any company name at all at the beginning of the calls.

46. If consumers did ask AutoAssure for further detail about the company, it has evaded telling them it is a third-party seller of service contracts, and has instead taken the opportunity to further falsely associate itself with dealers and manufacturers and fail to disclose that it has no such affiliation. When one consumer asked what the "Vehicle Service Department" was, an AutoAssure telemarketer claimed that it merely "set up the long-term coverage, so you go right back to your dealership." When another consumer asked an AutoAssure telemarketer "what company [he was] through," he responded by saying that "the

administrator of this program is A+ rated and . . . [has] been in business since 1987, they're the best in the business."

47. When a different consumer asked a follow-up question when the sales representative mentioned the name "AutoAssure," the representative replied, "Well, we're the Vehicle Services Department. We're on direct pay with every GMC dealership nationwide." When another consumer asked, "Are you Chevrolet people?" the telemarketer replied, "Yeah, we're on direct pay with the Chevrolet dealership, sir, yes." When yet another consumer directly asked at the beginning of the call if the Vehicle Services Department was "affiliated with Chevrolet," the AutoAssure representative simply responded, "What we do is we certainly handle the extended service contracts nationwide. We actually have a direct pay system with all your dealers." These representations were false, however, as AutoAssure does not have a "direct pay" relationship with car dealerships (or manufacturers). AutoAssure has deceptively referred to this non-existent relationship in other calls with Minnesota consumers as well.

48. AutoAssure telemarketers would sometimes try to convince customers of the trustworthiness of the company by referencing the Better Business Bureau ("BBB"). One sales representative, for example, told a customer that AutoAssure is "A+ accredited with the Better Business Bureau," while another said that AutoAssure is "backed by the Better Business Bureau, so everything we do is legit." In reality, AutoAssure is not accredited by the Better Business Bureau—in fact, it was rated as low as a D-minus by the BBB while selling service contracts in Minnesota—and has been criticized by its local Better Business Bureau branch for marketing practices like those described in this Complaint.

49. AutoAssure telemarketers further attempted to boost their own trustworthiness by falsely telling potential customers that they do not make commissions from sales. One

telemarketer, for example, told a caller that “I don’t make a dime off you or lose a dime whether or not you [buy a service contract] or not.” Another said that he was paid hourly and that “if they actually paid me for commission . . . I would be making like [\$100,000] a year” because he sold so many service contracts. According to a recent AutoAssure online job posting for “inside sales representatives,” however, AutoAssure sales representatives receive a “HIGHLY COMPETITIVE COMMISSION PLAN,” as well as a “[h]ighly competitive bonus program,” providing them with “unlimited earning potential.”

C. AutoAssure Has Deceptively Represented to Consumers that the Nature and Quality of the Repair Coverage It Sells Is More Comprehensive Than Is Actually the Case.

50. AutoAssure has deceptively conflated the service contracts it sells with manufacturer warranties during its solicitation calls by asserting that it will “extend” or “update” customers’ existing or past coverage, perpetuating similar representations contained in its mailers. For instance, AutoAssure representatives have told Minnesota consumers that its third-party coverage was “simply a re-activation of the coverage that came with your [car] when it was a brand new vehicle,” was “exactly the same thing as when you got [your car] off the lot,” was the “equivalent to what you had when you got it off the showroom floor,” and was a “one-time extension to put the coverage back on your Buick.” AutoAssure, in fact, had no ability to extend consumers’ prior vehicle coverage because its third-party service contracts were not warranties or extensions of other companies’ warranties or service contracts. Such statements further deceptively suggest that it was associated with callers’ vehicle manufacturers, as discussed elsewhere herein.

51. AutoAssure telemarketers have further deceptively represented the scope of the coverage provided by the service contracts it sold. AutoAssure’s telephone sales script directed

its representatives to claim the service contracts would provide “Full Car/Comprehensive” coverage or provide coverage “like when it was new.”

52. AutoAssure telemarketers used this instruction with Minnesotans, telling them that the contracts sold by AutoAssure were “full car coverage”; “full coverage”; covered “everything”; provided “full car comprehensive coverage”; would “cover all of the repairs for a five-year period”; covered “everything from A to Z”; covered the car “head to toe”; covered “the car front to back, top to bottom”; covered “everything from the front of your [vehicle], all the way to the rear, . . . and that does include your electronics”; covered “everything mechanical, all the electrical and computer parts”; or covered “everything on there like new.” Or as one representative summed it up: “You would be responsible for your oil changes, your brake pads, and tires . . . and then we'll take care of everything else.”

53. As described earlier, even the most comprehensive service contracts sold by AutoAssure did not cover “everything” on a vehicle. Numerous parts were not covered by the service contracts it sold, and there were various circumstances under which the contracts would not pay for the repair of an otherwise-covered part. An illustrative example of how AutoAssure misrepresented the scope of coverage and these exclusions to one Minnesota consumer is as follows:

54. In a 2016 sales call, AutoAssure offered the consumer “enhanced full car coverage.” that would cover “the whole nine yards, you guys just have to keep up with the regular maintenance on the vehicle.” When the consumer began listing parts by name, the representative assured the consumer that, “[A]ll that’s covered. You guys just have to keep up with the maintenance.” After buying a service contract, the same consumer subsequently called AutoAssure to cancel his contract. He told AutoAssure that the parts he had discussed with its

telemarketer during the sales call, including his GPS unit, were not, in fact, covered in the contract. AutoAssure responded by stating that it could not change the coverage: "I mean, we can review the call and, you know, see what happened there. But I mean, to be quite honest with you, sir, I don't want to waste your time. I mean, there's just nothing we can do to change that." The customer information provided by AutoAssure shows that this consumer ultimately received a refund of only \$302 out of the approximately \$470 he paid toward the service contract.

D. AutoAssure Has Deceptively Pressured Consumers into Buying Based on False Time Constraints.

55. AutoAssure has deceptively pressured Minnesota consumers to buy a service contract by telling them that their only chance to do so is to complete the purchase on the current phone call. AutoAssure has told Minnesota callers, for instance, that they "wouldn't be able to hold the file open," "can't offer this same level of coverage in the future," "it will be the last time we can guarantee the offer to you," that it would "close out the file" if the consumer declined, that this was a "one-time exception" or "one last exception to still honor that coverage", and that the consumer would "forfeit" the coverage if he did not buy on the call. Another Minnesota consumer was told by an AutoAssure telemarketer that she couldn't call him back because the "program I have on my computer only gives me the option of accepting or declining during the phone call."

56. AutoAssure's professed reason for creating a sense of urgency, however—that customers would call back once they needed repairs if they did not purchase on the first call—is a false and deceptive rationale, in part, because some of the service contracts it sold did not cover pre-existing conditions, and most mandated a 30-day waiting period after purchase before customers could make a repair claim.

E. AutoAssure Has Targeted Senior Citizens When Selling Service Contracts.

57. AutoAssure telemarketers have asked callers if they are seniors or retired, including asking their ages or if they are over a certain age. Ostensibly this is so AutoAssure can offer preferential senior rates. Thus, if AutoAssure did not already know that its mailings were received and answered by seniors, it certainly knew this after its sales representatives asked potential customers about their age or retirement status on the phone. AutoAssure then directed its marketing conduct at those groups by offering them specific discounts on the basis of their senior status.

IV. AUTOASSURE FAILED TO SUFFICIENTLY DISCLOSE MATERIAL FACTS ABOUT ITSELF AND THE SERVICE CONTRACTS IT MARKETING AND SOLD TO MINNESOTA CONSUMERS.

58. In conjunction with the deceptive representations described in this Complaint, AutoAssure failed to sufficiently disclose to potential Minnesota customers, among other things: that it was not a vehicle manufacturer or dealership and did not have any association with any such entities; that the service contracts it sold were not extensions of previous manufacturer warranties or service contracts provided by others; and that the service contracts it sold did not provide the same degree of coverage as a manufacturer warranty. AutoAssure was required to sufficiently disclose this material information to customers, and its failure to do so was independently deceptive, misleading, and unlawful.

59. Special circumstances exist that triggered a duty on the part of AutoAssure to sufficiently disclose these material facts for several reasons. First, AutoAssure had a statutory duty under Minnesota Statutes section 59B.07, subdivision 2, to disclose to consumers to whom it marketed and sold service contracts all material information that would be considered misleading if omitted. AutoAssure nonetheless regularly failed to sufficiently disclose material information when selling service contracts, which not only violated section 59B.07, but also

independently rendered the manner in which it marketed and sold the contracts deceptive, confusing, misleading, and unlawful.

60. Second, the nature and quality of the representations that AutoAssure made to potential Minnesota customers about itself and the service contracts it offered were so incomplete that by failing to further sufficiently disclose the material facts that, it had no responsibility or obligation to notify any particular consumer of the expiration of his or her manufacturer warranty or prior service contract, that it was not a vehicle manufacturer or dealership and did not have any association with any such entities, that the service contracts it sold were not extensions of previous manufacturer warranties or service contracts, and that the service contracts it sold did not provide the same degree of coverage as a manufacturer warranty, AutoAssure did not say enough to prevent the representations it did make to consumers from being deceptive, confusing, misleading, and unlawful.

61. Third, AutoAssure had special and actual knowledge—knowledge which at least some Minnesota consumers did not have at the time of their purchase—that it had no responsibility or obligation to notify any particular consumer of the expiration of his or her manufacturer warranty or prior service contract; that it was a third-party service contract seller and not a vehicle manufacturer or dealership, and that it offered independent third-party service contracts that do not extend prior coverage and that have lesser coverage than manufacturer warranties. By suggesting that it was a vehicle manufacturer, dealership, or associated with one of these entities, AutoAssure knew or had reason to know that potential customers would place their trust and confidence in AutoAssure and rely on AutoAssure to inform them of material facts relating to their purchase of service contracts. AutoAssure acted deceptively, confusingly,

and misleadingly in failing to sufficiently disclose its special and actual knowledge of these material facts when marketing and selling service contracts to Minnesota customers.

V. AUTOASSURE'S DECEPTIVE AND MISLEADING SOLICITATION PRACTICES HAVE HARMED MINNESOTA CONSUMERS.

62. Had AutoAssure not made the deceptive and misleading representations described in this Complaint, and/or had it sufficiently disclosed to consumers the material facts about itself and the service contracts it offered, some Minnesotans would not have purchased service contracts from it. Below are illustrative, non-exclusive examples of several such Minnesota consumers:

S.H.

63. S.H. is a 76-year-old retiree living in Blaine. She bought a new 2012 Kia Sorento in July 2011. S.H.'s new vehicle came with two Kia factory warranties: a five-year, 60,000 mile basic warranty, and a 10-year, 100,000 mile powertrain warranty.

64. S.H. received an AutoAssure mailing in early 2016, and called the listed phone number. The AutoAssure telemarketer told S.H. that, "with your policy as of right now, you are expired. You have nothing on your car at all." This statement was false, as S.H. was still covered under both her basic and powertrain Kia warranty at the time.

65. The telemarketer then falsely said that AutoAssure would be "extending the original factory Kia coverage, so we're extending the coverage like that out for another five years." She continued, stating that "it's the original coverage, so what we cover—what Kia covered originally—we are covering now," and that this "new car" coverage would "cover[] everything on the vehicle except wear and tear." Another representative who later took over the call similarly told S.H. that "this will make sure that for the next five years, all the repair bills are taken care of."

66. AutoAssure offered S.H. various discounts during the call, including a “55 or older” discount and a potential military discount, although AutoAssure said that the senior and veteran discount were “the exact same, and you can only apply one.”

67. AutoAssure further made clear that S.H. had to purchase a contract on this phone call, saying that “it is going to be the last time that we offer the coverage, so keep that in mind for new car [coverage].”

68. Based on AutoAssure’s representations, S.H. purchased a service contract for her already-covered car by making a \$450 down payment during that call. After S.H. hung up, the AutoAssure sales representative heard on the call recording appears to celebrate the sale by stating, “F**k yeah!”

69. To date, S.H. has paid \$3,433 toward this service contract, which is payment in full. S.H.’s car was covered by its basic Kia warranty when she bought the service contract, and is still covered by its Kia powertrain warranty today. If S.H. had known that her Kia coverage was still in effect when she was contacted by AutoAssure, she would not have purchased the contract in the first place.

K.W.

70. K.W. is a 59-year-old medical device inspector living in Cambridge. She bought a new 2013 Ford Escape from her local Ford dealership in July 2013. At the same time, K.W. also bought a four-year, 120,000 mile service contract for her new car.

71. K.W. received an AutoAssure “Vehicle Services Department” mailing in early 2016. She thought that it was an official notice from Ford because it contained her personal information, including detailed information about her car.

72. K.W. called AutoAssure in February 2016, as its mailer gave her a deadline by which she ostensibly had to respond. At the time K.W. called, she had about another 45,000 miles of use left under the service contract she had purchased from her dealership, or another 18 months, whichever came first.

73. At the beginning of the call, the AutoAssure telemarketer said that "I don't like to be the one to tell you, but your car is out of the factory warranty." The representative did not mention or ask if she already had service contract coverage. He also told K.W. that he would not make commission from a sale because he was an hourly employee, and that she had to accept or decline coverage by the end of the phone call.

74. In describing the nature of the repair coverage, AutoAssure told K.W. that the service contract would provide "full car comprehensive coverage." When she asked if that meant "full coverage for everything," the representative responded, "Yes. Well, I mean, that's all we offer is full coverage."

75. Later in the call, an "authorization manager" came onto the phone. He told K.W. that he would "do everything I can to help you out now that that has expired," in reference to her supposedly expired vehicle coverage. The manager offered K.W. a senior discount during the call. He also told K.W. that she was "correct" that the coverage she was buying would be "full coverage, that covers everything in the engine," and that "the only thing you're really going to have to worry about is just regularly scheduled maintenances like oil changes . . . and then any wear and tear items."

76. Based on these representations, K.W. purchased a \$3,791 service contract from AutoAssure with a \$199 down payment.

77. Shortly after this phone call, K.W. called the local Ford dealership from which she had purchased her Escape. The Ford dealer told her that AutoAssure was not associated with Ford and that her car was still covered by the service contract she had purchased when she bought it.

78. K.W. decided to cancel her service contract, but AutoAssure did not make it easy. She had to call three different times because its representatives persisted in asking her why she wanted to cancel. In one of these calls, AutoAssure kept K.W. on the phone for 54 minutes, during which it warned her at length about potential repair issues regarding her car. The representative further claimed that AutoAssure received information about repair issues because “we’re licensed through the Department of Insurance—we get our information from government organizations,” including the federal Department of Transportation.

79. K.W. was eventually able to successfully cancel her service contract. If AutoAssure had not made misrepresentations to K.W., she would not have called the number on the mailer or purchased the service contract.

R.P.

80. R.P. is a 62-year-old food industry worker living in Garfield, near Alexandria. R.P. bought a used 2010 Chevrolet Impala in 2011, which had about 125,000 miles of use by 2016. The car came with Chevrolet basic and powertrain warranties, the latter of which covered her car through 100,000 miles.

81. R.P. received an AutoAssure mailing in early 2016, which she thought was a reminder mailing from her dealership to purchase repair coverage. R.P. called AutoAssure in or around January 2016 and received a sales pitch for a service contract.

82. The AutoAssure telemarketer deceptively conflated its third-party service contracts with her prior Chevrolet coverage by saying it was “extend[ing] your coverage back on the vehicle” and “re-applying the coverage to your vehicle.” The representative also made clear that she had to “accept or decline the coverage by the end of the call,” because AutoAssure “cannot guarantee that coverage in the future.”

83. At one point, R.P. expressed concerns that AutoAssure might not be legitimate and said she wanted to speak to her dealership first. The telemarketer suggested that AutoAssure was associated with the dealership in response, stating that she could take her car “back to your dealership . . . for your repairs. We’re the ones who handle extended coverage.” The telemarketer later told R.P. that it knew the dealership that had previously changed the oil in her car and would add it as a “preferred” dealer, and that the administrator of the service contract was in “direct pay with your dealership.”

84. When R.P. further pressed AutoAssure about its legitimacy, the representative said: “Trust me, ma’am. That’s also why we’re A+ accredited with the Better Business Bureau, you know, we’re licensed through Dun and Bradford Corporation, which is a law firm. . . . All of our calls are recorded by the VPA.” In reality, AutoAssure is not accredited by the Better Business Bureau and does not have an A+ rating. The VPA, or Vehicle Protection Association, is an industry trade group and not a governmental regulator. “Dun and Bradford” appears to be a reference to Dun & Bradstreet, a collector and provider of information about businesses that is not a law firm.

85. When R.P. asked if a “lot of people” bought the coverage, the representative said that “90% of my customers sign up with the policy.” He went on to claim that “90% of my

customers use this within the first 90 days of purchasing the policy [and] 95% of my customers use it within the first two years of purchasing the policy.”

86. R.P. eventually purchased a service contract during the call with a \$155 down payment. Soon thereafter, she called her local dealership, which told her that she likely did not need this coverage and that it may not cover everything on her car.

87. R.P. decided to cancel. It took her multiple phone calls with AutoAssure to successfully do so, however, because its representatives tried to talk her out of cancelling. In one call, for example, an AutoAssure representative repeated the claim that 90% of customers have a paid claim under service contract within 90 days of purchase, while 95% get a claim paid within the first two years.

88. R.P. was eventually able to cancel and get a refund of her down payment. If she had known that she was not buying an extension of her Chevrolet warranty, she would not have bought the service contract in the first place.

S.R.

89. S.R. is a 66-year-old retired engineer living in Ranier, near International Falls. He bought a new 2012 GMC Sierra 1500 truck in 2012. The truck came with GMC warranties, including a three-year, 36,000 mile basic warranty and a five-year, 100,000 mile powertrain warranty.

90. S.R. received an AutoAssure mailer in fall 2014. At this time, his truck had only been driven about 31,000 miles. He called AutoAssure and it said that because his car was two-and-a-half years old, “this would be the last time we can guarantee the re-offer of the new car coverage back on.” The telemarketer further said that AutoAssure could get “everything updated” for S.R. and “renew” his coverage.

91. S.R. told AutoAssure that he thought he had repair coverage from his GMC warranty for another 6,000 miles. The representative responded that AutoAssure was “compensat[ing]” him for any overlapping coverage by offering him a longer coverage period, and that its service contracts were “kind of like car insurance—you don’t wait until it expires, you have to renew it beforehand.” The representative further explained, “Basically you get two chances to renew it: whenever they sell you the truck at the dealer they gave you an opportunity to extend it then, and then we get in contact with you before it expires. It might be a year and a half before it expires, it might be a couple months before it expires. There’s really no rhyme or reason, we just get in contact with you.” Based on these and other representations on the call, S.R. thought that AutoAssure was associated with GMC, and that he was purchasing an extension of his manufacturer warranty.

92. When S.R. later attempted to clarify with whom exactly he was speaking, the telemarketer avoided answering and instead responded by telling him that “[e]verything we do is regulated, it’s on a recorded line, [and] we all have to go through the state and get an insurance producer’s license.” He then claimed that “they go back and audit these calls” and that he could lose his job and insurance license if he lied to customers.

93. AutoAssure also asked S.R. if he was retired, and offered him a discount after he confirmed that he was retired. S.R. purchased a contract during the phone call by making a \$500 down payment. S.R. then made all of his monthly payments, eventually paying a total of \$3,598 toward the contract.

94. The AutoAssure telemarketer did not mention or tell S.R. that the service contract it was selling him would not cover repairs already covered by a manufacturer warranty. S.R. still

has the service contract. If S.R. had known AutoAssure was not affiliated with GMC and was not extending his GMC warranty, he would not have bought the service contract.

H.S.

95. H.S. is a 74-year-old retiree living in St. Paul. H.S. owns a 2009 Kia Sorento that he bought new in 2009, and which is covered by a 10-year, 100,000 mile Kia powertrain warranty. In early 2016, H.S. received a mailer from AutoAssure. At the time, his car had only been driven about 13,000 miles, as H.S. had bought the car for his wife who passed away a few months prior to his receipt of the AutoAssure mailer.

96. H.S. called AutoAssure soon after. H.S. gave the AutoAssure telemarketer his mailer code number, and the telemarketer told him that “that letter, they sent that out because if you want to keep your high-end coverage on it, which keeps you covered on everything, it would be time for that renewal.” The telemarketer warned H.S. that “it would be our last chance to keep you under new car [coverage].”

97. Later, when providing H.S. more coverage details, the AutoAssure telemarketer claimed that “this program . . . will cover you from head to toe. It’s the best protection you can have.” She said that “the only thing you would be responsible for over in the next six years is just a standard \$100 deductible anytime something goes wrong.” The telemarketer reiterated that the “new car” coverage H.S. was purchasing would “cover [him] from head to toe,” and further claimed at various points that the coverage would be “platinum new car coverage,” would be “what it came with when it came off the showroom floor,” and would “keep it fully covered as if it were brand new at the lot.”

98. The telemarketer also asked H.S. if he was on a fixed income, and offered him a senior citizen discount.

99. H.S. eventually purchased a service contract with a \$150 down payment. He made several monthly payments toward the service contract. H.S. thought that he was buying an extension of his Kia warranty from AutoAssure. At the time he purchased the service contract, H.S. still had about three years and more than 85,000 miles remaining on his Kia powertrain warranty coverage. If H.S. had known at the time that he had existing Kia powertrain warranty coverage, or that he was not buying an extension of his Kia warranty, he would not have purchased the service contract in the first place.

COUNT I CONSUMER FRAUD

100. The State re-alleges all prior paragraphs of this Complaint.

101. Minnesota Statutes section 325F.69, subdivision 1, provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

102. The term “merchandise” within the meaning of Minnesota Statutes section 325F.69 includes both goods and services. *See* Minn. Stat. § 325F.68, subd. 2.

103. Given the statutory duty imposed by Minnesota Statutes section 59B.07, subdivision 2, the nature and quality of the representations AutoAssure made, the actual and special knowledge it had, and the other circumstances described in this Complaint, AutoAssure had a duty to sufficiently disclose all material facts to potential Minnesota customers in connection with its marketing and offering of service contracts to said persons.

104. AutoAssure repeatedly violated Minnesota Statutes section 325F.69, subdivision 1, by engaging in the deceptive and fraudulent practices described in this Complaint with the intent that others rely thereon in connection with the sale of service contracts, including

by making false, deceptive, and/or misleading representations to Minnesota consumers regarding the expiration or nonexistence of repair coverage for their vehicles, that AutoAssure was a vehicle manufacturer or dealership or was associated with such, that the service contracts AutoAssure sold would extend, update, or renew prior repair coverage, and that the service contracts it sold would provide a greater degree of coverage than was actually the case.

105. Separately, AutoAssure repeatedly violated Minnesota Statutes section 325F.69, subdivision 1, by omitting material information in the course of marketing and selling service contracts to Minnesota consumers such that its failures to sufficiently disclose such material information constituted deceptive and fraudulent practices committed with the intent that others rely thereon in connection with the sale of service contracts, including by failing to sufficiently disclose the material information to Minnesota consumers that AutoAssure was not a vehicle manufacturer or dealership; that it had no association or other affiliation with any vehicle manufacturer or dealership; that AutoAssure had no authority or ability to extend, update, or renew previous manufacturer warranties or service contracts provided by others; that the service contracts AutoAssure sold contain a large number of exclusions and exceptions significantly limiting their coverage; and that AutoAssure would sell service contracts after the "Must Respond By" date given in its mailings or after a customer's phone call in response to a mailing.

106. Due to the fraudulent, deceptive, and misleading conduct, representations, and material omissions described in this Complaint, Minnesota consumers made payments to AutoAssure and other parties for goods and/or services that they otherwise would not have purchased, thereby causing harm to said persons and enriching AutoAssure.

107. AutoAssure's conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 325F.69.

COUNT II
DECEPTIVE TRADE PRACTICES

108. The State re-alleges all prior paragraphs of this Complaint.

109. Minnesota Statutes section 325D.44, subdivision 1, provides, in part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

(5) represents that goods or services have sponsorship, approval, characteristics, . . . [or] benefits . . . that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

110. Given the statutory duty imposed by Minnesota Statutes section 59B.07, subdivision 2, the nature and quality of the representations AutoAssure made, the actual and special knowledge it had, and the other circumstances described in this Complaint, AutoAssure

had a duty to sufficiently disclose all material facts to potential Minnesota customers in connection with its marketing and offering of service contracts to said persons.

111. AutoAssure repeatedly violated Minnesota Statutes section 325D.44, subdivision 1, by engaging in the deceptive and fraudulent practices described in this Complaint that caused a likelihood of confusion or misunderstanding among Minnesota consumers, including by making false, deceptive, and/or misleading representations to Minnesota consumers regarding the expiration or nonexistence of repair coverage for consumers' vehicles, that AutoAssure was a vehicle manufacturer or dealership or was associated with such, that the service contracts it sold would extend, update, or renew prior repair coverage, and that the service contracts it sold would provide a greater degree of coverage than was actually the case.

112. Separately, AutoAssure repeatedly violated Minnesota Statutes section 325D.44, subdivision 1, by omitting material information in the course of marketing and selling service contracts to Minnesota consumers that caused a likelihood of confusion or misunderstanding among Minnesota consumers, including by failing to sufficiently disclose the material information to Minnesota consumers that AutoAssure was not a vehicle manufacturer or dealership; that it had no association or other affiliation with any vehicle manufacturer or dealership; that AutoAssure had no authority or ability to extend, update, or renew previous manufacturer warranties or service contracts provided by others; that the service contracts AutoAssure sold contain a large number of exclusions and exceptions significantly limiting their coverage; and that AutoAssure would sell service contracts after the "Must Respond By" date given in its mailings or after a customer's phone call in response to a mailing.

113. Due to the fraudulent, deceptive, and misleading conduct, representations, and material omissions described in this Complaint, Minnesota consumers made payments to

AutoAssure and other parties for goods and/or services that they otherwise would not have purchased, thereby causing harm to said persons and enriching AutoAssure.

114. AutoAssure's conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 325D.44.

**COUNT III
DECEPTIVE SALE OF SERVICE CONTRACTS**

115. The State re-alleges all prior paragraphs of this Complaint.

116. Minnesota Statutes section 59B.07, subdivision 2, provides:

A provider or its representative shall not in its service contracts, literature, or otherwise make, permit, or cause to be made any false or misleading statement or omit any material statement that would be considered misleading if omitted.

117. AutoAssure was an authorized sales representative for several different providers of service contracts.

118. AutoAssure repeatedly violated Minnesota Statutes section 59B.07, subdivision 2, by making, permitting, or causing to be made false and misleading statements in literature and otherwise in the course of marketing and selling service contracts, including by making, permitting, or causing to be made false, deceptive, and/or misleading statements to Minnesota consumers regarding the expiration or nonexistence of repair coverage for consumers' vehicles, that AutoAssure was a vehicle manufacturer or dealership or was associated with such, that the service contracts it sold would extend, update, or renew prior repair coverage, and that the service contracts it sold would provide a greater degree of coverage than was actually the case.

119. Separately, AutoAssure repeatedly violated Minnesota Statutes section 59B.07, subdivision 2, by omitting material statements in literature and otherwise in the course of marketing and selling service contracts to Minnesota consumers, including by failing to

sufficiently disclose the material information to Minnesota consumers that AutoAssure was not a vehicle manufacturer or dealership; that it had no association or other affiliation with any vehicle manufacturer or dealership; that AutoAssure had no authority or ability to extend, update, or renew previous manufacturer warranties or service contracts provided by others; that the service contracts AutoAssure sold contain a large number of exclusions and exceptions significantly limiting their coverage; and that AutoAssure would sell service contracts after the “Must Respond By” date given in its mailings or after a customer’s phone call in response to a mailing.

120. Due to the fraudulent, deceptive, and misleading conduct, statements, and material omissions described in this Complaint, Minnesota consumers made payments to AutoAssure and other parties for goods and/or services that they otherwise would not have purchased, thereby causing harm to said persons and enriching AutoAssure.

121. AutoAssure’s conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 59B.07.

**COUNT IV
DECEPTIVE ACTS PERPETRATED AGAINST SENIOR CITIZENS**

122. The State re-alleges all prior paragraphs of this Complaint.

123. Minnesota Statutes section 325F.71, subdivision 2(a), provides:

In addition to any liability for a civil penalty pursuant to sections 325D.43 to 325D.48, regarding deceptive trade practices; 325F.67, regarding false advertising; and 325F.68 to 325F.70, regarding consumer fraud; a person who engages in any conduct prohibited by those statutes, and whose conduct is perpetrated against one or more senior citizens or disabled persons, is liable for an additional civil penalty not to exceed \$10,000 for each violation, if one or more of the factors in paragraph (b) are present.

124. Minnesota Statutes section 325F.71, subdivision 2(b), provides:

In determining whether to impose a civil penalty pursuant to paragraph (a), and the amount of the penalty, the court shall

consider, in addition to other appropriate factors, the extent to which one or more of the following factors are present:

- (1) whether the defendant knew or should have known that the defendant's conduct was directed to one or more senior citizens or disabled persons;
- (2) whether the defendant's conduct caused senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement or for personal or family care and maintenance; substantial loss of payments received under a pension or retirement plan or a government benefits program; or assets essential to the health or welfare of the senior citizen or disabled person;
- (3) whether one or more senior citizens or disabled persons are more vulnerable to the defendant's conduct than other members of the public because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered physical, emotional, or economic damage resulting from the defendant's conduct; or
- (4) whether the defendant's conduct caused senior citizens or disabled persons to make an uncompensated asset transfer that resulted in the person being found ineligible for medical assistance.

125. AutoAssure engaged in conduct prohibited by Minnesota Statutes sections 325D.44 and 325F.69, as described above.

126. AutoAssure's conduct was perpetrated against one or more senior citizens (i.e., persons who are 62 years of age or older). *See* Minn. Stat. § 325F.71, subd. 1(a).

127. AutoAssure's conduct meets one or more of the nonexclusive factors listed in section 325F.71, subdivision 2(b), and satisfies other appropriate factors, including that AutoAssure knew that its conduct was directed to one or more senior citizens, used high-pressure tactics in soliciting seniors to buy service contracts, as well as engaging in other appropriate

factors stated above in this Complaint. These circumstances are established, in part, by AutoAssure's conduct on sales calls with senior citizens, in which AutoAssure asked if callers were retired and/or asked for the caller's age, offered special discounts to such callers, including a "senior discount," and used the high-pressure sales tactic of creating a false sense of urgency with seniors.

128. AutoAssure's conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 325F.71.

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to award judgment against AutoAssure as follows:

1. Declaring that AutoAssure's acts described in this Complaint constitute multiple, separate violations of Minnesota Statutes sections 59B.07, 325D.44, 325F.69, and 325F.71;
2. Enjoining AutoAssure and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with them from engaging in conduct in violation of Minnesota Statutes sections 59B.07, 325D.44, 325F.69, and 325F.71;
3. Requiring AutoAssure and its employees, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert of participation with them, to undertake remedial actions to address the unlawful acts and omissions described in this Complaint;
4. Awarding monetary relief, including restitution, pursuant to Minnesota Statutes section 8.31, Minnesota common law, the *parens patriae* doctrine, and the general equitable

powers of this Court, as necessary to remedy the harm and injury from AutoAssure's acts and omissions described in this Complaint:

5. Awarding civil penalties pursuant to Minnesota Statutes section 8.31, subdivision 3, for each separate violation of Minnesota law;
6. Awarding supplemental civil penalties pursuant to Minnesota Statutes section 325F.71 for each separate violation of Minnesota law;
7. Awarding the State its costs, including costs of investigation and attorneys' fees, as authorized by Minnesota Statutes section 8.31, subdivision 3a; and
8. Granting such further relief as provided by law or equity as the Court deems appropriate and just.

Dated: April 6, 2018

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

BENJAMIN VELZEN
Assistant Attorney General

/s/ Eric J. Maloney
ERIC J. MALONEY (#0396326)
Assistant Attorney General

445 Minnesota Street, Suite 1200
St. Paul, MN 55101-2130
Telephone: (651) 757-1021
Fax: (651) 296-7438
eric.maloney@ag.state.mn.us

ATTORNEYS FOR THE
STATE OF MINNESOTA