

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ROBERT MCKEAGE,)	
JANET MCKEAGE,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 6:12-CV-3157
)	
BASS PRO SHOPS)	
OUTDOOR WORLD, LLC,)	
TMBC, LLC,)	
TRACKER MARINE RETAIL, LLC,)	
TRAVIS BOATS AND MOTORS BATON ROUGE, LLC)	
)	
Defendants.)	

FIFTH AMENDED CLASS ACTION PETITION

Plaintiffs Robert McKeage and Janet McKeage (“Plaintiffs”) bring this action on behalf of themselves and all others similarly situated against defendants Bass Pro Outdoor World, LLC, (“Bass Pro”); TMBC, LLC (“TMBC”); Tracker Marine Retail, LLC (“Tracker Marine Retail” or “TMR”)’ and Travis Boats and Motors Baton Rouge, LLC (“Travis Boats or “TB&M”)

INTRODUCTION

1. Plaintiffs are residents of Franklin County, Missouri. This action is brought by Plaintiffs on behalf of themselves and a proposed class of persons and other entities worldwide who were charged document fees by Defendants in connection with the purchase and/or lease of a boat, boat trailers, boating accessories, motors, all terrain vehicles (“ATVs”), and/or other goods from Defendants.

2. Defendants are duly existing companies with retail stores throughout the country. Plaintiffs Robert McKeage and Janet McKeage’s purchase referenced herein occurred in defendants’

store, located in St. Charles County, Missouri.

3. Defendant Travis Boats and Motors Baton Rouge, LLC, is served through their counsel of record.

4. Defendants are not licensed attorneys in the State of Missouri as required by § 484.020, R.S. Mo.

5. Defendants are engaged in the business of selling and/or leasing boats, boat trailers, boating accessories and ATVs. As part of the sales and/or leasing process, defendants prepare and/or process purchase agreements, invoices, retail installment contracts, title work, bills of sale, financing documents and other instruments and/or documents of legal significance that affect and/or relate to secular rights and title to property. These instruments and documents of legal significance or that affect or relate to the rights and title to property or other secular rights are collectively referred to herein as the “documents.”

6. Defendants, as a general business practice, have charged a fee for the preparation and/or processing of the Documents relating to its sales and/or leases of boats, boat trailers, boating accessories, motors, ATVs and other goods. Defendants refer to the fee as “document fees” and upon information and belief, have at various times referred to it as a document fee, customer service fee, administrative fee, administration fee, document preparation charge, registration and document fee, doc fee, documentation fee and other similar names (referred to herein as “document preparation fee” or “document fee”).

7. Defendants’ documents fail to define the document preparation fee, which was referred to in plaintiffs Robert and Janet McKeage’s paperwork only as a document fee.

8. This action is brought by plaintiffs against defendants, to recover for plaintiffs and

for all others similarly situated (hereinafter “Class” or “the proposed Class”) all document fees, by whatever name, paid by plaintiffs and worldwide class to defendants, and to recover all other damages allowed by law.

9. Plaintiffs and Class contend that it is unlawful for defendants to collect from their customers a document fee in that receiving consideration for the preparation and processing of legal documents by an unlicensed individual is illegal and constitutes engaging in the law business and the unauthorized practice of law.

10. Plaintiffs also contend that it is deceptive and fraudulent for defendants to call these fees a “document fee,” “documentation fee,” “registration and document fee” or “doc fee,” when not charging the fee for said purposes. Plaintiffs also contend it is deceptive and fraudulent to utilize said fees for employee salaries, employee training, office furniture, office supplies, overhead expenses and other items of expense, while calling said fees “document fees,” “documentation fees,” “registration and document fees,” and “doc fees.”

11. Plaintiffs and class further contend that defendants are legally obligated to a refund to plaintiffs and all Class members all document fees charged and collected by defendants on all transactions worldwide, and to pay in addition statutory treble damages, the attorneys’ fees incurred by customers herein, pre judgment and post-judgment interest, costs, and punitive damages.

12. For the reasons stated in more detail below, this case is properly brought as a Class Action, represented by plaintiffs.

13. On May 23, 2008, Plaintiffs Robert McKeage and Janet McKeage purchased a 2008 Tracker Avalanche boat and boat trailer from defendants.

14. Defendants collected a document fee in the amount of seventy-five dollars (\$75.00)

from plaintiffs in connection with plaintiffs' purchase. A copy of the purchase agreement reflecting this document preparation fee is attached hereto as Exhibit 1.

15. Upon information and belief, the document fee was charged for the preparation, processing and/or procuring of documents as that term is defined above. Upon information and belief, defendants claim to have charged said fees for preparing and processing legal documents. Defendants claim to have charged said fees not only for the preparation and processing of documents, but also for other overhead expenses, including employee salaries, employee training, office furniture and office supplies.

16. The McKeage's transaction took place at defendants' retail store located in St. Charles County, Missouri. Upon information and belief, defendants engaged in similar transactions with its customers in more than seventy (70) stores around the country.

17. Upon information and belief, the agreements defendants entered into with customers in all states nationwide and worldwide contained the following language: : "GOVERNING LAW. THE PARTIES AGREE THAT THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF MISSOURI." Alternatively, all agreements contained similar language, indicating that Missouri law would govern.

18. At all times relevant, defendant Bass Pro held itself out as a manufacturer and seller of boats, boating accessories, ATVs, motors and other goods, and publicized and represented to consumers that its boats and boating business were a part of its business operations – by actions including but not limited to placing its "Tracker Boat/Boating Center" inside its stores; having salesmen of boats, ATVs, trailers and boating accessories wear shirts and give out business cards bearing the trade name and trademark of "Bass Pro Shops"; by directing payments to be made out

to “Bass Pro” and collecting same; by representing the term “Tracker” to be a trademark of “Bass Pro Shops”; by advertising “Tracker” boats and products as being products of “Bass Pro Shops” and its founder, John Morris; and by failing to disclose to consumers defendants’ alleged separate corporate entity structure. Defendant Bass Pro was the apparent agent of defendants TMBC and/or TMR and/or TB&M, and Bass Pro was the alter ego and/or business conduit of defendants TMBC and TMR and TB&M. Additionally and/or in the alternative, in the sale and distribution of Tracker boats, ATVs, trailers, motors, boating accessories and other goods, and/or collecting document fees acquired thereon, defendant TMBC and/or Tracker Marine Retail and/or TB&M were controlled by the interest of defendant Bass Pro and its owners.

19. In the sale and distribution of boats, boat trailers, ATVs, motors, goods, and boating accessories, and/or concerning profits derived therefrom and from associated financing documents, defendant TMBC, defendant Tracker Marine Retail, TB&M and defendant Bass Pro failed to act independent of each other. Defendants TMBC, TMR, TB&M and Bass Pro charged document fees and received the profits thereof.

20. Additionally and/or in the alternative, in the sale of boats, boat trailers, boating accessories, motors, goods, and ATVs worldwide, defendant Tracker Marine Retail shared in the control of the transactions and/or shared in the profits thereof and/or the charging of document fees thereon. Defendant Tracker Marine Retail shared in the profits of document fees charged.

21. All defendants are liable to plaintiffs and the Class for their actions referenced herein.

CLASS ACTION ALLEGATIONS

22. Plaintiffs hereby incorporate by reference all preceding paragraphs of this Petition as if fully set forth herein.

23. The preparation and processing of documents necessary to purchase a boat and effectuate a loan transaction for a fee is the “practice of law” and is an engagement in the “law business” as those terms are used and defined in § 484.020 R. S. Mo.

24. Plaintiffs propose to represent the worldwide Class consisting of all persons or other entities who were charged and who paid a document preparation fee to defendants, in connection with their purchase, lease or servicing of boats, boat trailers, motors, boating accessories, ATVs and other goods from defendants.

25. The Class is believed to consist of thousands of customers who purchased or leased boats, trailers, boating accessories, motors, goods, and/or ATVs from defendants worldwide, the joinder of which is impracticable, and the members of the Class are so numerous that it is impractical to bring all of them before the Court in this action. Moreover, the amount of damages suffered individually by each member of the Class is so small as to make suit for its recovery by each individual member of the Class economically unfeasible.

26. Class treatment of the claims asserted herein will provide substantial benefit to both the parties and the court system. A well-defined commonality of interest in the questions of law and fact involved affect all plaintiffs and proposed members of the Class.

27. There are common questions of law and fact applicable to the claims asserted on behalf of the Class. The common questions include:

- a. Whether defendants charge document preparation fees for the preparation or processing of documents;
- b. Whether charging a document preparation fee for the preparation of documents required by defendants to effectuate a transaction constitutes the

unauthorized practice of law or law business within the meaning given those phrases under Missouri law;

- c. Whether defendants acted with the recklessness, outrageousness, and/or malice necessary for the imposition of punitive damages;
- d. Whether this action is maintainable as a Class Action;
- e. Whether members of the Class have a right to recover the document fees paid to defendants;
- f. Whether defendants are bound by the provisions of § 484.020 R.S. Mo.;
- g. Whether defendants have engaged in a fraud, unfair practices, material omissions and/or deceptive practices as defined under the law; and
- h. Whether plaintiffs are entitled to common law remedies implied in contract, including for money had and received.

28. Plaintiffs' claims are typical of the claims of the proposed Class, and plaintiffs will fairly and adequately represent and protect the interests of the proposed Class. Plaintiffs do not have any interest antagonistic to those of the Class. Plaintiffs have retained competent and experienced counsel in the prosecution of this type of litigation. The questions of law and fact common to the members of the Class, some of which are set out above, predominate over any questions affecting only individual members of the Class.

29. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because members of the Class number in the thousands and individual joinder is impracticable. The expenses and burden of individual litigation would make it impracticable or impossible for proposed members of the Class to prosecute their claims

individually. Trial of plaintiffs' claims is manageable.

30. Unless a class is certified, defendants will retain monies unlawfully received as a result of its schemes to collect fees from plaintiffs and Class. Unless a class-wide injunction is issued, defendants will continue to commit such violations against customers, there being no adequate remedy at law available to stop defendants' actions.

31. This action is maintainable as a class action pursuant to Fed. R. Civ. Pro. 23 and pursuant to § 407.025.3 R.S. Mo.

COUNT I: DAMAGES FOR VIOLATION OF § 484.010, et seq., R.S.Mo.

32. Plaintiffs hereby incorporate by reference all preceding paragraphs of this Petition as though fully set forth herein.

33. Section 484.010 R.S. Mo. prohibits any entity, association or corporation, except a professional corporation organized pursuant to the provisions of Chapter 356, R.S. Mo., from engaging in the practice of law or doing law business, and further provides that any association or corporation that violates this prohibition shall be subject to paying treble the amount paid to it for any services rendered in violation of this prohibition.

34. Defendants are prohibited from engaging in the practice of law or doing law business.

35. Defendants charge their customers a document fee, known by many names, for the preparation and procuring of documents necessary to effectuate the lease, purchase and/or servicing of boats, boat trailers, motors, other boating personal property, ATVs, and/or other goods.

36. By charging a document fee to its customers, defendants have engaged in the practice of law and the law business, and are therefore liable to each customer to whom they charged such a document preparation fee.

37. By charging a document preparation fee to their customers, defendants have engaged in the practice of law and the doing of law business and are liable for treble damages to each such customer to whom they charged such a document preparation fee within two (2) years prior to the date of the filing of plaintiffs' Class Action Petition; and actual and consequential damages to customers who were charged such fees within five (5) years of the filing of this Petition, up through present.

38. The conduct of defendants was outrageous, malicious, corrupt, and either intentional or reckless to a degree sufficient to support an award of punitive damages against defendants.

WHEREFORE, plaintiffs and Class pray for the relief requested in the Request for Relief set forth below in this Third Amended Class Action Petition.

COUNT II: DAMAGES FOR VIOLATION OF §407.010 et seq R.S.Mo.

39. Plaintiffs hereby incorporate by reference all preceding paragraphs of this petition as though fully set forth herein.

40. R.S. Mo. § 407.010 makes unlawful the use of deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of a material fact in connection with the sale of goods or merchandise. Plaintiffs and class purchased goods and/or merchandise from defendants, in that plaintiffs purchased boats, boat trailers, motors, goods, boating accessories, and ATVs.

41. The charging of a document fee to defendants' customers, not allowed by law, was deceptive or unfair in violation of 407.010 et seq. The charging of document fees to defendants' customers resulted from defendants' misrepresentations, concealment, and omissions of material facts.

42. Further, by labeling said fees as “document fees,” “documentation fees,” “doc fees,” and “registration and document fees,” while purportedly utilizing said fees for employee training, employee salaries, overhead expenses, office furniture and office supplies, defendants engaged in an unlawful, unfair, fraudulent and deceptive practice. Defendants omitted material facts, and defendants deceived plaintiffs and class as to the purpose of the fees.

43. Defendants engaged in lending practices that resulted in unfair charges, and the assessment of fees and interest that were not truthful, accurate nor legally proper. Defendants engaged in sales practices that were deceptive, misleading, unfair, fraudulent and unreasonable. Defendants omitted, concealed and/or suppressed material facts during the sale of goods and merchandise to their customers.

44. As a result of defendants’ actions, plaintiffs and Class suffered ascertainable loss.

45. The conduct of defendants was outrageous, malicious, corrupt, and intentional and/or reckless to a degree sufficient to support an award of punitive damages against defendants.

WHEREFORE, Plaintiffs and Class pray for the relief requested in the Request for Relief set forth below in this petition.

COUNT III: MONEY HAD AND RECEIVED

46. Plaintiffs hereby incorporate by reference all preceding paragraphs of this petition as if fully set forth herein.

47. Defendants have received monies to which they were not entitled pursuant to their contracts with plaintiffs and the worldwide class.

48. Defendants have received monies unlawfully which in equity and good conscience ought to be paid back to plaintiffs and to the Class. Implied in contract, plaintiffs are entitled to a

return of said monies, plus other consequential damages.

49. The conduct of defendants was outrageous, malicious, corrupt, and intentional and/or reckless to a degree sufficient to support an award of punitive damages against defendants.

WHEREFORE, Plaintiffs and Class pray for the relief requested in the Request or Relief set forth below in this Third Amended Class Action Petition.

COUNT IV: RESCISSION/REVOCAION OF PLAINTIFFS' BOAT PURCHASE

50. Plaintiffs hereby incorporate by reference all preceding paragraphs of this Petition as though fully forth herein.

51. The boat defendants sold to plaintiffs Robert and Janet McKeage was defective, as it violently shakes, shimmers and “porpoises” out of the water when put to its reasonable and intended use. The boat is defective.

52. Defendants have tried on four (4) separate occasions to remedy the aforesaid defective condition of plaintiffs’ boat, but have been unable to do so.

53. Plaintiffs have notified defendants of their intent to rescind and/or revoke their acceptance of the boat and have demanded a full refund of the money paid for the boat, but defendants have failed and refused to refund plaintiffs said money as required by § 407.567, R.S. Mo.

54. Said boat has been out of service by reason of repair by defendants for a cumulative total of thirty (30) or more working days.

WHEREFORE, plaintiffs individually pray as set forth below.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs and each member of the proposed Class pray for judgment against

defendants:

- a. Certifying the Class as requested herein;
- b. Enter an order appointing Baylard, Billington, Dempsey & Jensen, P.C., and Strong-Garner-Bauer, P.C., as lead counsel for the Class;
- c. Awarding plaintiffs and members of the proposed Class treble damages in the sum of three times the document preparation fees charged within in the last two (2) years prior to filing original suit up to present and for actual damages charged prior thereto;
- d. Awarding restitution to plaintiffs and members of the proposed Class, including any interest paid or to be paid on any illegal and/or improper fees that were financed by plaintiffs and Class;
- e. Awarding declaratory and injunctive relief as permitted by law or equity including a preliminary and permanent injunction enjoining defendants from continuing the unlawful practices as set forth herein and directing defendants to identify, with Court supervision, victims of their conduct and pay them restitution and disgorgement of all monies acquired by defendants by means of any act or practice declared by this Court to be wrongful;
- f. Awarding punitive damages;
- g. Awarding prejudgment interest;
- h. Awarding post-judgment interest;
- i. Awarding attorneys' fees and costs;
- j. Awarding plaintiffs individually a full refund of their purchase price for their boat, incidental damages, consequential damages, and attorneys fees pursuant to § 407.567,

R.S. Mo.; and

- k. Providing such further relief as may be fair and reasonable.

Respectfully submitted,
STRONG-GARNER-BAUER, P.C.

/s/ Steve Garner

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was forwarded to attorney(s) of record via **ECF ONLY**, as prescribed by law, on this 27 day of November, 2012.

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