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8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF ARIZONA

10 TALLYHO ENTERPRISES, LLC, d/b/a  
11 PREMIERGARAGE OF THE SIOUX  
EMPIRE, a South Dakota limited-liability  
12 company; PREMIERGARAGE OF THE  
TWIN CITIES, INC., a South Dakota  
13 subchapter S corporation; GARAGE  
GUYS OF KANSAS CITY, LLC, d/b/a  
14 PREMIERGARAGE OF KANSAS CITY,  
a Kansas limited-liability company;  
15 LARRY JAMES, an individual; LYNX  
ENTERPRISES, LLC, d/b/a  
16 PREMIERGARAGE OF OKLAHOMA  
CITY, an Oklahoma limited-liability  
17 company; LARRY LARA, an individual;  
ANTHONY MARTIN, an individual; and  
18 LAMAR OF KANSAS, LLC, d/b/a  
PREMIERGARAGE OF WICHITA, a  
Kansas limited-liability company,

19 Plaintiffs,

20 v.

21 PREMIERGARAGE SYSTEMS, LLC, an  
Arizona limited-liability company; MARK  
22 LOBERG and ANNA LOBERG, husband  
and wife; BRADLEY KIELER and JANE  
23 DOE KIELER, husband and wife; ROB  
GOINS and JANE DOE GOINS, husband  
and wife; STARLA REICHOW and JOHN  
24 DOE REICHOW, wife and husband;  
KENNETH LUNDIN and JANE DOE  
25 LUNDIN, husband and wife, and SCOTT  
JOHNSON and JANE DOE JOHNSON,  
26 husband and wife.

Case No.

**COMPLAINT AND JURY  
DEMAND**

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Defendants.

The above-named Plaintiffs, for their Complaint against Defendants PremierGarage Systems, LLC (“PremierGarage”), Mark Loberg (“Loberg”) and Anna Loberg (“Anna Loberg”), Bradley Kieler (“Kieler”) and Jane Doe Kieler, Rob Goins (“Goins”) and Jane Doe Goins, Starla Reichow (“Reichow”) and John Doe Reichow, Kenneth Lundin (“Lundin”) and Jane Doe Lundin, and Scott Johnson (“Johnson”) and Jane Doe Johnson (all individual defendants and PremierGarage shall be referred to collectively as “Defendants”), allege as follows:

**NATURE OF ACTION**

This is an action in which Plaintiffs, current and former franchisees of PremierGarage, seek to recover losses they have sustained as a result of Defendants’ violations of their statutory and common-law duties. Plaintiffs seek rescission of their franchise agreements, restitution and/or compensatory damages, and attorneys’ fees for Defendants’ intentional misrepresentations, negligent misrepresentations, breaches of contract and the implied covenant of good faith and fair dealing, and violations of state franchise statutes and state unfair trade practices laws.

**I. INTRODUCTORY STATEMENT**

1. Plaintiffs seek the damages caused by the misrepresentations and fraudulent concealments of PremierGarage and its officers regarding the profits Plaintiffs’ PremierGarage franchises would generate, as well as the quality of PremierGarage’s floor-coating materials. Defendants’ misrepresentations (including fraudulent concealments and material omissions) and failure to deliver floor-coating materials that did what Defendants had promised they would do, violated the South Dakota Registration Act, Minnesota Franchise Act, and Oklahoma Business

1 Opportunity Sales Act, the Kansas Consumer Protection Act, as well as their contract-  
2 in-fact and contract-in-law obligations.

## 3 **II. PARTIES**

4 2. Plaintiffs are current and former franchisees of PremierGarage.

5 3. Tallyho Enterprises, LLC, d/b/a PremierGarage of the Sioux Empire  
6 (“Sioux Empire”), is a South Dakota limited-liability company with its principal place  
7 of business at Sioux Falls, South Dakota. Gregory W. Lair (“Lair”) is the Vice  
8 President of Sioux Empire and resides in Sioux Falls, South Dakota.

9 4. PremierGarage of the Twin Cities, Inc. (“Twin Cities”) is a South Dakota  
10 subchapter S corporation with its principal place of business at Edina, Minnesota. Lair  
11 is the Managing Shareholder of Twin Cities.

12 5. Garage Guys of Kansas City, LLC, d/b/a PremierGarage of Kansas City  
13 (“Kansas City”), is a Kansas limited-liability company with its principal place of  
14 business at Leawood, Kansas. Terrence Nygaard (“Nygaard”) is the President of  
15 Kansas City and resides in Mission Hills, Kansas.

16 6. Larry James (“James”) is an individual who resides in Edmond,  
17 Oklahoma. James signed a franchise agreement to operate a PremierGarage franchise in  
18 Oklahoma City. James formed Lynx Enterprises, LLC, d/b/a PremierGarage of  
19 Oklahoma City (“Oklahoma City”) to operate his PremierGarage franchise. Oklahoma  
20 City is an Oklahoma limited-liability company with its principal place of business at  
21 Oklahoma City, Oklahoma. James is the President of Oklahoma City.

22 7. Larry L. Lara (“Lara”) is an individual who resides in Andover, Kansas.  
23 Anthony W. Martin (“Martin”) is an individual who resides in Wichita, Kansas. Lara  
24 and Martin signed a franchise agreement to operate a PremierGarage franchise in  
25 Wichita, Kansas. Lara and Martin formed LAMAR of Kansas, LLC, d/b/a  
26 PremierGarage of Wichita (“Wichita”), on or about August 25, 2005, to operate their

1 PremierGarage franchise. Wichita is a Kansas limited-liability company with its  
2 principal place of business at Wichita, Kansas. Lara and Martin are the Managing  
3 Members of Wichita.

4 8. PremierGarage has been and continues to be an Arizona limited-liability  
5 company with its principal place of business at Phoenix, Arizona. PremierGarage is a  
6 nationwide marketer of franchises that install floor coating, cabinetry and organizer  
7 systems in garages for home buyers, home builders, design centers, and remodeling  
8 contractors and clients.

9 9. Upon information and belief, Loberg and Anna Loberg are husband and  
10 wife. They have been and continue to be residents of Arizona. They have caused  
11 events to occur giving rise to this Complaint as to which their marital community is  
12 fully liable. Upon information and belief, Loberg and Anna Loberg founded  
13 PremierGarage in November 2002. At all times material hereto, Loberg served as the  
14 President of PremierGarage, where he had direct control of PremierGarage and  
15 materially aided in the pre-signing representations made to Plaintiffs. At all times  
16 material hereto, Anna Loberg served as Vice-President of PremierGarage where she had  
17 direct control of PremierGarage and materially aided in the pre-signing representations  
18 made to Plaintiffs.

19 10. Upon information and belief, Bradley Kieler (Vice-President/Operations  
20 Manager) and Jane Doe Kieler are husband and wife. They have been and continue to  
21 be residents of Arizona. They have caused events to occur giving rise to this Complaint  
22 as to which their marital community is fully liable.

23 11. Upon information and belief, Rob Goins (General Manager) and Jane Doe  
24 Goins are husband and wife. They have been and continue to be residents of Arizona.  
25 They have caused events to occur giving rise to this Complaint as to which their marital  
26 community is fully liable.

1           12. Upon information and belief, Starla Reichow (Business Manager) and  
2 John Doe Reichow are wife and husband. They have been and continue to be residents  
3 of Arizona. They have caused events to occur giving rise to this Complaint as to which  
4 their marital community is fully liable.

5           13. Upon information and belief, Scott Johnson (Director of Franchise  
6 Operations) and Jane Doe Johnson are husband and wife. They have been and continue  
7 to be residents of Arizona. They have caused events to occur giving rise to this  
8 Complaint as to which their marital community is fully liable.

9           14. Upon information and belief, Kenneth Lundin (Dealer Development  
10 Manager) and Jane Doe Lundin are husband and wife, and, at times relevant hereto,  
11 were residents of Arizona. Upon information and belief, Lundin currently resides in  
12 Atlanta, Georgia.

13           15. Plaintiffs are ignorant of the true names and capacities of the defendants  
14 sued herein as Jane Doe Keiler, Jane Doe Goins, John Doe Reichow, Jane Doe Lundin,  
15 and Jane Doe Johnson, inclusive, and therefore sue these defendants by such fictitious  
16 names. Plaintiffs will amend their complaint to allege these defendants' true names and  
17 capacities when ascertained. In the meantime, Plaintiffs are informed and believe that  
18 each of the fictitiously named defendants is legally responsible in some manner for the  
19 occurrences herein alleged, and subject to and liable for the relief prayed for below.

20           16. As a corporate officer of PremierGarage, each of the above-named  
21 individuals identified as a corporate officer of PremierGarage had direct control of  
22 PremierGarage and materially aided in the pre-signing representations made to  
23 Plaintiffs. The above-named individual defendants shall be referred to individually, or  
24 collectively as the "Corporate Officers."

25           17. PremierGarage and the Corporate Officers willfully and knowingly  
26 marketed the PremierGarage franchise concept within the states of South Dakota,

1 Minnesota, and Oklahoma without registering PremierGarage's Uniform Franchise  
2 Offering Circular ("UFOC"), and/or without providing prospective franchisees,  
3 including Plaintiffs, with accurate UFOCs.

### 4 **III. JURISDICTION AND VENUE**

5 18. Jurisdiction is proper in this Court, pursuant to 28 U.S.C.A §1332(a)(1)  
6 because there is complete diversity between the parties and the amount in controversy is  
7 reasonably believed to be substantially in excess of \$75,000.00, exclusive of interest  
8 and costs, for each Plaintiff.

9 19. Venue is proper in this district, pursuant to 28 U.S.C.A. §1391(a)(2),  
10 because a substantial part of the events or omissions giving rise to this cause of action  
11 occurred in this district.

12 20. Each of the Defendants is subject to jurisdiction in this district because  
13 each engaged in wrongful acts alleged in this Complaint, causing injury within this  
14 district, or because each contracted to provide services in this district; or because each  
15 offered, or sold, or participated in the offer or sale of a franchise in or from this district.

### 16 **IV. FACTUAL BACKGROUND**

#### 17 **BACKGROUND OF THE PREMIERGARAGE FRANCHISE CONCEPT**

18 21. Loberg and his wife, Anna Loberg, organized PremierGarage in  
19 November 2002 to establish a network of franchises throughout the United States to sell  
20 and install PremierGarage products.

21 22. PremierGarage uses the name "PremierGarage" in connection with the  
22 solicitation and installation of epoxy/polyurethane garage-floor coatings and the  
23 manufacturing and/or sale of custom cabinets, organizers and related products.

24 23. PremierGarage offers franchise opportunities for the retail sales of garage-  
25 floor coatings, garage cabinets, garage organizers and related products under the  
26 "PremierGarage" trade name.

1           24. PremierGarage offers its franchisees garage-floor coating materials in  
2 either solid colors or ¼-inch chip simulated granite styles.

3           25. Pursuant to the authority it had received from Congress, the Federal Trade  
4 Commission in 1978 promulgated a rule requiring franchisors, such as PremierGarage,  
5 to provide prospective franchisees with certain disclosures prior to purchase. See 16  
6 C.F.R., Part 436. Many states, including South Dakota, and Minnesota, either already  
7 had passed, or since have passed, statutes requiring similar disclosure requirements.  
8 See S.D. CODE ANN. §§37-5A-1 et seq.; MINN. STAT. ANN. §80C.06, subd. 5. The FTC  
9 permits franchisors to make the required disclosures through a document called the  
10 Uniform Franchise Offering Circular (“UFOC”). See 16 C.F.R., Part 436. The Midwest  
11 Securities Commissioners Association adopted the UFOC Guidelines in 1974 (the North  
12 American Securities Administrators Association now resides over those guidelines).

13           26. Many states, including South Dakota and Minnesota, also require  
14 franchisors, such as PremierGarage, to register their UFOCs (or other qualifying  
15 disclosure statements) with the state prior to selling any franchises in the state. See,  
16 e.g., S.D. CODE ANN. §§37-5A-6 and 37-5A-16; MINN. STAT. ANN. §80C.02.

17           27. In South Dakota, the statute provides that “[n]o person may offer or sell  
18 any franchise in this state unless there is an effective registration statement on  
19 file...unless the franchise is exempted under §§37-5A-11 to 37-5A-14.” S.D. CODE  
20 ANN. §§37-5A-6.

21           28. In Minnesota, the statute provides that “[n]o person may offer or sell any  
22 franchise in this state unless there is an effective registration statement on file in  
23 accordance with the provisions of sections 80C.01 to 80C.22 or unless the franchise is  
24 exempted under section 80C.03.” MINN. STAT. ANN. §80C.02.

25           29. Moreover certain states, such as Oklahoma, prohibit sellers of business  
26 opportunities such as PremierGarage, from selling such business opportunities “unless

1 the business opportunity is registered under the provisions of the Oklahoma Business  
2 Opportunity Sales Act or is exempt under Section 803....” OKLA. STAT. ANN. tit. 71,  
3 §806.

4 30. It is necessary for franchisors to make various disclosures in the UFOC.  
5 A franchisor’s representation of the actual or potential sales, costs, income or profit  
6 from franchised or non-franchised units, or information from which such data can be  
7 derived, is called an “earnings claim.” For example, Item 19 of the UFOC Guidelines  
8 provides “[a]n earnings claim made in connection with an offer of a franchise must be  
9 included in full in the offering circular and must have a reasonable basis at the time it is  
10 made. If no earnings claim is made, Item 19 of the offering circular must contain a  
11 negative disclosure prescribed in the instruction.” A copy of the UFOC Guidelines  
12 outlining the requirements for preparation of Item 19 UFOC disclosure is attached as  
13 Exhibit 1.

14 31. A franchisor is not required to make an earnings claim to a prospective  
15 franchisee, but if it does, it must include the earnings claim in the offering circular in  
16 full and the earnings claim must have a reasonable basis. A statement of future  
17 performance must include significant matters on which the results are expected to  
18 depend, the material assumptions on which it is based, a summary of the basis for the  
19 claim, including the percentage of franchisees that have actually achieved the stated  
20 results, and an admonition that a new franchisee’s results are likely to differ.

21 **LAIR’S INITIAL INVOLVEMENT WITH PREMIERGARAGE:**  
22 **THE ESTABLISHMENT OF PREMIERGARAGE OF THE SIOUX EMPIRE**

23 32. In early 2003, Lair and his wife, Jill, investigated multiple garage-  
24 remodeling franchise concepts, including PremierGarage, Garage Tek, and Gladiator.  
25  
26

1 Lair also investigated several non-garage remodeling businesses in Sioux Falls, South  
2 Dakota (in lieu of a franchise).

3 33. PremierGarage had stated in its promotional materials that it provided its  
4 franchisees with a turn-key operation, and that was important to Lair, so he contacted  
5 PremierGarage directly, by telephone, and spoke with Loberg.

6 34. In January 2003, Loberg mailed Lair a VHS tape and a “Dealer  
7 Information Packet” that stated, among other things, that:

8 As a PremierGarage [franchise], you receive the benefit of  
9 our knowledge and experience in the industry, as we offer  
10 you the time tested and proven products to build your  
11 business around. Our [Franchise] fee includes the  
12 following:

- 13 • Intensive 2 week hands-on training in Floor coating  
14 and Cabinet Installation, as well as Sales Training
- 15 • Ongoing training for new employees
- 16 • Use of our web site, with a link direct to your email
- 17 • Sample Cabinets
- 18 • Floor coating Sample Boards
- 19 • Sales Brochures
- 20 • Advertising layouts in multiple sizes and formats
- 21 • Business card and letterhead layouts
- 22 • Estimate Forms
- 23 • Customer Service/Estimating software package
- 24 • Safety Program
- 25 • Employee Manual
- 26 • Technical Support
- National name-brand recognition

22 A true and correct copy of the Lair “Dealership Information Packet” is attached as  
23 Exhibit 2.

24 35. The Dealer Information Packet also included several sales scenarios that  
25 provided Lair with the retail sales price, costs and “Profit,” that he could earn by  
26 installing solid-color epoxy/polyurethane flooring in different size garages, “simulated

1 granite” epoxy/polyurethane flooring in different size garages, and several different  
2 cabinet configurations in different size garages. Based on the franchisee cost of the  
3 solid color and “simulated granite” flooring materials (approximately \$.28 and \$1.09  
4 per square foot respectively), these sales scenarios included “Profits” of between  
5 \$461.30 and \$1,294.55 per job, before labor. Ex. 2 at 5-9.

6 36. The Dealer Information Packet also listed “Dealership costs for  
7 PremierGarage.” Specifically, the Package listed the following costs:

8	• Initial [Franchise] Fee	\$25,000.00
9	• Initial Cabinet Parts Inventory	\$34,000.00
	• Initial Organizers Inventory	\$ 2,000.00
10	• <u>Initial Floor Coating Inventory</u>	<u>\$ 9,000.00</u>
11	• Total Initial Investment	\$70,000.00

12 Ex. 2 at 10. PremierGarage dropped the cost of the initial cabinet parts to \$25,000.00 to  
13 accommodate shipping related matters. Ex. 2 at 10.

14 37. In this same section, the Dealership Information Packet stated that the  
15 initial cabinet parts inventory “includes a mix of Cabinet parts capable of completing  
16 approx. \$75,000.00 worth of installations at PremierGarage MSRP,” and that the initial  
17 organizers inventory “includes a mix of Specialty Organizer components capable of  
18 completing approx. \$4000.00 worth of installations at PremierGarage MSRP,” and that  
19 the initial floor-coatings inventory “includes materials capable of completing approx.  
20 \$18,000.00 worth of Floor Coating installations ... .” Ex. 2 at 10.

21 38. In February 2003, Lair called PremierGarage and spoke with Loberg.  
22 Loberg discussed with Lair the benefits of starting a PremierGarage franchise and  
23 confirmed, as set forth in the Dealer Information Packet, the profits Lair would earn by  
24 installing flooring and cabinet configurations in different size garages. Loberg also  
25 called the PremierGarage franchise system a “family” franchise.

26

1           39. Lair traveled to PremierGarage's headquarters in Phoenix, Arizona, in  
2 April 2003. Here, Lair toured the facilities and several job sites. Goins and Keiler  
3 informed Lair during this trip that they were both familiar with the Sioux Falls market  
4 from having lived near the market a few years earlier, and assured Lair that Sioux Falls  
5 was large enough to support a PremierGarage franchise. Further, Goins and Keiler  
6 informed Lair that they would help Lair find a way to generate business for his  
7 PremierGarage franchise during the winter months. Goins and Keiler told Lair he could  
8 use heating implements to assist the curing process during the winter months, when  
9 temperatures would drop below 50 degrees Fahrenheit.

10           40. Between April and June 2003, Goins and Lair engaged in numerous  
11 telephone conversations. During these telephone calls, Goins told Lair that the  
12 estimated initial-investment costs were different than those identified in the Dealer  
13 Information Packet and would range from \$75,000.00 to \$100,000.00 for the Sioux  
14 Falls, South Dakota market. In addition, Goins informed Lair that he would earn a  
15 profit margin of 40% on all sales and installation of flooring and a profit margin of 35%  
16 on all sales and installation of cabinets.

17           41. Loberg also informed Lair that PremierGarage would not require  
18 franchisees to pay any advertising fees to PremierGarage. Loberg told Lair that he  
19 would be responsible for providing and paying for his own advertising at his own  
20 discretion.

21           42. Based on the representations of Loberg, Goins and Keiler regarding  
22 profitability, advertising fees, and the other information provided to him, Lair estimated  
23 that he would break even within 18 months of operation.

24           43. In the summer of 2003, Lair formed Sioux Empire for the sole purpose of  
25 owning and operating a PremierGarage franchise.  
26

1           44.   Lair attended PremierGarage's training seminar in Phoenix, Arizona in  
2 July, 2003. Here, PremierGarage provided Lair with an informational document that  
3 represented the epoxy/polyurethane floor coating would:

4                   [S]eal and protect concrete against staining from automotive  
5 fluids ... A non-skid material is broadcast into the floor  
6 material to provide slip resistance. Light foot traffic is  
7 possible 24 hours after the final coat. Vehicle parking is  
8 permitted after three days. Full cure will occur in seven to  
9 ten days.

10           A true and correct copy of the information document that PremierGarage provided to  
11 each Plaintiff at training is attached hereto as Exhibit. 3.

12           45.   PremierGarage also represented that the ¼-inch simulated granite  
13 epoxy/polyurethane chip flooring:

14                   [C]onsists of vinyl paint chips embedded in three coats of  
15 epoxy and coated with one coat of polyurethane. Finished  
16 flooring gives a beautiful terrazzo or granite-like appearance  
17 ... Light foot traffic will be possible 24 hours following the  
18 installation of the final coat. Large objects and vehicles  
19 must remain prohibited from the area for three to four days  
20 following completion of procedure. Vehicles must then  
21 park on cardboard until the coating is completely cured.  
22 Full cure will occur seven to ten days from installation of  
23 the final coat.

24           Ex. 3.

25           46.   On the first day of training, July 1, 2003, Loberg presented Lair with a  
26 franchise agreement. Lair signed the franchise agreement on behalf of Sioux Empire  
and paid the franchise fee of \$25,000.00. A true and correct copy of the Franchise  
Agreement for Sioux Empire will be referred to herein as the "Sioux Empire Franchise  
Agreement," and is attached as Exhibit 4.

          47.   The Sioux Empire Franchise Agreement granted Sioux Empire the right to  
utilize the products, systems, custom cabinets, trade names, future trademarks, future

1 service marks, and technology and business format of PremierGarage. Ex. 4 at 1. The  
2 Sioux Empire Franchise Agreement also required Sioux Empire to pay an annual license  
3 fee of 10% of the initial franchise fee (or \$2,500.00). Ex. 4 at 23.

4 48. The Sioux Empire Franchise Agreement set forth that “PremierGarage  
5 does not dictate a marketing and advertising program.” Ex. 4 at 2.

6 49. The Sioux Empire Franchise Agreement obligated PremierGarage to  
7 provide, free of charge, up to 12 hours of telephonic technical assistance for the initial  
8 three months, to assist Sioux Empire in establishing a marketing program, to develop  
9 promotional materials at a reasonable cost, to provide suggestions on new programs,  
10 sales and advertising, and to provide ongoing research and development pertaining to  
11 material, products, chemicals and techniques. Ex. 4 at 16.

12 50. Further, Paragraph 39 of the Franchise Agreement stated:

13 The products manufactured by or for PremierGarage are  
14 intended to meet a level of quality and consistency for their  
15 intended use. Should any product purchased by  
16 [Franchisee] from PremierGarage be proved to be defective  
17 within one year of the date of shipment, the product will  
18 either be replaced or repaired or the purchase price  
19 refunded, at the discretion of PremierGarage....Therefore,  
20 except for replacement, repair or refund, PremierGarage  
21 makes no warranty or guarantee, express or implied,  
22 including warranties of fitness, design, durability,  
23 compatibility or merchantability regarding the products  
24 supplied by PremierGarage.

21 Ex. 4 at 20.

22 51. Loberg never provided Lair or Sioux Empire with a UFOC as required by  
23 the FTC Rule and the South Dakota Franchise Act.

24 52. On or about July 11, 2003, Sioux Empire paid \$32,478.00 for the initial  
25 inventory of products, including floor-coating materials, which it received on or about  
26

1 July 18, 2003. Sioux Empire paid an additional \$9,849.95 on or about August 5, 2003  
2 for inventory.

3 53. On or about August 1, 2003, Sioux Empire commenced the operation of  
4 its PremierGarage franchise.

5 54. In establishing its PremierGarage franchise, Sioux Empire invested  
6 hundreds of thousands of dollars in the purchase of the franchise, inventory, a box van,  
7 a trailer, a pick-up truck, a sales vehicle, other equipment, computers, advertising, and  
8 employee wages (including an installation crew, operations manager and salesperson),  
9 and in the payment of rent pursuant to a long-term lease.

10 **LAIR'S ESTABLISHMENT OF PREMIERGARAGE OF THE TWIN CITIES**

11 55. Lair entered into negotiations with PremierGarage for the establishment of  
12 a PremierGarage franchise in Minnesota in the early summer of 2004.

13 56. Goins represented to Lair during the negotiations for Sioux Empire that  
14 the initial investment for the establishment of a second PremierGarage franchise in the  
15 Minneapolis/St. Paul market would range between \$200,000 and \$228,000. During  
16 these new negotiations, Goins and Loberg both confirmed their previous representations  
17 to Lair regarding the profitability of a PremierGarage franchise, and the fact that there  
18 were no advertising fees.

19 57. Loberg sent Lair an email on July 6, 2004, including what Loberg said  
20 was "the latest version of our Franchise Offering Circular." A true and correct copy of  
21 the July 6, 2004 email from Loberg to Lair and the UFOC is attached as Exhibit 5.

22 58. Item 6 of the Uniform Franchise Offering Circular ("UFOC") forwarded  
23 to Lair stated that there were no cooperative advertising fees. Ex. 5 at Item 6. The  
24 UFOC also stated that PremierGarage would require its franchises to maintain only  
25 telephone listings in the Yellow Pages and White Pages phone directories in their  
26 respective territories. Ex. 5 at Item 6.

1           59. Item 7 of the UFOC stated that the estimated investment cost for the  
2 establishment of a PremierGarage franchise would range from \$88,000.00 to  
3 \$228,000.00 depending upon the territory. The UFOC stated that start-up costs would  
4 include an initial franchise fee of between \$35,000 and \$75,000 (depending on the  
5 population of the given territory), initial inventory of approximately \$45,000, and  
6 additional product purchases during the first year of \$60,000.00. Ex.5. at Item 7. Lair  
7 and Loberg agreed to a franchise fee of \$50,000 for Twin Cities.

8           60. Item 8 of the UFOC also stated that the products purchased by franchisees  
9 would represent 60% of the cost to establish the franchise and 25% of the ongoing  
10 operating budget. Ex. 5 at Item 8, p. 7-8.

11           61. Item 8 further stated that the “products provided to [franchisees] have  
12 undergone substantial testing. In addition, PremierGarage is continually conducting  
13 research and testing on existing products and evaluating potential new products.” Ex. 5  
14 at Item 8 (emphasis added).

15           62. Item 19 of the UFOC stated that “PremierGarage does not furnish any oral  
16 or written information concerning the actual or potential sales, costs, income or profits  
17 to a PremierGarage [franchise].” Ex. 5 at Item 19.

18           63. Shortly after Lair received the UFOC for the Minnesota franchise, Loberg  
19 informed Sioux Empire, in a letter dated July 14, 2004, that, contrary to the South  
20 Dakota Franchise Act, PremierGarage failed to register the franchise with the Division  
21 of Securities of the Department of Revenue of the State of South Dakota, as required by  
22 law.

23           64. In the letter, Loberg gave Sioux Empire the opportunity to rescind the  
24 Sioux Falls Franchise Agreement and offered to reimburse the \$25,000.00 franchise fee.  
25 PremierGarage did not, however, give or offer Sioux Empire the chance to return the  
26

1 inventory or provide Sioux Empire with enough money to pay for the investment it  
2 already had made in the franchise.

3 65. Sioux Empire elected not to rescind the agreement under the terms offered  
4 by PremierGarage because, considering the monies paid, and owed, for the franchise  
5 fee, inventory, trucks, equipment, a three-year lease, and employees to support the  
6 franchise, Sioux Empire would have lost more than \$125,000.

7 66. On or about August 15, 2004, based on the representations made by  
8 PremierGarage and its Corporate Officers, and the representations in the Minnesota  
9 UFOC, Lair and PremierGarage reached a verbal agreement for the establishment of a  
10 PremierGarage franchise in the Minneapolis/St. Paul market.

11 67. Although no franchise agreement was signed, Lair formed Twin Cities,  
12 and Twin Cities paid \$10,000 toward the franchise fee on August 15, 2004. Twin Cities  
13 paid the balance (\$40,000) of the franchise fee on September 1, 2004.

14 68. On or about December 10, 2004, Twin Cities paid \$25,000.00 for the  
15 Twin Cities' initial inventory shipment.

16 69. Twin Cities and PremierGarage finally executed a franchise agreement on  
17 December 29, 2004 (hereinafter "Twin Cities Franchise Agreement"). The Twin Cities  
18 Franchise Agreement, which contains some, but not all of the agreements between the  
19 parties, granted Twin Cities the right and opportunity to utilize the products, systems,  
20 custom cabinets, trade names, future trademarks, future service marks, technology and  
21 business format of PremierGarage. A true and correct copy of the "Twin Cities  
22 Franchise Agreement" is attached as Exhibit 6.

23 70. The Twin Cities Franchise Agreement obligated PremierGarage to  
24 provide, free of charge, up to 12 hours of telephonic technical assistance for the initial  
25 three months, to assist Twin Cities in establishing a marketing program, to develop  
26 promotional materials at a reasonable cost, to provide suggestions on new programs,

1 sales and advertising, and to provide ongoing research and development pertaining to  
2 material, products, chemicals and techniques. Ex. 6 at 15.

3 71. Further, Paragraph 39 of the Franchise Agreement stated:

4 The products manufactured by or for PremierGarage are  
5 intended to meet a level of quality and consistency for their  
6 intended use. Should any product purchased by  
7 [Franchisee] from PremierGarage be proved to be defective  
8 within one year of the date of shipment, the product will  
9 either be replaced or repaired or the purchase price  
10 refunded, at the discretion of PremierGarage....Therefore,  
11 except for replacement, repair or refund, PremierGarage  
12 makes no warranty or guarantee, express or implied,  
13 including warranties of fitness, design, durability,  
14 compatibility or merchantability regarding the products  
15 supplied by PremierGarage.

12 Ex. 6 at 18.

13 72. Twin Cities received the first shipment of inventory on or about January  
14 2, 2005. Twin Cities later paid an additional \$34,972.83 for inventory on or about  
15 February 15, 2005.

16 73. In establishing its PremierGarage franchise, Twin Cities invested  
17 hundreds of thousands of dollars in the purchase of the franchise, inventory, a  
18 showroom, a van, a trailer, a pick-up truck, a sales vehicle, other equipment, computers,  
19 advertising, trade-show displays, and employee wages (including an installation crew,  
20 operations manager and salesperson), and in the payment of rent pursuant to a long-term  
21 lease.

22 **PREMIERGARAGE'S MISREPRESENTATIONS REGARDING**  
23 **FLOOR-COATING AND ADVERTISING EXPENSES**

24 74. After PremierGarage had represented to Lair that the products  
25 PremierGarage sold to its franchisees had undergone substantial testing, and that the  
26 epoxy/polyurethane floor-coating sold to its franchisees would cure properly in garages

1 year round, even though business was conducted in a “cold weather market,” Loberg,  
2 on December 27, 2004 (after Lair executed both the Sioux Empire Franchise Agreement  
3 and the Twin Cities Franchise Agreement), informed all franchisees, including Sioux  
4 Empire and Twin Cities, that PremierGarage prohibited the use of heating implements  
5 in garages. As a result, Sioux Empire and Twin Cities could no longer apply floor  
6 coatings when temperatures fell below 50 degrees Fahrenheit.

7 75. Upon information and belief, a company called Key Resins had  
8 manufactured the epoxy/polyurethane floor coating for use only in dry and hot climates  
9 such as that in Arizona because: (1) the floor coating would fail to cure in colder  
10 temperatures; and (2) it would turn white when exposed to standing water, snow or rain.

11 76. Loberg also informed all PremierGarage franchisees, including Sioux  
12 Empire and Twin Cites, that PremierGarage was working with several different coating  
13 manufacturers on various cold weather applications, and was “fairly close to a solid  
14 color application that allows usage down to 32 degrees.” In this same communication,  
15 Loberg admitted that PremierGarage was not close to finding a solution for a cold  
16 weather application of the simulated-granite floor coating. Loberg further informed  
17 franchisees that he hoped to have a system tested and ready for use the following winter.  
18 Loberg acknowledged that franchisees operating in a “cold climate” would be unable to  
19 coat floors for three to four months.

20 77. Loberg also stated he personally would not release a product to  
21 PremierGarage franchisees unless it had been extensively examined and tested.

22 78. On or about January 13, 2005, Lair attended a PremierGarage franchise  
23 conference in Las Vegas, during which Loberg introduced PremierOne (solid-color  
24 coating) and PremierOne Plus (1/4-inch fine-chip coating) hybrid polymer floor-coating  
25 systems. PremierGarage stated that PremierOne and PremierOne Plus were the solution  
26

1 to all the problems associated with the original epoxy/polyurethane floor-coating  
2 formulation.

3 79. Specifically, Loberg represented that franchisees could apply PremierOne  
4 products at temperatures as low as 32 degrees Fahrenheit. Loberg also stated that  
5 PremierOne and PremierOne Plus would not peel, flake, or fail to adhere to the garage  
6 floor.

7 80. Loberg also represented that the “PremierOne Floor coating system  
8 [could] be installed in just one day,” that the customer could have “full use of [the  
9 garage] just 24 hours later. When the temperature falls below 50 degrees, cars and  
10 heavy objects must be kept off the floor for a minimum of 2 days.”

11 81. Loberg also stated that the PremierOne and PremierOne Plus were “zero  
12 VOC and free of solvents, they were non-flammable and non-hazardous to people and  
13 the environment.” Loberg also stated that PremierOne and PremierOne Plus were  
14 moisture tolerant.

15 82. The franchisee cost of the PremierOne and PremierOne Plus was  
16 approximately two times the cost of the original floor-coating product: \$1.65 per square  
17 foot for solid color coating and more than \$2.00 per square foot for the simulated  
18 granite chip coating. But PremierGarage told Sioux Empire and Twin Cities that the  
19 increase in the cost of the products would be offset by the decrease in cost associated  
20 with labor.

21 83. On March 16, 2005, Lair and the operations managers from both Sioux  
22 Empire and Twin Cities attended a training seminar in Atlanta, Georgia, on the  
23 installation process of the PremierOne and PremierOne Plus flooring product.

24 84. At the training seminar, and as presented in the PremierOne training  
25 manual, PremierGarage promoted and highly recommended that Sioux Empire and  
26

1 Twin Cities continue the use of “Bondo” to repair concrete garage floors prior to  
2 applying the PremierOne and PremierOne Plus floor coating.

3 85. Both Twin Cities and Sioux Empire acquired PremierOne and  
4 PremierOne Plus and began using the products on floor-coating projects. Despite  
5 applying the products as directed, Sioux Empire and Twin Cities began to receive  
6 complaints that both PremierOne and PremierOne Plus were bubbling and peeling away  
7 from the garage floors.

8 86. Sioux Empire and Twin Cities also learned that the product dried too  
9 quickly, thereby leading to flash curing and poor top coat quality, had color float  
10 problems, a strong odor, and failed to adhere to garage floors in humid climates. For  
11 example, when Sioux Empire and Twin Cities, and other franchisees, mixed the active  
12 pigment (i.e. color dye) in the PremierOne top coat, the pigment would react too quickly  
13 and produce inconsistent color and shade variations depending on how long the batch  
14 had been mixed. The top coat also would change color or shade if a portion of the floor  
15 was re-rolled while it was drying. This defect is commonly referred to as a “color float  
16 problem.”

17 87. Approximately 10 percent of the customers of Sioux Empire and Twin  
18 Cities who received PremierOne and PremierOne Plus products on their garage floors  
19 reported failures that Sioux Empire and Twins Cities had to repair.

20 88. Sioux Empire and Twin Cities informed PremierGarage of the defects and  
21 PremierGarage instructed Sioux Empire and Twin Cities to place an additive into the  
22 product, which Sioux Empire and Twin Cities did to no avail.

23 89. PremierGarage provided a number of additional suggested “solutions” to  
24 prevent the floor coating from bubbling or peeling away from the floor, including: (1)  
25 grinding or shot blasting the floors prior to applying the floor coating (even though  
26 PremierGarage had trained Sioux Empire and Twin Cities to only acid wash the garage

1 floors prior to applying the floor coating), which increased floor preparation costs by  
2 approximately \$0.75 per square foot; (2) buying from PremierGarage and using a  
3 porcupine roller to roll over the “out gassing” bubbles; (3) spraying a sealer on the  
4 garage floor before applying the coating; (4) buying the Sonin Rapitest Moisture Meter  
5 to determine the humidity levels in the concrete prior to applying the floor coating.

6 90. Sioux Empire and Twin Cities tried each of these alleged “solutions,” but  
7 none of them worked.

8 91. In addition, in August 2005, Sioux Empire and Twin Cities discovered  
9 that PremierGarage previously instituted a program by which PremierGarage would  
10 reimburse franchisees for the costs of repair and replacement caused by the faulty  
11 PremierOne and PremierOne Plus products. Sioux Empire and Twin Cities learned that  
12 PremierGarage had discriminated between franchisees by notifying only select  
13 franchisees, not including Sioux Empire or Twin Cities.

14 92. In November 2005, Lair traveled to Arizona to meet with Loberg and  
15 Johnson to discuss the reimbursement program. Loberg informed Lair that  
16 PremierGarage did not make the reimbursement program available to all franchisees  
17 because it would have been too expensive. Sioux Empire and Twin Cities were able to  
18 submit only seven claims, worth \$7,500.00, for reimbursement before the program  
19 expired in the fall of 2005.

20 93. As a result of PremierGarage’s failure to inform Sioux Empire and Twin  
21 Cities of the reimbursement program in a timely fashion, both Sioux Empire and Twin  
22 Cities incurred additional debt and substantial financial losses from their repair of  
23 numerous garage floors. Further, the change in product and increase in labor costs  
24 diminished any likelihood that Sioux Empire and Twin Cities would ever be able to  
25 operate profitably.

26

1           94.    Ultimately, PremierGarage admitted in an email that the PremierOne  
2 system was defective. A true and correct copy of the email from Loberg to Plaintiffs,  
3 dated December 15, 2005, is herein attached as Exhibit 7.

4           95.    Contrary to the oral and written representations regarding advertising fees,  
5 PremierGarage, at the February 2006 PremierGarage Franchise Seminar, introduced the  
6 Google national advertising campaign. Under this advertising campaign,  
7 PremierGarage requested franchisees pay an advertising fee based on the number of  
8 “hits” or “clicks” on the ad in their respective territories. Originally, Loberg  
9 represented that this was not a mandatory program.

10          96.    However, on March 3, 2006, Loberg informed franchisees that they would  
11 each receive a monthly fixed-fee advertising bill, which PremierGarage would base on  
12 the size of the franchisee’s territory. The franchisees’ payments would, in the  
13 aggregate, pay for approximately 75% of the overall costs of the Google program.  
14 Loberg informed Sioux Empire and Twin Cities by email that, while he hoped they  
15 would participate in the program, they could not be forced to participate in the program.  
16 A true and correct copy of the email between Loberg and PremierGarage franchisees is  
17 attached as Exhibit 8.

18          97.    Sioux Empire and Twin Cities both requested to not be included in the  
19 program. PremierGarage denied their requests and charged Sioux Empire  
20 approximately \$350.00 per month and Twin Cities approximately \$750.00 per month  
21 for Google advertising. Contrary to the representations set forth in the UFOC, the  
22 franchise agreements, and the verbal representations made by Loberg, Johnson and  
23 Goins, PremierGarage made participation in the Google program mandatory.

24          98.    Johnson notified Lair, on December 15, 2006, that Twin Cities was in  
25 default for failure to pay for product it had purchased, but never informed Twin Cities,  
26

1 as required by Minnesota law, that PremierGarage was going to terminate the Twin  
2 Cities Franchise Agreement.

3 99. After receiving an extension of the expiration date of the Sioux Empire  
4 Franchise Agreement, Sioux Empire allowed the agreement to expire by its amended  
5 terms on December 31, 2006.

6 100. In February 2007, PremierGarage held the PremierGarage Franchise  
7 Seminar in Las Vegas. During the seminar, Ronald Schorr, a chemist for PremierOne  
8 and PremierOne Plus, questioned why franchisees were using “Bondo” to repair  
9 concrete floors prior to the application of the PremierOne systems. Schorr implied that  
10 the chemical make-up of “Bondo” when combined with the chemical make-up of  
11 PremierOne and PremierOne Plus would cause defects in the application and curing  
12 process of PremierOne and PremierOne Plus. In addition, Schorr stated that if  
13 franchisees “wet etch” the concrete garage floors, they must ensure that the expansion  
14 cracks are thoroughly dry before applying PremierOne or PremierOne Plus because the  
15 coatings were not moisture tolerant. Schorr’s comments were contrary to  
16 PremierGarage’s training and suggested “solutions,” to “wet etch” the concrete garage  
17 floors prior to applying the product.

18 101. PremierGarage earlier had instructed Sioux Empire and Twin Cities to use  
19 “Bondo” to repair concrete floors before applying PremierOne and/or PremierOne Plus.  
20 The use of “Bondo” prevented PremierOne and PremierOne Plus from adhering  
21 properly and induced moisture in the concrete, which led to failures (peeling and  
22 bubbling). This resulted in substantial financial damage to Sioux Empire and Twin  
23 Cities.

24 102. On January 22, 2007, PremierGarage terminated the Twin Cities  
25 Franchise Agreement without providing proper notice and an opportunity to cure. Twin  
26

1 Cities responded, and PremierGarage withdrew the termination until March 18, 2007,  
2 which still was contrary to Minnesota law.

3 **PREMIERGARAGE'S MISREPRESENTATIONS REGARDING**  
4 **INITIAL INVESTMENT COSTS**

5 103. Contrary to the initial investment costs represented by PremierGarage,  
6 Lair's total investment costs for his two franchises exceeded \$700,000.

7 104. Lair invested, on behalf of the respective business entities, over twice as  
8 much as PremierGarage's high initial-investment investment to establish the franchises  
9 for Sioux Empire and Twin Cities.

10 105. PremierGarage had no material basis on which to make any estimate of  
11 the range for initial-investment costs for new franchises in the Midwest because, upon  
12 information and belief, PremierGarage had not operated any corporate or licensed  
13 locations in South Dakota or Minnesota.

14 106. Lair never would have gone forward with the purchase of the first  
15 franchise, let alone a second franchise, had PremierGarage accurately portrayed the  
16 prospective investment costs.

17 107. The magnitude of Lair's initial investment drastically diminished the  
18 prospect of either Sioux Empire or Twin Cities ever being able to operate the franchises  
19 profitably.

20 **NYGAARD'S INVOLVEMENT WITH PREMIERGARAGE:**  
21 **ESTABLISHMENT OF PREMIERGARAGE OF KANSAS CITY**

22 108. In early 2004, Nygaard began investigating the establishment of a  
23 franchise garage remodeling business.  
24  
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26

1           109. As part of his due diligence, Nygaard investigated multiple remodeling-  
2 based franchise concepts including PremierGarage, Garage Tek, California Closets and  
3 a local business called “Help My Garage.”

4           110. In February 2004, Nygaard saw PremierGarage’s advertisement for the  
5 sale of garage-remodeling franchises on the Internet and believed, based on the  
6 representations PremierGarage included on its website, that the products used by  
7 PremierGarage were superior to those used by other franchises.

8           111. On or about February 24, 2004 Nygaard contacted PremierGarage by  
9 telephone, and spoke with Lundin, who mailed Nygaard an application for a  
10 PremierGarage franchise and license.

11           112. On or about March 31, 2004, Nygaard traveled to PremierGarage’s  
12 headquarters in Phoenix, Arizona to meet with Lundin, Goins, Loberg and Kieler and  
13 tour the Phoenix PremierGarage facility. During the meeting Lundin discussed the  
14 franchise, available protected areas, and PremierGarage’s plan to have a nationwide  
15 franchise network. Loberg called the PremierGarage franchise system a “family”  
16 franchise.

17           113. During this meeting Lundin stated that PremierGarage provided its  
18 franchisees with a turn-key operation, and that was important to Nygaard. Similarly,  
19 Lundin represented that the franchise had a great niche market potential and exploding  
20 opportunities in the garage remodeling business.

21           114. At the meeting, Lundin presented Nygaard with a “Dealer Information  
22 Package,” dated June 30, 2003, that stated, among other things, that:

23                   As a PremierGarage [franchise], you receive the benefit of  
24 our knowledge and experience in the industry, as we offer  
25 you the time tested and proven products to build your  
26 business around. Our [Franchise] fee includes the  
following:

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- Intensive 2 week hands-on training in Floor Coating and Cabinet Installation, as well as Sales Training
- Ongoing training for new employees
- Use of our web site, with a link direct to your email
- Sample Cabinets
- Floor coating Sample Boards
- Sales Brochures
- Photography Disc for use of Advertising layouts
- Business Cards
- Estimate Forms
- Safety Program
- Employee Manual
- Technical Support
- National name-brand recognition

A true and correct copy of the Nygaard “Dealer Information Package” is attached as Exhibit 9.

115. The Dealer Information Package also included several sales scenarios that provided Nygaard with the retail sales price, costs and “Profit,” that he could earn by installing solid-color flooring in different size garages, “simulated granite” flooring in different size garages, and several difference cabinet configurations in different size garages. Based on the franchisee cost of the solid color and “simulated granite” flooring materials (approximately \$.28 and \$1.09 per square foot respectively), these sales scenarios included “Profits” ranging between \$461.30 and \$1,294.55 per job, before labor. Ex. 9 at 6-7.

116. The Dealer Information Package also provided “Dealership costs for PremierGarage.” Specifically, the Package listed the following costs:

• Initial [Franchise] Fee	\$35,000.00
• Initial Cabinet Parts Inventory	\$30,000.00
• Initial Organizers Inventory	\$2,000.00
• <u>Initial Floor Coating Inventory</u>	<u>\$8,000.00</u>
• Total Initial Investment	\$75,000.00

1 Ex. 9 at 8.

2 117. In this same section, the Dealership Information Packet stated that the  
3 initial cabinet parts inventory “includes a mix of Cabinet parts capable of completing  
4 approx. \$52,000.00 worth of installations at PremierGarage MSRP,” and that the initial  
5 organizers inventory “includes a mix of Specialty Organizer components capable of  
6 completing approx. \$4,000.00 worth of installations at PremierGarage MSRP,” and that  
7 the initial floor-coatings inventory “includes materials capable of completing approx.  
8 \$18,000.00 worth of Floor Coating installations ... .” Ex. 9 at 8.

9 118. Nygaard requested additional information relating to the cost associated  
10 with the establishment of a PremierGarage franchise. Lundin confirmed the information  
11 in the Dealer Information Packet, namely, that Nygaard would be required to pay the  
12 franchise fee of \$35,000.00, in addition to the start-up costs, which included \$45,000.00  
13 in initial inventory, equipment, vehicles, a warehouse, and training which totaled  
14 approximately \$55,000.00 to \$70,000.00. Lundin and Loberg both represented that  
15 franchisees were not required to pay any advertising fees to PremierGarage.

16 119. Lundin also informed Nygaard at the March 31, 2004 meeting that the  
17 estimated initial investment costs to start a PremierGarage franchise would range  
18 between \$72,000.00 and \$132,000.00 for the Kansas City, Kansas market, that the  
19 estimated breakeven for a PremierGarage franchise was \$300,000.00 to \$320,000.00 in  
20 revenues, and that the gross margins would be about 40% on floor coatings and 35% on  
21 cabinet sales.

22 120. Lundin estimated that Nygaard would break even within 15 months of  
23 opening.

24 121. Lundin, Loberg, Goins, and Keiler made various oral and written  
25 representations about PremierGarage and the products and services it provided to its  
26 franchisees in order to convince Nygaard to become a franchisee. Notably, they stated

1 that the products PremierGarage sold to its franchisees had undergone substantial  
2 testing. They also stated that the epoxy/polyurethane floor coating PremierGarage sold  
3 to its franchisees would work year round, even though business was conducted in a  
4 “cold weather market.” Goins told Nygaard that with the assistance of heating  
5 implements in the garages, the epoxy/polyurethane floor coating would properly cure to  
6 garage floors in temperatures below 50 degrees Fahrenheit and could sustain the winter  
7 weather subsequent to installation.

8 122. Upon his return home, Nygaard completed and mailed the application to  
9 PremierGarage, with his personal and financial information, on or around April 27,  
10 2004.

11 123. Nygaard created Kansas City, and on May 24, 2004, and without having  
12 received a copy of PremierGarage’s UFOC or a franchise agreement, Kansas City paid  
13 the initial franchise fee of \$35,000.00 to PremierGarage.

14 124. On August 25, 2004, Kansas City paid \$45,304.45 for its initial inventory  
15 shipment and received its first shipment of inventory on or about August 27, 2004.

16 125. Nygaard attended PremierGarage’s training seminar in Phoenix, Arizona  
17 from September 6, 2004 through September 17, 2004. Here, PremierGarage provided  
18 Nygaard with an informational document that represented the epoxy/polyurethane floor  
19 coating would:

20 [S]eal and protect concrete against staining from automotive  
21 fluids ... A non-skid material is broadcast into the floor  
22 material to provide slip resistance. Light foot traffic is  
23 possible 24 hours after the final coat. Vehicle parking is  
permitted after three days. Full cure will occur in seven to  
ten days.

24 Ex. 3.

25 126. PremierGarage also represented that the ¼-inch simulated granite  
26 epoxy/polyurethane chip flooring:

1 [C]onsists of vinyl paint chips embedded in three coats of  
2 epoxy and coated with one coat of polyurethane. Finished  
3 flooring gives a beautiful terrazzo or granite-like appearance  
4 ... Light foot traffic will be possible 24 hours following the  
5 installation of the final coat. Large objects and vehicles  
6 must remain prohibited from the area for three to four days  
7 following completion of procedure. Vehicles must then  
8 park on cardboard until the coating is completely cured.  
9 Full cure will occur seven to ten days from installation of  
10 the final coat.

11 Ex. 3.

12 127. On the first day of the training seminar, Loberg finally presented Nygaard  
13 with a franchise agreement (hereinafter “Kansas City Franchise Agreement”) and a  
14 copy of PremierGarage’s UFOC, dated September 3, 2004.

15 128. Item 5 of the UFOC stated that franchisees are required to “pay a \$25,000  
16 lump sum [franchise] fee, ... a standard beginning inventory of PremierGarage products  
17 [in the amount of] \$40,000 ... and an additional \$60,000 worth of product in the first  
18 year.” A true and correct copy of the Kansas 2004 UFOC is attached as Exhibit 10.

19 129. Item 6 of the UFOC stated that PremierGarage franchisees would not be  
20 required to pay advertising fees or cooperative advertising fees. Ex. 10 at Item 6.

21 130. Item 7 of the UFOC listed that the cost for establishing a PremierGarage  
22 franchise would be between \$72,650.00 and \$132,500.00 depending on the territory.  
23 The start-up costs included a franchise fee between \$25,000.00 and \$30,000.00  
24 (depending on the population of the given territory) and initial inventory of  
25 approximately \$40,000.00. Ex. 10 at Item 7.

26 131. Item 8 of the UFOC stated that the products purchased from  
PremierGarage would represent 60% of the cost to establish the franchise and  
approximately 25% of the ongoing operating budget. Ex. 10 at Item 8.

1           132. Item 8 further provided that the “products provided to [franchises] have  
2 undergone substantial testing. In addition, PremierGarage is continually conducting  
3 research and testing on existing products and evaluating potential new products.” Ex. 10  
4 at Item 8 (emphasis added).

5           133. Item 19 of the UFOC stated that “PremierGarage does not furnish any oral  
6 or written information concerning the actual or potential sales, costs, income or profits  
7 to [sic] a PremierGarage [franchise]. Ex. 10 at Item 19.

8           134. The Kansas City Franchise Agreement, which contains some, but not all,  
9 of the agreements between the parties, granted Kansas City the right to utilize the  
10 products, systems, custom cabinets, trade names, future trademarks, future service  
11 marks, technology and business format of PremierGarage. A true and correct copy of  
12 the Kansas City Franchise Agreement is attached as Exhibit 11.

13           135. The Kansas City Franchise Agreement obligated PremierGarage to  
14 provide, free of charge, up to 12 hours of telephonic technical assistance for the initial  
15 three months, to assist Kansas City in establishing a marketing program, to develop  
16 promotional materials at a reasonable cost, to provide suggestions on new programs,  
17 sales and advertising, and to provide ongoing research and development pertaining to  
18 material, products, chemicals and techniques. Ex. 11 at 12-13.

19           136. Further, Paragraph 12.12 of the Kansas City Franchise Agreement stated:

20           The products manufactured by or for PremierGarage are  
21 intended to meet a level of quality and consistency for their  
22 intended use. Should any product purchased by  
23 [Franchisee] from PremierGarage be proved to be defective  
24 within one year of the date of shipment, the product will  
25 either be replaced or repaired or the purchase price  
26 refunded, at the discretion of PremierGarage....Therefore,  
except for replacement, repair or refund, PremierGarage  
makes no warranty or guarantee, express or implied,  
including warranties of fitness, design, durability,

1 compatibility or merchantability regarding the products  
2 supplied by PremierGarage.

3 Ex. 11 at 15.

4 137. Based on the representations made by PremierGarage and its Corporate  
5 Officers, the representations set forth in the franchise agreement and the UFOC,  
6 Nygaard signed the Kansas City Franchise Agreement on behalf of Kansas City on or  
7 about September 6, 2004. PremierGarage failed to provide Nygaard with a signed copy  
8 of the Kansas City Franchise Agreement.

9 138. Nygaard ultimately invested hundreds of thousands of dollars to purchase  
10 the franchise, inventory, office equipment, a pick-up truck and two trailers, equipment,  
11 and advertising and in employee wages (two installation crews and an assistant  
12 manager).

13 **PREMIERGARAGE'S MISREPRESENTATIONS REGARDING**  
14 **FLOOR COATING AND ADVERTISING EXPENSES**

15 139. After PremierGarage had represented to Nygaard that the products  
16 PremierGarage sold to its franchisees had undergone substantial testing, and that the  
17 epoxy/polyurethane floor-coating sold to its franchisee would cure properly in garages  
18 year round, even though business was conducted in "cold weather markets," Loberg on  
19 December 27, 2004 (after Kansas City executed the Kansas City Franchise Agreement)  
20 informed all franchisees, including Kansas City, that PremierGarage prohibited  
21 franchisees from using heating implements in garages. As a result, Kansas City could  
22 no longer apply floor coatings in temperatures under 50 degrees Fahrenheit.

23 140. Upon information and belief, a company called Key Resins had  
24 manufactured the epoxy/polyurethane floor coating for use only in dry and hot climates  
25  
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1 such as that in Arizona because: (1) the floor coating would fail to cure in colder  
2 temperatures; and (2) it would turn white when exposed to standing water, snow or rain.

3 141. Loberg also informed all PremierGarage franchisees, including Kansas  
4 City, that PremierGarage was working with several different coating manufacturers on  
5 various cold weather applications, and was “fairly close to a solid color application that  
6 allows usage down to 32 degrees.” In this same communication, Loberg admitted that  
7 PremierGarage was not close to finding a solution for a cold weather application of the  
8 simulated-granite floor coating. Loberg further informed franchisees that he hoped to  
9 have a system tested and ready for use the following winter. Loberg acknowledged that  
10 franchisees operating in a “cold climate” would be unable to coat floors for three to four  
11 months.

12 142. Loberg also stated he personally would not release a product to  
13 PremierGarage franchisees unless it had been extensively examined and tested.

14 143. On or about January 13, 2005, Nygaard attended a PremierGarage  
15 franchise conference in Las Vegas, during which Loberg introduced PremierOne (solid  
16 color coating) and PremierOne Plus (1/4-inch fine chip coating) hybrid polymer floor-  
17 coating systems. PremierGarage stated that PremierOne and PremierOne Plus were the  
18 solution to all the problems associated with the original epoxy/polyurethane floor-  
19 coating formulation.

20 144. Specifically, Loberg stated that franchisees could apply PremierOne  
21 products at temperatures as low as 32 degrees Fahrenheit. Loberg also stated that the  
22 PremierOne and PremierOne Plus would not peel, flake, or fail to adhere to the garage  
23 floor.

24 145. Loberg also stated that the “PremierOne Floor coating system [could] be  
25 installed in just one day,” that the customer could have “full use of [the garage] just 24  
26

1 hours later. When the temperature falls below 50 degrees, cars and heavy objects must  
2 be kept off the floor for a minimum of 2 days.”

3 146. Loberg also stated that the PremierOne Floor coating system was “zero  
4 VOC and free of solvents, they were non-flammable and non-hazardous to people and  
5 the environment.” Loberg also stated that PremierOne and PremierOne Plus were  
6 moisture tolerant.

7 147. The franchisee cost of the PremierOne and PremierOne Plus flooring  
8 products was approximately two times the cost of the original floor-coating product:  
9 \$1.65 per square foot for solid color coating and more than \$2.00 per square foot for the  
10 simulated granite chip coating. But PremierGarage told Kansas City that the increase in  
11 the cost of the products would be offset by the decrease in cost associated with labor.

12 148. On March 3, 2004, Nygaard and members of the installation crew  
13 attended a three-day training seminar, in Atlanta, Georgia, on the installation process of  
14 the PremierOne flooring products.

15 149. At the training seminar, and as presented in the PremierOne training  
16 manual, PremierGarage promoted and highly recommended that Kansas City use  
17 “Bondo” (a material most often used in auto body repair shops) to repair concrete  
18 garage floors prior to applying PremierOne and PremierOne Plus.

19 150. Kansas City acquired PremierOne and PremierOne Plus and began using  
20 the product on its floor-coating projects. Despite applying the products as directed,  
21 Kansas City soon began receiving complaints that both PremierOne and PremierOne  
22 Plus were bubbling and peeling away from the garage floors.

23 151. Kansas City also learned that the product dried too quickly, thereby  
24 leading to flash curing and poor top-coat quality, had color float problems, a strong  
25 odor, and failed to adhere to garage floors in humid climates. For example, with  
26 PremierOne in particular, when Kansas City, and other franchisees, mixed the active

1 pigment (i.e. color dye) in the PremierOne top coat the pigment would react too quickly  
2 and produce inconsistent color and shade variations depending on how long the batch  
3 had been mixed. The top coat would also change color or shade if a portion of the floor  
4 was re-rolled while it was drying. This defect is commonly referred to as a “color float  
5 problem.”

6 152. Approximately 15 percent of the Kansas City customers who received  
7 PremierOne and PremierOne Plus products on their garage floors reported failures that  
8 Kansas City had to repair.

9 153. Kansas City informed PremierGarage of the defects and PremierGarage  
10 instructed Kansas City to place an additive into the product, which Kansas City did, but  
11 to no avail.

12 154. PremierGarage provided a number of additional suggested “solutions” to  
13 prevent the floor coating from bubbling or peeling away from the floor, including: (1)  
14 grinding or shot blasting the floors prior to applying the floor coating (even though  
15 PremierGarage had trained Kansas City to only acid wash the garage floors prior to  
16 applying the floor coating), which increased floor preparation costs by approximately  
17 \$0.75 per square foot; (2) buying from PremierGarage and using a porcupine roller to  
18 roll over the “out gassing” bubbles; (3) spraying a sealer on the garage floor before  
19 applying the coating; (4) buying the Sonin Rapitest Moisture Meter to determine the  
20 humidity levels in the concrete prior to applying the floor coating.

21 155. Kansas City tried each of these alleged “solutions,” but none of them  
22 worked.

23 156. Ultimately, PremierGarage admitted that the PremierOne system was  
24 defective. Ex. 7.

25 157. Contrary to the oral and written representations regarding advertising fees,  
26 PremierGarage, at the February 2006 PremierGarage Franchise Seminar, introduced the

1 Google national advertising campaign. Under this advertising campaign,  
2 PremierGarage requested franchisees pay an advertising fee based on the number of  
3 “hits” or “clicks” on the ad in their respective territories. Originally, Loberg  
4 represented that this was not a mandatory program.

5 158. However, on March 3, 2006, Loberg informed franchisees that they would  
6 each receive a monthly fixed-fee advertising bill, which PremierGarage would base on  
7 the size of the franchisee’s territory. The franchisees’ payments would, in the  
8 aggregate, pay for approximately 75% of the overall costs of the Google program.  
9 Loberg informed Kansas City that, while he hoped they would participate in the  
10 program, they could not be forced to participate in the program. Ex. 8.

11 159. Kansas City requested to not be included in the program. PremierGarage  
12 denied its request and charged Kansas City approximately \$500.00 per month for  
13 Google advertising. Contrary to the representations set forth in the UFOC, the franchise  
14 agreement, and the verbal representations made by Loberg, Lundin and Goins,  
15 PremierGarage made participation in the Google program mandatory.

16 160. In addition, in the summer of 2006, Kansas City discovered that  
17 PremierGarage previously instituted a program through which PremierGarage would  
18 reimburse franchisees for the costs of repair and replacement caused by the faulty  
19 PremierOne products. Kansas City learned that PremierGarage had discriminated  
20 between franchisees by notifying only select franchisees, not including Kansas City.

21 161. By the time Kansas City found out about the program, the deadline for  
22 submitting claims already had expired.

23 162. As a result of PremierGarage’s failure to inform Kansas City of the  
24 reimbursement program in a timely fashion, Kansas City incurred additional debt and  
25 financial losses from its repair of numerous garage floors. Further, the change in  
26

1 product and increase in labor costs diminished any likelihood that Kansas City would  
2 ever be able to operate profitably.

3 163. On or about October 25, 2006, Johnson informed Nygaard that Kansas  
4 City's purchases for the twelve-month period ending August 27, 2006 was not enough  
5 to meet its minimum purchase commitment for the period. A true and correct copy of  
6 the letter from Johnson to Kansas City, dated October 25, 2006, is attached as Exhibit  
7 12.

8 164. In February, 2007, Kansas City attended PremierGarage's franchise  
9 seminar in Las Vegas, during which, Ronald Schorr, a chemist for PremierOne and  
10 PremierOne Plus, questioned why franchisees were using "Bondo" to repair concrete  
11 floors prior to the application of the PremierOne systems. Schorr implied that the  
12 chemical make-up of "Bondo" when combined with the chemical make-up of  
13 PremierOne and PremierOne Plus would cause defects in the application and curing  
14 process of PremierOne and PremierOne Plus. In addition, Schorr stated that if  
15 franchisees "wet etch" the concrete garage floors, they must ensure that the expansion  
16 cracks are thoroughly dry before applying PremierOne or PremierOne Plus because the  
17 coatings were not moisture tolerant. Schorr's comments were contrary to  
18 PremierGarage's training and suggested "solutions," to "wet etch" the concrete garage  
19 floors prior to applying the product.

20 165. As a result of the defective floor coating products, and the damage the  
21 defective floor coating product had caused to Kansas City's reputation, Kansas City was  
22 not able to purchase enough product to meet its alleged minimum amount of product.

23 166. Ultimately, on or about April 4, 2007, Kansas received a Notice of  
24 Default. The correspondence stated:

25 In accordance with Section 7.3 of the referenced Agreement,  
26 this letter will serve as written notice that Premier Garage of

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Kansas City, Inc. is in material default of its obligations under said Agreement because it failed to pay for product it has purchased from Premier Garage when due.

A true and correct copy of the Correspondence from Anderson to Kansas City, dated April 4, 2007, is attached as Exhibit 13.

**PREMIERGARAGE’S MISREPRESENTATIONS REGARDING INITIAL INVESTMENT COSTS**

167. Contrary to the initial investment costs represented by PremierGarage, Nygaard’s total investment costs for his franchise exceeded \$200,000.

168. Nygaard invested, on behalf of his business entity, over twice as much as PremierGarage’s high initial-investment investment to establish the franchise for Kansas City.

169. Lundin told Nygaard that the initial investment cost for a PremierGarage franchise was between \$72,650.00 and \$132,500.00. Lundin’s representations were confirmed by the UFOC. Ex. 10 at Item 7.

170. PremierGarage had no material basis on which to make any estimate of the range for initial-investment costs for new franchises in the Midwest because, upon information and belief, PremierGarage had not operated any corporate or licensed locations in Kansas.

171. Nygaard never would have purchased his franchise had PremierGarage accurately portrayed the prospective investment costs.

172. The magnitude of Nygaard’s initial investment drastically diminished the prospect of Kansas City ever being able to operate the franchises profitably.

1                   **JAMES' INITIAL INVOLVEMENT WITH PREMIERGARAGE:**  
2                   **THE ESTABLISHMENT OF PREMIERGARAGE OF OKLAHOMA CITY**

3                   173. In the summer of 2004, James began investigating the establishment of a  
4 garage remodeling franchise.

5                   174. As part of his due diligence, James investigated numerous garage  
6 remodeling-based franchise concepts, including PremierGarage and Garage Tek.

7                   175. In July 2004, in an attempt to obtain additional information on the  
8 establishment of a PremierGarage franchise, James contacted PremierGarage by  
9 telephone and spoke with Lundin. Lundin responded to James via letter and informed  
10 James that PremierGarage was excited to show him how he could become a part of the  
11 industry. Specifically, Lundin told James that:

12                                 Our virtually turn-key system of product supply, training  
13                                 and support, all royalty free, puts you far ahead of the curve  
14                                 and on your way to profitability often times as much as 24  
15                                 months ahead of a typical start-up business. As a  
16                                 PremierGarage [franchisee], you will offer the finest  
17                                 cabinetry, floor coatings and organizer systems available, at  
                                      factory direct savings, to an emerging market of home  
                                      owners and home builders who are discovering the last  
                                      bastion of the truly finished residence in the garage.

18                   A true and correct copy of the Correspondence from Lundin to James, dated September  
19 14, 2004 is attached as Exhibit 14.

20                   176. Lundin told James that the franchise fee for the Oklahoma City market  
21 was \$35,000, and the initial inventory purchase was \$45,000. Lundin recommended  
22 James have \$150,000 to \$250,000 as available capital “depending on how aggressively”  
23 he wished to grow his business. Ex. 14.

24                   177. On or around August 24, 2004, James traveled to PremierGarage’s  
25 headquarters in Phoenix, Arizona and met with Lundin, Goins and Loberg in regard to  
26 the establishment of a PremierGarage franchise in Oklahoma. Loberg called the

1 PremierGarage franchise system a “family” franchise. Lundin informed James that a  
2 PremierGarage franchise could operate on its own and that it was not necessary for the  
3 franchise to be owner-managed. This was important to James. During this meeting,  
4 Lundin took James on a tour of the production facilities and discussed the start-up costs  
5 and profit margins associated with a PremierGarage franchise and visited a job-site.

6 178. At this meeting, Lundin informed James that should he wish to establish a  
7 PremierGarage franchise, he would be required to pay the franchise fee of \$35,000.00  
8 for the exclusive right to the Oklahoma market. In addition, Lundin represented that  
9 \$150,000.00 would be more than enough to cover the start-up costs.

10 179. Lundin represented that James would receive a gross profit margin of 40%  
11 on all sales and installation of flooring and a profit margin of 35% percent on all sales  
12 and installation of cabinets. Lundin further represented that after one year of operation,  
13 James would make at least \$5,000.00 to \$6,000.00 a month in profit and would break  
14 even within one year.

15 180. Lundin informed James that PremierGarage would provide him with  
16 professional training and assist him in formulating a marketing strategy for his territory.

17 181. Loberg, Lundin and Goins all made various representations about  
18 PremierGarage and the products and services it provided to its franchisees.  
19 PremierGarage never informed James that the epoxy/polyurethane floor coating could  
20 not be used in the winter months or could not sustain the winter weather subsequent to  
21 installation.

22 182. PremierGarage also stated that the products it sold to its franchisees had  
23 undergone substantial testing.

24 183. Lundin informed James that PremierGarage did not require its franchisees  
25 to pay advertising or cooperative advertising fees, but that James would be responsible  
26 for providing and paying for his own advertising at his own discretion. In reliance upon

1 the representations made by PremierGarage and Lundin, James elected to pursue the  
2 establishment of a PremierGarage franchise.

3 184. On October 14, 2004, Lundin sent James an email attaching the following  
4 documents: (1) Preparation for Discovery Day; (2) Confidential Statement; (3) Dealer  
5 Application; (4) Dealer List; and (5) PremierGarage Business Plan. A true and correct  
6 copy of the email from Lundin to James, dated October 14, 2004, with all attachments,  
7 is attached as Exhibit 15.

8 185. The proposed PremierGarage Business Plan stated that “[u]sing  
9 conservative estimates, the company will provide a break-even financial return in its  
10 first year of operations, followed by substantial financial returns in the following years.”  
11 Ex. 15 at 17.

12 186. The Business Plan also represented to James that it was necessary to have  
13 \$100,000.00 to support the start-up costs and provide capital for inventory purchases.  
14 The Plan established “[t]he financial goal of the company is to pay back all initial fees  
15 and expenses by the end of the second year of operations.” Ex. 15 at 21.

16 187. On or about December 4, 2004, James established Oklahoma City.

17 188. Lundin requested James pay the franchise fee prior to signing a franchise  
18 agreement. Lundin thought that it would be more convenient for James to sign the  
19 franchise agreement at the training seminar. Thus, in early December 2004, and without  
20 having received a copy of PremierGarage’s UFOC, and without having received a  
21 franchise agreement of any sort, James applied his payment of \$35,000 (originally  
22 designated as his initial capital contribution to Oklahoma City) toward the \$35,000  
23 franchise fee to PremierGarage.

24 189. James paid the franchise fee with the understanding that Oklahoma City  
25 would pay him back upon approval of Oklahoma City’s loan application.  
26

1           190. James attended PremierGarage's training seminar in Phoenix, Arizona in  
2 January, 2005. On the first day of training, January 31, 2005, Lundin finally presented  
3 James with a franchise agreement. Based on the oral representations made by  
4 PremierGarage and its Corporate Officers, and representations set forth in the franchise  
5 agreement, James signed the franchise agreement as the owner of Oklahoma City on  
6 January 31, 2005 (hereinafter "Oklahoma City Franchise Agreement"). Loberg signed  
7 the Oklahoma City Franchise Agreement on February 7, 2005. A true and correct copy  
8 of the Oklahoma City Franchise Agreement is attached as Exhibit 16.

9           191. In addition, on or around February 7, 2005, Oklahoma City paid  
10 PremierGarage \$44,235.95 for Oklahoma City's standard beginning inventory purchase.  
11 As and from February 7, 2005 any and all checks tendered (or received) on behalf of  
12 Oklahoma City originated from Oklahoma City's checking account and/or Small  
13 Business Loan disbursements.

14           192. Lundin never provided James or Oklahoma City with a UFOC as required  
15 by the FTC Rules and the Oklahoma Business Opportunity Sales Act.

16           193. The Oklahoma City Franchise Agreement, which provides some, but not  
17 all, of the agreements between the parties, granted Oklahoma City the right to utilize  
18 products, systems, custom cabinets, trade names, future trademarks, technology and  
19 business format of PremierGarage. Ex. 16. The Oklahoma City Franchise Agreement  
20 also required Oklahoma City to pay an annual license fee of \$3,500.00. Ex. 16 at  
21 attachment A.

22           194. The Oklahoma City Franchise Agreement did not require Oklahoma City  
23 to pay advertising or cooperative advertising fees (with the exception of telephone  
24 listings). Ex. 16 at 4.

25           195. The Oklahoma City Franchise Agreement stated that PremierGarage  
26 conducted research and testing on products and evaluated potential new products to

1 ensure that the products met a level of quality and consistency for their intended use.

2 Ex. 16 at 15.

3 196. The Oklahoma City Franchise Agreement obligated PremierGarage to  
4 provide, free of charge, up to 12 hours of telephonic technical assistance for the initial  
5 three months, to assist Oklahoma City in establishing a marketing program, to develop  
6 promotional materials at a reasonable cost, to provide suggestions on new programs,  
7 sales and advertising, and to provide ongoing research and development pertaining to  
8 material, products, chemicals and techniques. Ex. 16 at 15.

9 197. Further, Paragraph 12.12 of the Franchise Agreement stated:

10 The products manufactured by or for PremierGarage are  
11 intended to meet a level of quality and consistency for their  
12 intended use. Should any product purchased by  
13 [Franchisee] from PremierGarage be proved to be defective  
14 within one year of the date of shipment, the product will  
15 either be replaced or repaired or the purchase price  
16 refunded, at the discretion of PremierGarage....Therefore,  
17 except for replacement, repair or refund, PremierGarage  
18 makes no warranty or guarantee, express or implied,  
19 including warranties of fitness, design, durability,  
20 compatibility or merchantability regarding the products  
21 supplied by PremierGarage.

22 Ex. 16 at 18.

23 198. Over the course of the first six months of operation, James and Oklahoma  
24 City spent hundreds of thousands of dollars to pay for the franchise, inventory, trucks  
25 and equipment, advertising, and for employees' wages (a manager and a salesperson).

26 **PREMIERGARAGE'S MISREPRESENTATIONS REGARDING**  
**FLOOR COATING AND ADVERTISING EXPENSES**

199. On January 13, 2005, James attended the PremierGarage Franchise  
conference in Las Vegas, (after James paid the franchise fee). Here, Loberg informed

1 all franchisees that PremierGarage prohibited the use of heating implements in garages.  
2 Loberg also told James for the first time that if a franchisee applied the  
3 epoxy/polyurethane floor coating in temperatures below 50 degrees Fahrenheit that the  
4 coating would turn white when exposed to standing water.

5 200. At the same time, PremierGarage acknowledged that the  
6 epoxy/polyurethane floor coating failed to cure properly in garages that did not maintain  
7 a temperature over 50 degrees Fahrenheit during installation. PremierGarage also  
8 formally introduced the PremierOne (solid color coating) and PremierOne Plus (1/4-  
9 inch fine chip coating) hybrid polymer floor-coating systems manufactured for  
10 PremierGarage. PremierGarage stated that PremierOne and PremierOne Plus were the  
11 solution to all the problems associated with the original epoxy/polyurethane floor-  
12 coating formulation.

13 201. Specifically, Loberg represented that franchisees could apply PremierOne  
14 products at temperatures as low as 32 degrees Fahrenheit. Loberg also stated that  
15 PremierOne and PremierOne Plus would not peel, flake, or fail to adhere to the garage  
16 floor.

17 202. Loberg also represented that the “PremierOne Floor coating system  
18 [could] be installed in just one day,” that the customer could have “full use of [the  
19 garage] just 24 hours later. When the temperature falls below 50 degrees, cars and  
20 heavy objects must be kept off the floor for a minimum of 2 days.”

21 203. Loberg also stated that the PremierOne Floor coating system was “zero  
22 VOC and free of solvents, they were non-flammable and non-hazardous to people and  
23 the environment.” Loberg also stated that PremierOne and PremierOne Plus were  
24 moisture tolerant.

25 204. The franchisee cost of the PremierOne and PremierOne Plus flooring  
26 products was approximately two times the cost of the original floor-coating product:

1 \$1.65 per square foot for solid color coating and more than \$2.00 per square foot for the  
2 simulated granite chip coating. But PremierGarage told James that the increase in the  
3 cost of the products would be offset by the decrease in cost associated with labor.

4 205. Between March 23, 2005 and March 24, 2005, installation employees of  
5 Oklahoma City attended a training seminar in Phoenix, Arizona to learn how to install  
6 PremierOne and PremierOne Plus.

7 206. At the training seminar, and as presented in the PremierOne training  
8 manual, PremierGarage promoted and highly recommended Oklahoma City continue  
9 the use of “Bondo” to repair the concrete garage floor prior to applying PremierOne and  
10 PremierOne Plus.

11 207. Oklahoma City acquired PremierOne and PremierOne Plus and began  
12 using the products on its floor-coating projects. Despite applying the product as  
13 directed, Oklahoma City began to receive complaints that both PremierOne and  
14 PremierOne Plus were bubbling and peeling away from the garage floors

15 208. For example, on May 18, 2005, May 24, 2005, and June 6, 2005,  
16 Oklahoma City installed PremierOne in three premier “high-end” homes in Oklahoma  
17 in strict compliance with the training materials provided by PremierGarage. In each  
18 home, the floor coating peeled and had to be replaced. The expense incurred by  
19 Oklahoma City to fix and replace these floors exceeded \$15,000.00. In addition to the  
20 cost of repair associated with these floors, Oklahoma City suffered substantial damage  
21 to its business reputation.

22 209. More specifically, on May 24, 2006, Oklahoma City installed the flooring  
23 in a home presented in a “Home Show.” During tours of prospective buyers for the  
24 home, the flooring peeled away from the garage floor. Oklahoma City immediately  
25 informed PremierGarage of the problems and the damages caused to both the floor and  
26 his business’ reputation. Kieler advised Oklahoma City to apply a topcoat to fix the

1 damages. Oklahoma City did this, but it did not work. Kieler then advised Oklahoma  
2 City to apply a second topcoat. Oklahoma City did so and this also did not work and  
3 ultimately the entire floor peeled up. The attempts to fix the floor cost Oklahoma City a  
4 substantial amount of money and severely damaged his business reputation.

5 210. Oklahoma City determined the product dried too quickly, thereby leading  
6 to flash curing and poor top coat quality, had color float problems, a strong odor, and  
7 failed to adhere to garage floors in humid climates. For example, with PremierOne in  
8 particular, when Oklahoma City, and other franchisees, mixed the active pigment (i.e.  
9 color dye) in the PremierOne top coat the pigment would react too quickly and  
10 produced inconsistent color and shade variations depending on how long the batch had  
11 been mixed. The top coat would also change color or shade if a portion of the floor was  
12 re-rolled while it was drying. This defect is commonly referred to as a “color float  
13 problem.”

14 211. Overall, approximately 10 percent of the Oklahoma City customers who  
15 received PremierOne and PremierOne Plus products on their garage floors reported  
16 failures that Oklahoma City had to repair.

17 212. Oklahoma City informed PremierGarage of the defects and  
18 PremierGarage instructed Oklahoma City to place an additive into the product, which  
19 Oklahoma City did, but to no avail.

20 213. PremierGarage provided a number of additional suggested “solutions” to  
21 prevent the floor coating from bubbling or peeling away from the floor, including: (1)  
22 grinding or shot blasting the floors prior to applying the floor coating (even though  
23 PremierGarage had trained Oklahoma City to only acid wash the garage floors prior to  
24 applying the floor coating), which increased floor preparation costs by approximately  
25 \$0.75 per square foot; (2) buying from PremierGarage and using a porcupine roller to  
26 roll over the “out gassing” bubbles; (3) spraying a sealer on the garage floor before

1 applying the coating; (4) buying the Sonin Rapitest Moisture Meter to determine the  
2 humidity levels in the concrete prior to applying the floor coating.

3 214. Oklahoma City tried each of these alleged “solutions,” but none of them  
4 worked.

5 215. Ultimately, PremierGarage admitted that the PremierOne system was  
6 defective. Ex. 7.

7 216. Contrary to the oral and written representations regarding advertising fees,  
8 PremierGarage, at the February 2006 PremierGarage Franchise Seminar, introduced the  
9 Google national advertising campaign. Under this advertising campaign,  
10 PremierGarage requested franchisees pay an advertising fee based on the number of  
11 “hits” or “clicks” on the ad in their respective territories. Originally, Loberg  
12 represented that this was not a mandatory program.

13 217. However, on March 3, 2006, Loberg informed franchisees that they would  
14 each receive a monthly fixed-fee advertising bill, which PremierGarage would base on  
15 the size of the franchisee’s territory. The franchisees’ payments would, in the  
16 aggregate, pay for approximately 75% of the overall costs of the Google program.  
17 Loberg informed Oklahoma City that, while he hoped it would participate in the  
18 program, it could not be forced to participate in the program. Ex. 8.

19 218. Oklahoma City requested to not be included in the program.  
20 PremierGarage denied its requests and charged Oklahoma City approximately \$500.00  
21 per month for Google advertising. Contrary to the representations set forth in the  
22 franchise agreement, and the verbal representations made by Loberg, Lundin and Goins,  
23 PremierGarage made participation in the Google program mandatory.

24 219. In addition, on or around July, 2006, Oklahoma City discovered that  
25 PremierGarage previously instituted a program by which franchisees who experienced  
26 problems with the PremierOne floor coverings could submit a claim for reimbursement

1 of the costs of repair and replacement of the product. Oklahoma City learned that  
2 PremierGarage had discriminated between franchisees by notifying only select  
3 franchisees, not including Oklahoma City.

4 220. On July 19, 2006, James questioned Reichow on the claim reimbursement  
5 program and she confirmed that reimbursement was available only for those claims  
6 asserted prior to the time that PremierGarage offered the high-humidity blend. A true  
7 and correct copy of the email from Reichow to James, dated July 19, 2006, is attached  
8 as Exhibit 17. Johnson told James that PremierGarage would not reimburse Oklahoma  
9 City for lost business and time associated with the defective floors.

10 221. As a result of PremierGarage's failure to inform James or Oklahoma City  
11 of the reimbursement program in a timely fashion, Oklahoma City incurred additional  
12 debt and substantial financial losses from its repair of numerous garage floors. Further,  
13 the change in product and increase in labor costs diminished any likelihood that  
14 Oklahoma City would ever be able to operate profitably.

15 222. In December, 2006, James requested a copy of PremierGarage's UFOC  
16 for the state of Oklahoma. PremierGarage responded by mail and attached "a copy of  
17 the current Offering Circular". A true and correct copy of the correspondence from  
18 Johnson to James with the UFOC is attached as Exhibit 18.

19 223. Item 7 of the UFOC listed the initial investment for the establishment of a  
20 PremierGarage franchise as being between \$132,900.00 and \$407,750.00, depending on  
21 the territory granted under the franchise agreement. Ex. 18 at Item 7.

22 224. Further, the UFOC stated:

23 You must purchase garage cabinets, organizers, floor  
24 coatings, signage and related products from PremierGarage  
25 or another supplier designated by PremierGarage. . . .  
26 We believe that you will receive a material benefit from the  
use of designated or approved sources because we

1           manufacture and distribute high quality, tested products that  
2 we have used are extensive industry knowledge to determine  
3 the best types of products for the business. . . .  
4 PremierGarage estimates the cost of products purchased  
5 through it will represent approximately 45% of the cost to  
6 establish your franchise and approximately 35% of your  
7 ongoing operating budget. By operating a business similar  
8 to the one that you will operate, Premier Specialties has  
9 developed the products and services offered and sold by  
10 franchisees. The products provided to franchisees have  
11 undergone substantial testing. In addition, PremierGarage is  
12 continually conducting research and testing on existing  
13 products and evaluating potential new products.

14 Ex. 18 at Item 8(emphasis added).

15           225. Item 8 of the UFOC further stated that the franchisee “will be required to  
16 participate in an internet sponsored search program. The annual cost to participate in  
17 the internet sponsored search program varies. In 2007, the cost to participate in the  
18 internet sponsored search program is \$200.00 per month for a tier one territory, \$400.00  
19 per month for a tier two territory, and \$700.00 per month for a tier three territory.” Ex.  
20 18 at Item 8.

21           226. The representations set forth in the UFOC in regard to investment costs,  
22 fees, and advertising fees were all contrary to PremierGarage’s oral representations and  
23 the written representations set forth in the franchise agreement.

24           227. On December 31, 2006, James questioned PremierGarage why it failed to  
25 provide him with a copy of the UFOC prior to his signing of the Oklahoma City  
26 Franchise Agreement. A true and correct copy of the email from James to Johnson,  
dated December 31, 2006, is attached as Exhibit 19.

          228. On or about January 3, 2007, James received a written notice of material  
breach. The correspondence stated:

                          In accordance with Section 7.3 of the referenced Agreement,  
                          this letter will serve as written notice that you are in material

1 breach of your obligations under said Agreement because  
2 you have failed to pay for product you have purchased from  
3 PremierGarage when due.

4 A true and correct copy of the letter from Johnson to James, dated January 3, 2007, is  
5 attached as Exhibit 20.

6 229. On or about January 4, 2007, Johnson responded to James' inquiry and  
7 stated that it was not necessary for PremierGarage to be registered in the State of  
8 Oklahoma. Ex. 19.

9 230. Notably, James established the PremierGarage of Oklahoma City  
10 franchise before PremierGarage obtained the registration necessary under Oklahoma  
11 law. James would never have gone forward with the purchase of the franchise or  
12 invested the hundreds of thousands of dollars he did had PremierGarage accurately  
13 portrayed the franchise's registration status, and properly disclosed the start-up costs.

14 231. Other PremierGarage franchisees informed James that at the February  
15 2007 PremierGarage Seminar, Ronald Schorr, a chemist for PremierOne and  
16 PremierOne Plus, questioned why franchisees were using "Bondo" to repair concrete  
17 floors prior to the application of the PremierOne systems. Schorr implied that the  
18 chemical make-up of "Bondo" when combined with the chemical make-up of  
19 PremierOne and PremierOne Plus would cause defects in the application and curing  
20 process of PremierOne and PremierOne Plus. In addition, Schorr stated that if  
21 franchisees "wet etch" the concrete garage floors, they must ensure that the expansion  
22 cracks are thoroughly dry before applying PremierOne or PremierOne Plus because the  
23 coatings were not moisture tolerant. Schorr's comments were contrary to  
24 PremierGarage's training and suggested "solutions," to "wet etch" the concrete garage  
25 floors prior to applying the product.

1           232. The use of “Bondo” before the application of the PremierOne and  
2 PremierOne Plus floor coatings caused both James and Oklahoma City substantial  
3 financial damage.

4                           **PREMIERGARAGE’S MISREPRESENTATIONS REGARDING**  
5                           **INITIAL INVESTMENT COSTS**

6           233. Contrary to the initial investment costs represented by PremierGarage,  
7 James and Oklahoma City’s total investment costs for his franchise exceeded  
8 \$420,000.00.

9           234. James and Oklahoma City both invested over twice as much as  
10 PremierGarage represented as the investment costs.

11           235. Upon information and belief, PremierGarage had no material basis on  
12 which to make any estimate on the range of initial investment costs for a new franchise  
13 in Oklahoma because PremierGarage had not operated any corporate or licensed  
14 locations in Oklahoma.

15           236. James never would have gone forward with the purchase of the franchise  
16 had PremierGarage accurately portrayed the prospective initial investment costs.

17           237. The magnitude of James and Oklahoma City’s initial investment  
18 drastically diminished the prospect of Oklahoma City ever being able to operate  
19 profitably.

20                           **LARA’S AND MARTINS’ INITIAL INVOLVEMENT WITH**  
21                           **PREMIERGARAGE:**  
22                           **THE ESTABLISHMENT OF PREMIERGARAGE OF WICHITA**

23           238. In February, 2004, Lara and Martin discussed the possibility of  
24 establishing a PremierGarage franchise to supplement their individual income sources.

25           239. As part of their due diligence, in May, 2004, Lara and Martin contacted  
26 PremierGarage by telephone to further investigate and obtain additional information on

1 the establishment of a PremierGarage franchise in Wichita, Kansas. Lara and Martin  
2 spoke with Lundin.

3 240. Lundin informed Lara and Martin that PremierGarage provided the  
4 highest standard of garage remodeling products in the industry and that PremierGarage  
5 was one of the fastest growing franchises in the business. Lundin sent Lara and Martin  
6 a DVD that consisted of interviews with co-founders Loberg and Anna Loberg (both of  
7 whom discussed how the franchise was growing, how the products were state of the art  
8 and how profitable the business was), a builder in Phoenix and an interior designer  
9 (both of whom described how wonderful the products were and how they enjoyed  
10 working with PremierGarage). In addition to the interviews, the DVD stated, among  
11 other things, that PremierGarage franchisees receive:

- 12 • Intensive 2 week hands-on training in Floor coating  
and Cabinet Installation, as well as Sales Training
- 13 • Ongoing training for new employees
- 14 • Use of our web site, with a link direct to your email
- 15 • Sample Cabinets
- 16 • Floor coating Sample Boards
- 17 • Sales Brochures
- 18 • Photography Disc for use of Advertising layouts
- 19 • Business Cards
- 20 • Estimate Forms
- 21 • Safety Program
- 22 • Employee Manual
- 23 • Technical Support
- 24 • National name-brand recognition

25 241. In addition, the promotional documents included several sales scenarios  
26 that provided Lara and Martin with the retail sales price, costs and “Profit,” that they  
could earn by installing solid-color epoxy/polyurethane flooring in different size  
garages, “simulated granite” epoxy/polyurethane flooring in different size garages, and  
several different cabinet configurations in different size garages. Based on the

1 franchisee cost of the solid color and “simulated granite” flooring materials  
2 (approximately \$.28 and \$1.09 per square foot respectively), these sales scenarios  
3 included “Profits” of between \$461.30 and \$1,294.55 per job, before labor.

4 242. Lundin also sent Lara and Martin a copy of PremierGarage’s “current  
5 UFOC” in June 2004. The UFOC was undated. A true and correct copy of the UFOC  
6 provided to Lara and Martin is herein attached as Exhibit 21.

7 243. Item 6 of the UFOC provided that PremierGarage required franchisees to  
8 maintain telephone listings in the Yellow and White Pages phone directories in their  
9 respective territories. The UFOC listed no other advertising or cooperative advertising  
10 fees. Ex. 21 at Item 6.

11 244. Item 7 of the UFOC listed the estimated initial investment cost for the  
12 establishment of a PremierGarage as being between \$88,000.00 and \$228,000.00  
13 depending on the territory. The UFOC stated that the start-up costs included an initial  
14 franchise fee between \$35,000.00 and \$75,000.00 (depending on the population of the  
15 given territory), and initial inventory costs of between \$45,000.00 and \$90,000.00. The  
16 UFOC did not list additional product purchases required during the first year of  
17 operation. Ex. 21 at Item 7.

18 245. The UFOC did not list any cooperative advertising fees and the only  
19 advertising requirement was that franchisees maintain a telephone listing in the Yellow  
20 Pages and White Pages phone directories in its respective territory under the authorized  
21 franchise name. Ex. 21 at Item 7.

22 246. Item 8 of the UFOC also stated that the products purchased by franchisees  
23 would represent 60% of the cost to establish the franchise and 25% of the ongoing  
24 operating budget. Ex. 21 at Item 8.

25 247. Item 8 of the UFOC further stated that the “products provided to  
26 [franchisees] have undergone substantial testing. In addition, PremierGarage is

1 continually conducting research and testing on existing products and evaluating  
2 potential new products.” Ex. 21 at Item 8 (emphasis added).

3 248. Exhibit B to the UFOC was listed as the franchise agreement. However,  
4 no Exhibit B was attached to the UFOC. Ex. 21.

5 249. Martin traveled to PremierGarage’s headquarters in Phoenix, Arizona to  
6 meet with Lundin on three separate occasions: June, August and September of 2004.  
7 During these visits, Martin received a tour of the production facilities, had an  
8 opportunity to visit with Lundin and discussed the start up costs and the profitability of  
9 the franchise.

10 250. At these meetings, Lundin specifically informed Martin that the  
11 PremierGarage franchise concept had a “remarkable exploding market potential” and  
12 that PremierGarage was growing at a remarkable pace. Lundin also represented the  
13 PremierGarage franchise system as a “family” franchise.

14 251. Lundin informed Lara and Martin that the estimated investment costs for  
15 the Wichita, Kansas market were different than those identified in the UFOC and would  
16 range from \$85,000.00 to \$120,000.00 (excluding the area around Kansas City).

17 252. Based on the representations of Lundin regarding profitability, the fact  
18 that there were no advertising fees, and the materials represented to them, Lara and  
19 Martin estimated, and Lundin confirmed, that they should break even within one and  
20 one-half years of operation.

21 253. In November 2004, Lara and Martin both traveled to Phoenix, Arizona to  
22 discuss the investment costs associated with the establishment of a PremierGarage in  
23 Wichita, Kansas. Lundin confirmed they would be required to pay the franchise fee of  
24 \$35,000.00 for the exclusive right to the Kansas market (excluding the area around  
25 Kansas City), that their initial start-up costs would be approximately \$85,000.00, that  
26

1 they would be required to order \$41,000.00 in initial inventory and an additional  
2 \$59,000.00 worth of inventory before the end of the first year of business.

3 254. Before Lara and Martin acquired a franchise, Loberg, Goins and Lundin  
4 of made various oral and written representations about PremierGarage and the products  
5 and services it provided to its franchisees, including that the products it provided to its  
6 franchisees had undergone substantial testing.

7 255. PremierGarage represented to Lara and Martin that the  
8 epoxy/polyurethane floor covering that it sold to its franchisees would cure properly in  
9 garages year round. Kieler and Goins told Lara and Martin that, because they  
10 conducted business in a “cold weather market”, they could use heating implements to  
11 assist in the application phase of the floor coating. Lara and Martin were never  
12 informed, before they signed the franchise agreement, that the epoxy/polyurethane floor  
13 coating could not be applied in cooler temperatures.

14 256. On or about November 16, 2004, without having received, reviewed or  
15 signed a franchise agreement, Lara and Martin paid the franchise fee of \$35,000.00.

16 257. Lara and Martin attended PremierGarage’s training seminar in Phoenix,  
17 Arizona in November 2004. On the last day of training (November 29, 2004), Loberg  
18 finally provided Lara and Martin with a franchise agreement. Lara and Martin signed  
19 the franchise agreement on November 29, 2004 (hereinafter “Wichita Franchise  
20 Agreement”). Loberg signed the Wichita Franchise Agreement on the same date. A  
21 true and correct copy of Wichita Franchise Agreement is attached as Exhibit 22.

22 258. The Wichita Franchise Agreement, which provides some, but not all, of  
23 the agreements between the parties, granted Lara and Martin the right to utilize the  
24 products, systems, custom cabinets, trade names, future trademarks, technology and  
25 business format of PremierGarage. Ex. 22. The Wichita Franchise Agreement did not  
26

1 require Wichita to pay advertising or cooperative advertising fees (with the exception of  
2 telephone listings). Ex. 22 at 4.

3 259. The Wichita Franchise Agreement obligated PremierGarage to provide,  
4 free of charge, up to 12 hours of telephonic technical assistance for the initial three  
5 months, to assist Lara and Martin in establishing a marketing program, to develop  
6 promotional materials at a reasonable cost, to provide suggestions on new programs,  
7 sales and advertising, and to provide ongoing research and development pertaining to  
8 material, products, chemicals and techniques. Ex. 22 at 15.

9 260. Further, Paragraph 12.12 of the Franchise Agreement stated:

10 The products manufactured by or for PremierGarage are  
11 intended to meet a level of quality and consistency for their  
12 intended use. Should any product purchased by  
13 [Franchisee] from PremierGarage be proved to be defective  
14 within one year of the date of shipment, the product will  
15 either be replaced or repaired or the purchase price  
16 refunded, at the discretion of PremierGarage....Therefore,  
17 except for replacement, repair or refund, PremierGarage  
18 makes no warranty or guarantee, express or implied,  
19 including warranties of fitness, design, durability,  
20 compatibility or merchantability regarding the products  
21 supplied by PremierGarage.

22 Ex. 22 at 18.

23 261. On December 10, 2004, Lara and Martin paid \$46,461.95 for its initial  
24 inventory.

25 262. Lara and Martin invested hundreds of thousands of dollars to pay for the  
26 franchise, inventory, a mini van, a box truck and trailer, advertising and signs,  
equipment, tools, office equipment, computers, and employee wages and rent pursuant  
to their long-term lease.



1           267. On January 13, 2005, Martin attended the PremierGarage Franchise  
2 conference in Las Vegas. Here, Loberg informed all franchisees that PremierGarage  
3 prohibited the use of heating implements in garages. Here, Loberg also told Martin for  
4 the first time that if a franchisee applied the epoxy/polyurethane floor coating in  
5 temperatures below 50 degrees Fahrenheit that the coating would turn white when  
6 exposed to standing water.

7           268. At the same time, PremierGarage acknowledged that the  
8 epoxy/polyurethane floor coating failed to cure properly in garages that did not maintain  
9 a temperature over 50 degrees Fahrenheit during installation. PremierGarage also  
10 formally introduced PremierOne (solid color coating) and PremierOne Plus (1/4-inch  
11 fine chip coating) hybrid polymer floor-coating systems manufactured for  
12 PremierGarage. PremierGarage stated that PremierOne and PremierOne Plus were the  
13 solution to all the problems associated with the original epoxy/polyurethane floor-  
14 coating formulation.

15           269. Specifically, Loberg stated that franchisees could apply PremierOne  
16 products at temperatures as low as 32 degrees Fahrenheit. Loberg also stated that the  
17 PremierOne and PremierOne Plus would not peel, flake, or fail to adhere to the garage  
18 floor.

19           270. Loberg also stated that the “PremierOne Floor coating system [could] be  
20 installed in just one day,” that the customer could have “full use of [the garage] just 24  
21 hours later. When the temperature falls below 50 degrees, cars and heavy objects must  
22 be kept off the floor for a minimum of 2 days.”

23           271. Loberg also stated that the PremierOne Floor coating system was “zero  
24 VOC and free of solvents, they were non-flammable and non-hazardous to people and  
25 the environment.” Loberg also stated that PremierOne and PremierOne Plus were  
26 moisture tolerant.

1           272. The franchisee cost of the PremierOne and PremierOne Plus flooring  
2 products was approximately two times the cost of the original floor-coating product:  
3 \$1.65 per square foot for solid color coating and more than \$2.00 per square foot for the  
4 simulated granite chip coating. But PremierGarage told Lara and Martin that the  
5 increase in the cost of the products would be offset by the decrease in cost associated  
6 with labor.

7           273. On March 23, 2005, Lara and Martin sent some of their installation  
8 employees to a three-day training seminar, in Phoenix, Arizona to learn how to install  
9 PremierOne and PremierOne Plus. PremierGarage had pre-prepped all the floors at the  
10 training seminar. As a result, PremierGarage did not train the employees of Lara and  
11 Martin on how to properly prep the floors prior to the use of PremierOne and/or  
12 PremierOne Plus.

13           274. At the training seminar, and as set forth in the PremierOne training  
14 manual, PremierGarage promoted and highly recommended the continued use of  
15 “Bondo” to repair concrete garage floors prior to applying the PremierOne and  
16 PremierOne Plus floor coatings.

17           275. Shortly after entering in the Wichita Franchise Agreement, Lara and  
18 Martin acquired PremierOne and PremierOne Plus and installed the floor coatings in  
19 several garages in Wichita, Kansas. Even after Lara and Martin strictly followed the  
20 training material presented by PremierGarage, Lara and Martin began to receive  
21 complaints that the flooring material bubbled and peeled away from the garage floors  
22 and had to be replaced at significant cost to Lara and Martin.

23           276. Lara and Martin learned that the product dried too quickly, thereby  
24 leading to flash curing and poor top coat quality, had color float problems, a strong  
25 odor, and failed to adhere to garage floors in humid climates. For example, with  
26 PremierOne in particular, when Lara Martin, and other franchisees, mixed the active

1 pigment (i.e. color dye) in the PremierOne top coat, the pigment would react too quickly  
2 and produced inconsistent color and shade variations depending on how long the batch  
3 had been mixed. The top coat would also change color or shade if a portion of the floor  
4 was re-rolled while it was drying. This defect is commonly referred to as a “color float  
5 problem.”

6 277. Lara and Martin formed Wichita on or about August 25, 2005, to operate  
7 their PremierGarage franchise.

8 278. In late 2005, and throughout 2006 and 2007, Lara and Martin replaced  
9 approximately ten floors covered with the PremierOne and PremierOne Plus products.  
10 PremierGarage never offered to provide financial or product assistance in the effort to  
11 fix and or replace the faulty floors.

12 279. Overall, approximately ten percent of the customers for Lara and Martin  
13 who received PremierOne and PremierOne Plus on their garage floors reported failures  
14 that Lara and Martin had to repair.

15 280. Lara and Martin informed PremierGarage of the defects and  
16 PremierGarage instructed Lara and Martin to place an additive into the product, which  
17 they did, but to no avail.

18 281. PremierGarage provided a number of additional suggested “solutions” to  
19 prevent the floor coating from bubbling or peeling away from the floor, including: (1)  
20 grinding or shot blasting the floors prior to applying the floor coating (even though  
21 PremierGarage had trained Lara and Martin to only acid wash the garage floors prior to  
22 applying the floor coating), which increased floor preparation costs by approximately  
23 \$0.75 per square foot; (2) buying from PremierGarage and using a porcupine roller to  
24 roll over the “out gassing” bubbles; (3) spraying a sealer on the garage floor before  
25 applying the coating; (4) buying the Sonin Rapitest Moisture Meter to determine the  
26 humidity levels in the concrete prior to applying the floor coating.

1           282. Lara and Martin tried each of these alleged “solutions,” but none worked.

2           283. Ultimately, PremierGarage admitted that the PremierOne system was  
3 defective. Ex. 7.

4           284. Contrary to the oral and written representations regarding advertising fees,  
5 PremierGarage, at the February 2006 PremierGarage Franchise Seminar, introduced the  
6 Google national advertising campaign. Under this advertising campaign,  
7 PremierGarage requested franchisees pay an advertising fee based on the number of  
8 “hits” or “clicks” on the ad in their respective territories. Originally, Loberg  
9 represented that this was not a mandatory program.

10           285. However, on March 3, 2006, Loberg informed franchisees that they would  
11 each receive a monthly fixed-fee advertising bill, which PremierGarage would base on  
12 the size of the franchisee’s territory. The franchisees’ payments would, in the aggregate,  
13 pay for approximately 75% of the overall costs of the Google program. Loberg  
14 informed Lara and Martin that, while he hoped it would participate in the program, it  
15 could not be forced to participate in the program. Ex. 8.

16           286. Lara and Martin requested not to be included in the program.  
17 PremierGarage denied its requests and charged Lara and Martin approximately \$350.00  
18 per month for Google advertising. Contrary to the representations set forth in the  
19 UFOC, the franchise agreement, and the verbal representations made by Loberg, Lundin  
20 and Goins, PremierGarage made participation in the Google program mandatory.

21           287. In addition, on or around July 2006, Lara and Martin discovered that  
22 PremierGarage previously instituted a program by which franchisees who experienced  
23 problems with the PremierOne floor covering could submit a claim for reimbursement  
24 of the costs of repair and replacement of the product. Lara and Martin learned that  
25 PremierGarage had discriminated between franchisees by notifying only select  
26 franchisees, not including Lara and Martin.

1           288. Because the deadline for submitting claims had expired in Fall 2005, Lara  
2 and Martin were not able to submit any reimbursement claims to PremierGarage.

3           289. As a result of PremierGarage's failure to inform Lara and Martin of the  
4 reimbursement program, Lara and Martin incurred additional debt and substantial  
5 financial losses as a result of their repairs of numerous garage floors. Further, the  
6 change in product and increase in labor costs diminished any likelihood that Lara and  
7 Martin would ever be able to operate profitably.

8           290. In February, 2007, Lara and Martin were informed that during the  
9 PremierGarage franchise conference in Las Vegas, Ronald Schorr, a chemist for  
10 PremierOne and PremierOne Plus, questioned why franchisees were using "Bondo" to  
11 repair concrete floors prior to the application of the PremierOne systems. Schorr  
12 implied that the chemical make-up of "Bondo" when combined with the chemical  
13 make-up of PremierOne and PremierOne Plus would cause defects in the application  
14 and curing process of PremierOne and PremierOne Plus. In addition, Schorr stated that  
15 if franchisees "wet etch" the concrete garage floors, they must ensure that the expansion  
16 cracks are thoroughly dry before applying PremierOne or PremierOne Plus because the  
17 coatings were not moisture tolerant. Schorr's comments were contrary to  
18 PremierGarage's training and suggested "solutions," to "wet etch" the concrete garage  
19 floors prior to applying the product.

20           291. Lara and Martin used "Bondo" before applying PremierOne floor  
21 coatings, as instructed by PremierGarage. The use of "Bondo" caused Lara and Martin  
22 damages and prevented the PremierOne floor coating from adhering properly to the  
23 floor and induced moisture in the concrete which led to failures (peeling and bubbling).

24           292. On April 4, 2007, PremierGarage terminated Lara and Martin for failing  
25 to pay for products received. The only reason Lara and Martin failed to pay for such  
26

1 products is because of the prior material misrepresentations and breaches of  
2 PremierGarage.

3 **PREMIERGARAGE'S MISREPRESENTATIONS REGARDING**  
4 **INITIAL INVESTMENT COSTS**

5 293. Contrary to the initial investment costs represented by PremierGarage,  
6 Lara and Martin's total start-up cost for their franchise exceeded \$300,000.00 (over  
7 twice as much as PremierGarage's estimated start-up costs).

8 294. The magnitude of Lara and Martin's initial investment drastically  
9 diminished the prospect of them ever being able to operate the franchise profitably.

10 295. Lara and Martin never would have gone forward with the purchase of the  
11 franchise had PremierGarage accurately portrayed the prospective initial investment  
12 costs.

13 **V. LEGAL CLAIMS**

14 **COUNT I**

15 ***Violation Of The South Dakota Registration And Disclosure Law***

16 296. Plaintiffs reallege and incorporate by reference all the allegations set forth  
17 in the preceding paragraphs as though fully set forth herein.

18 297. The South Dakota Franchise Registration and Disclosure Law ("The  
19 South Dakota Franchise Act"), S.D. CODE ANN. §37-5A-1 et seq., regulates both: (a) the  
20 registration of franchise offerings within South Dakota; and (b) the disclosures that a  
21 franchisor such as PremierGarage must make to a prospective franchisee that may  
22 operate his/her franchise within South Dakota.

23 298. The South Dakota Franchise Act prohibits the offer or sale of a franchise  
24 unless: (a) the offering statement has been registered and approved by the State; and (b)  
25

26

1 the offering statement conforms to the requirements of the Uniform Franchise Offering  
2 Circular Guidelines.

3 299. More specifically, section 37-5A-6 of the South Dakota Franchise Act  
4 provides:

5 No person may offer or sell any franchise in this state unless  
6 there is an effective registration statement on file....[with the  
7 director of the Division of Securities].

8 S.D. CODE ANN. §§ 37-5A-6 and 37-5A-16.

9 300. The sale of an unregistered franchise subjects the seller to both civil and  
10 criminal liability. S.D. CODE ANN. §§ 37-5A-76 through 37-5A-83.

11 301. The South Dakota Franchise Act is a comprehensive statute enacted to  
12 ensure that franchisees receive full, complete and truthful information concerning the  
13 franchisor and relationship before making an investment in the franchise.

14 302. The South Dakota Franchise Act is intended to give each prospective  
15 franchisee necessary information about any franchise offer and sections 37-5A-1  
16 through 37-5A-87 of the Act shall apply when an offer or sale of a franchise is made in  
17 the State of South Dakota; when an offer to purchase is accepted in the State of South  
18 Dakota, or, if the franchisee is domiciled in the State of South Dakota, when the  
19 franchised business is or will be operated in the State of South Dakota. S.D. CODE ANN.  
20 §§37-5A-7.1 and 37-5A-7.2.

21 303. PremierGarage failed to give PremierGarage of Sioux Empire the  
22 necessary information needed to make an informed decision about the PremierGarage  
23 franchise opportunity.

24 304. As an initial matter, PremierGarage illegally accepted payment of the  
25 initial franchisee fee in the amount of \$25,000, and also executed the Sioux Empire  
26

1 Franchise Agreement without having provided Lair and/or Sioux Empire with  
2 PremierGarage's UFOC.

3 305. PremierGarage's failure to register the UFOC and provide Lair and/or  
4 Sioux Empire with the proper disclosure violated the South Dakota Franchise Act,  
5 which provides:

6 Any person offering for sale or selling any franchise which  
7 is subject to the registration requirements imposed by § 37-  
8 5A-6 shall, at his own expense, present to the prospective  
9 franchisee, at least seven days prior to the execution by the  
10 prospective franchisee of any franchise or other agreement,  
11 or at least seven days prior to the payment of any  
12 consideration by the franchisee, whichever occurs first, a  
13 copy of the current public offering statement together with a  
14 copy of all proposed agreements relating to the sale of the  
15 franchise. The franchisee shall be permitted to retain the  
16 public offering statement prior and subsequent to the  
17 execution of any franchise or other agreement.

18 S.D. CODE ANN. §37-5A-47.

19 306. Additionally, PremierGarage made the above-described  
20 misrepresentations and omissions in direct violation of the South Dakota Franchise Act.  
21 The South Dakota Franchise Act provides that a franchisor may not, in connection with  
22 the offer or sale of a franchise, make any misleading or false statement of fact, omit to  
23 state any fact that if stated, would be material, or use any other scheme or artifice to  
24 defraud. Specifically the South Dakota Franchise Act states "no person may offer or  
25 sell a franchise in this state by means of any written or oral communication which  
26 includes an untrue statement of a material fact or which omits to state a material fact  
necessary in order to make the statement made, in the light of the circumstances under  
which they were made, not misleading." S.D. CODE ANN. §37-5A-43.

1           307. In connection with the sale of the franchise to Sioux Empire,  
2 PremierGarage violated the South Dakota Franchise Act by making the following  
3 misrepresentations of fact and material omissions:

- 4           • That the initial investment cost of a PremierGarage franchise would  
5 be between \$75,000.00 to \$100,000.00.
- 6           • That PremierGarage franchises could expect to break even within  
7 eighteen months after opening.
- 8           • That PremierGarage franchisees could expect to receive profits of  
9 between \$461.30 and \$1,294.55 per job, before labor.
- 10          • That the epoxy/polyurethane floor coating materials sold to  
11 franchisees would cure properly to the garage floors and that in the  
12 winter months the use of heating implements was allowed.
- 13          • That PremierGarage would provide appropriate and effective  
14 advertising for the franchisees at no charge to the franchisees.

15           308. In addition to the violation outlined above, PremierGarage also violated  
16 the South Dakota Franchise Act by engaging in unfair and inequitable practices such as:

- 17          • Not providing Sioux Empire with the opportunity to receive  
18 reimbursement for faulty floor-coating, while at the same time,  
19 providing the identical opportunity to other franchisees.
- 20          • Requiring Sioux Empire to buy unreasonable amounts of products.
- 21          • Requiring Sioux Empire to buy products that did not work.

22 S.D. CODE ANN. §37-5A-51.

23           309. If PremierGarage had not made the misrepresentations of fact, omissions  
24 and artifices to defraud, as set forth above, Sioux Empire would not have purchased the  
25 franchise or incurred the losses and debt obligations that it did.

26

1           310. A franchisor that violates the South Dakota Franchise Act is liable to the  
2 franchisee for actual damages, for rescission and restitution damages, treble damages,  
3 and for costs and disbursements plus reasonable attorneys' fees. S.D. CODE ANN. §§37-  
4 5A-49, 37-5A-83 and 37-5A-85.

5           311. PremierGarage is liable to Sioux Empire because PremierGarage violated  
6 the South Dakota Franchise Act as stated above.

7           312. Each of the Corporate Officers is jointly and severally liable for  
8 PremierGarage's violations of the South Dakota Franchise Act because each directly or  
9 indirectly controlled PremierGarage, and/or each is a principal officer or director of  
10 PremierGarage, and because each had knowledge or reasonable grounds to know of  
11 PremierGarage's actions as outlined in this Complaint. S.D. CODE ANN. §37-5A-84.

12           313. The protections of the South Dakota Franchise Act, including but not  
13 limited to, a South Dakota franchisee's rights to bring a claim under the Act in any  
14 Court of competent jurisdiction within the State of South Dakota, are not subject to  
15 waiver. More specifically, and as detailed in the South Dakota Franchise Act:

16                   Any condition, stipulation or provision purporting to waive  
17 compliance with any provision of this chapter or any rule or  
18 order thereunder is void. Any acknowledgment provision,  
19 disclaimer or integration clause or a provision having a  
20 similar effect in a franchise agreement does not negate or act  
to remove from judicial review any statement,  
misrepresentation or action that would violate this chapter or  
a rule or order under this chapter.

21 S.D. CODE ANN. § 37-5A-86.

22           314. Consistent with the foregoing, Sioux Empire has the explicit right to  
23 pursue its claims for violation of the South Dakota Franchise Act before this Court.

24           315. In addition, PremierGarage and the Corporate Officers' conduct in  
25 offering Sioux Empire the opportunity to rescind the Sioux Empire Franchise  
26

1 Agreement without offering to restore to Sioux Empire and/or Lair everything of value  
2 that it received from Lair and/or Sioux Empire under the Sioux Empire Franchise  
3 Agreement is also a violation of the Act.

4 316. As a result of the violations of the South Dakota Franchise Act by  
5 PremierGarage and the Corporate Officers, Sioux Empire was entitled to rescission and  
6 restitution damages, up to three times its actual damages, costs and disbursements plus  
7 reasonable attorneys' fees.

8 317. Sioux Empire's restitution and/or actual damages are more than \$75,000.

9 **COUNT II**

10 **Violation Of The Minnesota Franchise Act**

11 318. Plaintiffs reallege and incorporate by reference all the allegations set forth  
12 in the preceding paragraphs as though fully set forth herein.

13 319. The Minnesota Franchise Registration and Disclosure Law (the  
14 "Minnesota Franchise Act"), MINN. STAT. ANN. § 80C.01 et seq., regulates (a) the  
15 registration of franchise offerings sold from or into Minnesota, (b) the disclosures which  
16 must be made to a prospective franchisee that may operate his/her franchise within  
17 Minnesota; and (c) the ongoing franchise relationship.

18 320. The Minnesota Franchise Act prohibits the offer or sale of a franchise  
19 unless: (a) the offering statement has been registered and approved by the State; and (b)  
20 the offering statement conforms to the requirements of the Uniform Franchise Offering  
21 Circular Guidelines.

22 321. More specifically, Section 80C.02 of the Minnesota Franchise Act  
23 provides that:

24 No person may offer or sell any franchise in this state unless  
25 there is an effective registration statement on file ... [with  
26 the director of the Minnesota Commissioner of Commerce].

1 MINN. STAT. ANN. §80C.02 (West 2007).

2 322. The sale of an unregistered franchise subjects the seller to civil liability.  
3 MINN. STAT. ANN. §§80C.16 through 80C.17.

4 323. The Minnesota Franchise Act is a comprehensive statute enacted to ensure  
5 that franchisees receive full, complete and truthful information concerning the  
6 franchisor and the relationship before making an investment in the franchise.

7 324. The Minnesota Franchise Act is intended to give each prospective  
8 franchisee necessary information about any franchise offer and sections 80C.01 to  
9 80C.22 of the Act shall apply when a sale or offer to sell is made in the State of  
10 Minnesota; when an offer to purchase is made and accepted in the State of Minnesota,  
11 or when the franchise is to be located in the State of Minnesota. MINN. STAT. ANN. §  
12 80C.19.

13 325. PremierGarage failed to give PremierGarage of the Twin Cities the  
14 necessary information needed to make an informed decision about the PremierGarage  
15 franchise opportunity.

16 326. As an initial matter, PremierGarage illegally accepted payment of the  
17 initial franchise fee in the amount of \$50,000.00, and also executed the Twin Cities  
18 Franchise Agreement without having provided Lair and/or Twin Cities with  
19 PremierGarage's UFOC.

20 327. PremierGarage's failure to register the UFOC and provide Lair and/or  
21 Twin Cities with the proper disclosure violated the Minnesota Franchise Act, which  
22 provides:

23 Any person offering for sale or selling any franchise which  
24 is subject to the registration requirements imposed by  
25 section 80C.02 shall, at the person's own expense, present to  
26 the prospective franchisee, at least seven days prior to the  
execution by the prospective franchisee of any franchise or  
other agreement, or at least seven days prior to the payment

1 of any consideration by the franchisee, whichever occurs  
2 first, a copy of the current public offering statement together  
3 with a copy of all proposed agreements relating to the sale  
4 of the franchise.

MINN. STAT. ANN. § 80C.06, subd. 5.

5 328. Additionally, PremierGarage made the above-described  
6 misrepresentations and omissions in direct violation of the Minnesota Franchise Act.  
7 The Minnesota Franchise Act provides that a franchisor may not, in connection with the  
8 offer or sale of a franchise, make any misleading or false statement of fact, omit to state  
9 any fact that if stated, would be material, or use any other scheme or artifice to defraud.

MINN. STAT. ANN. § 80C.13, subd. 2.

11 329. More specifically, the Minnesota Franchise Act provides that “no person  
12 may offer or sell a franchise in this state by means of any written or oral communication  
13 which includes an untrue statement of a material fact necessary in order to make the  
14 statements made, in the light of the circumstances under which they were made, not  
15 misleading.” MINN. STAT. ANN. § 80C.13, subd. 2.

16 330. Further, the Minnesota Franchise Act specifically provides that a  
17 franchisor is prohibited from representing that “a franchise is registered or exempt from  
18 registration when in fact, such is not the case.” MINN. STAT. ANN. § 80C.13, subd. 3.

19 331. In connection with the sale of the franchise to Twin Cities, PremierGarage  
20 violated the Minnesota Franchise Act by making the following misrepresentations of  
21 fact, and material omissions:

- 22 • That the franchise was registered with the State of Minnesota.
- 23 • That the initial investment cost of a PremierGarage franchise would  
24 be between \$88,000.00 and \$228,000.00.
- 25 • That PremierGarage franchises could expect to break even within  
26 eighteen months after opening.

- 1           • That PremierGarage franchisees could expect to receive profits of
- 2                                   between \$461.30 and \$1,294.55 per job, before labor.
- 3           • That the original epoxy/polyurethane floor coating materials sold to
- 4                                   franchisees would cure properly to the garage floors and that in the
- 5                                   winter months the use of heating implements was allowed.
- 6           • That PremierGarage would provide appropriate and effective
- 7                                   advertising for the franchisees at no charge to the franchisees.

8           332. If PremierGarage had not made the misrepresentations of fact, omissions  
9 and artifices to defraud, as set forth above, Twin Cities would not have purchased the  
10 franchise or incurred the losses and debt obligations that it did.

11           333. A franchisor such as PremierGarage also violates the Minnesota Franchise  
12 Act if it:

- 13           • Discriminates between franchisees in the charges offered or made
- 14                                   for royalties, goods, services, equipment, rentals, advertising
- 15                                   services, or in any business dealing. Minn. Rule 2860.4400(B).
- 16           • Imposes on a franchisee by contract or rule any standard of conduct
- 17                                   that is unreasonable. Minn. Rule 2860.4400 (G).
- 18           • Terminates or fails to renew a franchisee without first providing
- 19                                   notice and an opportunity to cure. MINN. STAT. ANN. § 80C.14,
- 20                                   subd. 3.

21           334. In addition to the violations outlined above, PremierGarage also violated  
22 the Minnesota Franchise Act by:

- 23           • Not providing Twin Cities with the opportunity to receive
- 24                                   reimbursement for faulty floor-coating while, at the same time,
- 25                                   providing the identical opportunity to other franchisees.
- 26           • Requiring Twin Cities to buy unreasonable amounts of products.

- 1           •     Requiring Twin Cities to buy products that did not work.
- 2           •     Terminating Twin Cities' franchise without providing proper notice
- 3                     and an opportunity to cure.

4           335. A franchisor that violates the Minnesota Franchise Act is liable to the  
5 franchisee for actual damages, for rescission and restitution damages, and for costs and  
6 disbursements plus reasonable attorneys' fees. MINN. STAT. ANN. §80C.17, subds. (1,  
7 3).

8           336. PremierGarage is liable to Twin Cities because PremierGarage violated  
9 the Minnesota Franchise Act as stated above.

10          337. Each of the Corporate Officers is jointly and severally liable for  
11 PremierGarage's violations of the Minnesota Franchise Act because each directly or  
12 indirectly controlled PremierGarage, and/or each is a principal officer or director of  
13 PremierGarage, and because each had knowledge or reasonable grounds to know of  
14 PremierGarage's actions as outlined in this Complaint. MINN. STAT. ANN. §80C.17,  
15 subd. 2.

16          338. The protections of the Minnesota Franchise Act, including but not limited  
17 to, a Minnesota franchisee's rights to bring a claim under the Act in any Court of  
18 competent jurisdiction within the State of Minnesota, are not subject to waiver. More  
19 specifically, and as detailed in the Minnesota Franchise Act:

20                     Any condition, stipulation or provision, including any  
21                     choice of law provision, purporting to bind any person who,  
22                     at the time of acquiring a franchise is a resident of this state,  
23                     or, in the case of a partnership or corporation, organized or  
24                     incorporated under the laws of this state, or purporting to  
25                     bind a person acquiring a franchise to be operated in this  
26                     state to waive compliance or which has the effect of waiving  
                      compliance with any provision of section 80C.01 to 80C.22  
                      or any rule thereunder is void.

MINN. STAT. ANN. § 80C.21.



1 engages in or enforces consumer transactions, whether or not dealing directly with the  
2 consumer.” KAN. STAT. ANN. §50-624(j).

3 349. PremierGarage is a “supplier” under the Kansas Act.

4 350. Under the terms of the Kansas Act, it is unlawful for a supplier to engage  
5 in any deceptive act or practice in connection with a consumer transaction. KAN. STAT.  
6 ANN. §50-626.

7 351. PremierGarage violated the law of the State of Kansas by making the  
8 following false and misleading representations and material omissions:

- 9 • That the initial investment costs of a PremierGarage franchise  
10 would range between \$72,000.00 and \$132,000.00.
- 11 • That PremierGarage franchises could expect to break even within  
12 one year after opening.
- 13 • That PremierGarage franchisees could expect to receive profits of  
14 between \$461.30 and \$1,294.55 per job, before labor.
- 15 • That the average sales for PremierGarage franchisees in the first  
16 year of operation range between \$300,000.00 and \$320,000.00.
- 17 • That the epoxy/polyurethane floor coating materials sold to  
18 franchisees would cure properly to the garage floors and that in the  
19 winter months the use of heating implements was allowed.
- 20 • That PremierGarage would provide appropriate and effective  
21 advertising for the franchisees at no charge to the franchisees.

22 352. As a result of the violations of the Kansas Act by PremierGarage, Lara  
23 and Martin are entitled to recover damages.

24 353. Lara and Martin’s actual damages are more than \$75,000.00.  
25  
26

1 COUNT IV

2 Violation Of The Oklahoma Business Opportunity Sales Act

3 354. Plaintiffs reallege and incorporate by reference all the allegations set forth  
4 in the preceding paragraphs as though fully set forth herein.

5 355. The Oklahoma Business Opportunity Sales Act (“Oklahoma Act”), OKLA.  
6 STAT. ANN. tit. 71, §801 et seq., regulates the registration of the offer and sale of any  
7 business opportunity within the State of Oklahoma, and the disclosures that a seller of a  
8 business opportunity must make to a prospective purchaser of a business opportunity in  
9 the State of Oklahoma.

10 356. The Oklahoma Act defines a “Business Opportunity” as a:

11 [C]ontract or agreement, between a seller and purchaser,  
12 express or implied, orally or in writing, wherein it is agreed  
13 that the seller or a person recommended by the seller shall  
14 provide to the purchaser any products, equipment, supplies  
15 or services enabling the purchaser to start a business and the  
16 seller represents directly or indirectly, orally or in writing,  
17 that:

\*\*\*

The seller guarantees that the purchaser will derive income  
from the business which exceeds the price paid to the  
seller;....

18 OKLA. STAT. ANN. tit. 71, §802, subd. 3(a)(4).

19 357. The PremierGarage business that PremierGarage sold to James is a  
20 business opportunity.

21 358. A “Purchaser” is defined as a person [an individual, corporation, trust,  
22 partnership, limited liability company, incorporated or unincorporated association of  
23 any other entity] who enters into a contract or agreement for the acquisition of a  
24 business opportunity....” OKLA. STAT. ANN. tit. 71, §802, subds. 9-10.

25 359. James and/or Oklahoma City were purchasers under the Act.  
26

1           360. The Oklahoma Act prohibits the offer or sale of any business opportunity  
2 in the State of Oklahoma unless the seller of the business opportunity is registered under  
3 the provisions of the Oklahoma Act or is exempt under Section 803. OKLA. STAT. ANN.  
4 tit. 71, §806.

5           361. In order to register a business opportunity, the seller shall file with the  
6 Administrator one of the following disclosure documents: (1) A Uniform Franchise  
7 Offering Circular prepared in accordance with the guidelines adopted by the North  
8 American Securities Administration Association, Inc., or (2) A disclosure document  
9 prepared pursuant to the Federal Trade Commission rule entitled Disclosure  
10 Requirement and Prohibitions Concerning Franchising and Business Opportunity  
11 Ventures, 16 C.F.R. Section 436. OKLA. STAT. ANN. tit. 71, §807.

12           362. PremierGarage's failure to register the UFOC and provide James and/or  
13 Oklahoma City with the proper disclosure violated the Oklahoma Act.

14           363. The sale of an unregistered business opportunity subjects the seller to both  
15 civil and criminal liability. OKLA. STAT. ANN. tit. 71, §§ 823-824.

16           364. The Oklahoma Act is a comprehensive statute enacted to ensure that  
17 purchasers of business opportunities receive full, complete and truthful information  
18 concerning the business opportunity and the relationship before making an investment in  
19 the opportunity.

20           365. The Oklahoma Act is intended to give each prospective purchaser  
21 necessary information about any offer of a business opportunity and applies to all  
22 persons who sell or offer to sell a business opportunity in the State of Oklahoma, or the  
23 offer to purchase is made and accepted in the State of Oklahoma, or the purchaser is  
24 domiciled in the State of Oklahoma and the business opportunity will be operated in the  
25 State of Oklahoma. OKLA. STAT. ANN. tit. 71, §818.

26

1           366. PremierGarage failed to give James and/or Oklahoma City the necessary  
2 information needed to make an informed decision about the PremierGarage franchise.

3           367. As an initial matter, PremierGarage illegally accepted payment of the  
4 initial franchise fee in the amount of \$35,000.00, and also executed the Oklahoma City  
5 Franchise Agreement without having provided James and/or Oklahoma City with  
6 PremierGarage's UFOC.

7           368. Additionally, PremierGarage made the above-described misrepresentation  
8 and omissions in direct violation of the Oklahoma Act. Section 819 of the Oklahoma  
9 Act specifically provides that it is unlawful for any person in connection with the offer  
10 or sale of a business opportunity to "make any untrue statement of a material fact or to  
11 omit to state a material fact necessary in order to made the statements made, in the light  
12 of the circumstances under which they are made, not misleading; or to engage in any  
13 act, practice or course of business which operates or would operate as a fraud or deceit  
14 upon any person." OKLA. STAT. ANN. tit. 71, § 819.

15           369. In connection with the sale of the franchise to James and/or Oklahoma  
16 City, PremierGarage violated the Oklahoma Act by making the following false  
17 representations and material omissions:

- 18           • That the initial investment cost for a PremierGarage franchise  
19           would be approximately \$150,000.00.
- 20           • That PremierGarage franchises could expect to break even within  
21           one year after opening.
- 22           • That the average sales for PremierGarage franchisees in the first  
23           year of operation range between \$300,000.00 and \$320,000.00.
- 24           • That PremierGarage franchisees could expect to receive profits of  
25           between \$461.30 and \$1,294.55 per job, before labor.

- 1 • That the PremierOne and PremierOne Plus floor coating systems
- 2 could be installed in temperatures down to 32 degrees Fahrenheit.
- 3 • That the PremierOne and PremierOne Plus floor coatings were
- 4 moisture tolerant.
- 5 • That the increased costs of the flooring materials would be off-set
- 6 by the decrease in cost associated with the labor costs.
- 7 • That the PremierOne and PremierOne Plus floor coating systems
- 8 had been tested prior to being sold to franchisees for installation.
- 9 • That PremierGarage would provide appropriate and effective
- 10 advertising for the franchisees at no charge to the franchisees.

11 370. If PremierGarage had not made the misrepresentations of fact, omissions  
12 and artifices to defraud, as set forth above, James and/or Oklahoma City would not have  
13 purchased the business or incurred the losses and debt that it did.

14 371. Each Corporate Officer is jointly and severally liable for PremierGarage's  
15 violations of the Oklahoma Act because each directly or indirectly controlled  
16 PremierGarage, and because each had knowledge or reasonable grounds to know of  
17 PremierGarage's actions in this Complaint and materially aided in said actions. OKLA.  
18 STAT. ANN. tit. 71, §825.

19 372. A franchisor that violates Sections 806, 808, 809 or 811 of Oklahoma Act  
20 is liable to the franchisee for all monies or other valuable consideration paid for the  
21 business opportunity, for recovery of actual damages, together with interest at the legal  
22 rate from the date of sale, reasonable attorneys' fees and court costs. OKLA. STAT. ANN.  
23 tit. 71, §824, subd. A.

24 373. As a result of the violations of the Oklahoma Act by PremierGarage and  
25 Corporate Officers, James and/or Oklahoma City is entitled to damages, interest, costs  
26 and reasonable attorneys' fees.

1 374. PremierGarage is liable to James and/or Oklahoma City because  
2 PremierGarage violated the Oklahoma Act.

3 375. The damages of James and/or Oklahoma City are more than \$75,000.

4 **COUNT V**

5 **Intentional Misrepresentation And/Or Fraudulent Concealment**

6 376. Plaintiffs reallege and incorporate by reference all the allegations set forth  
7 in the preceding paragraphs as though fully set forth herein.

8 377. PremierGarage made false and material misrepresentations, omitted to  
9 disclose material facts, and concealed and suppressed material facts to Plaintiffs.

10 378. On several occasions, PremierGarage intentionally misrepresented:

- 11 • The initial investment cost of a PremierGarage franchise.
- 12 • That PremierGarage franchisees could expect to break even within  
13 one year after opening.
- 14 • That the average sales for PremierGarage franchisees in the first  
15 year of operation range between \$300,000.00 and \$320,000.00.
- 16 • That PremierGarage franchisees could expect to receive profits  
17 between \$461.30 and \$1,294.55 per job, before labor.
- 18 • That the original epoxy/polyurethane floor coating materials sold to  
19 franchisees would cure properly to the garage floors and that the  
20 use of heating implements in the winter months was allowed.
- 21 • That the PremierOne and PremierOne Plus floor coating systems  
22 could be installed in temperatures down to 32 degrees Fahrenheit.
- 23 • That the PremierOne and PremierOne Plus floor coatings were  
24 moisture tolerant.
- 25 • That the increased costs of the flooring materials would be off-set  
26 by the decrease in cost associated with the labor costs.

- 1 • That the PremierOne and PremierOne Plus floor coating systems
- 2 had been tested prior to being sold to franchisees for installation.
- 3 • That PremierGarage would provide appropriate and effective
- 4 advertising for the franchisees at no charge to the franchisees.

5 379. Moreover, on multiple occasions, prior to executing each franchise  
6 agreement at issue here, PremierGarage informed Plaintiffs that the floor coating  
7 products offered by PremierGarage were manufactured specifically for PremierGarage  
8 and that the floor coating products had undergone substantial testing and that  
9 PremierGarage continually researched and tested its products.

10 380. Further, PremierGarage set forth in the franchise agreement that “the  
11 products manufactured by or for PremierGarage are intended to meet a level of quality  
12 and consistency for their intended use.”

13 381. PremierGarage also represented to Plaintiffs that the floor coating system  
14 had been tested and that the floor coating could be applied year round in garages in  
15 Minnesota, South Dakota, Kansas, and Oklahoma.

16 382. PremierGarage made the statements referenced above, knowing that such  
17 statements and omissions were material, false and misleading, or in the alternative, it  
18 made such statements in reckless disregard as to their truth or falsity, or in a manner not  
19 warranted by the information known and available to PremierGarage.

20 383. The representations, statements and omissions made by PremierGarage  
21 were intended to deceive Plaintiffs and/or to induce Plaintiffs into further investing  
22 time, money and energy into purchasing a franchise opportunity from PremierGarage.

23 384. Plaintiffs reasonably relied upon the false and misleading representations,  
24 material omissions, and intentional concealments made by PremierGarage by investing  
25 time, money and energy and entering into their respective franchise agreements, all to  
26 Plaintiffs’ detriment.



- 1 • That PremierGarage franchisees could expect to receive profits
- 2 between \$461.30 and \$1,294.55 per job, before labor.
- 3 • That the original epoxy/polyurethane floor coating materials sold to
- 4 franchisees would cure properly to the garage floors and that the
- 5 use of heating implements in the winter months was allowed.
- 6 • That the PremierOne and PremierOne Plus floor coating systems
- 7 could be installed in temperatures down to 32 degrees Fahrenheit.
- 8 • That the PremierOne and PremierOne Plus floor coatings were
- 9 moisture tolerant.
- 10 • That the increased costs of the flooring materials would be off-set
- 11 by the decrease in cost associated with the labor costs.
- 12 • That the PremierOne and PremierOne Plus floor coating systems
- 13 had been tested prior to being sold to franchisees for installation.
- 14 • That PremierGarage would provide appropriate and effective
- 15 advertising for the franchisees at no charge to the franchisees.

16 390. Moreover, on multiple occasions, prior to executing each franchise  
17 agreement at issue here, PremierGarage informed Plaintiffs that the floor coating  
18 products offered by PremierGarage were manufactured specifically for PremierGarage  
19 and that the floor coating products had undergone substantial testing and that  
20 PremierGarage continually researched and tested its products.

21 391. Further, PremierGarage set forth in the franchise agreements that “the  
22 products manufactured by or for PremierGarage are intended to meet a level of quality  
23 and consistency for their intended use.”

24 392. PremierGarage also represented to Plaintiffs that the floor coating system  
25 had been tested and that the floor coating could be applied year round in garages in  
26 Minnesota, South Dakota, Kansas, and Oklahoma.



1           399. PremierGarage undertook certain contractual obligations as set forth in  
2 detail above.

3           400. PremierGarage breached its express contractual duties and the implied  
4 covenant of good faith and fair dealing to Plaintiffs by violating the terms of the parties'  
5 agreements, and Plaintiffs' reasonable expectations of PremierGarage's performance,  
6 support and assistance as prescribed under the parties' franchise agreements and as  
7 described more fully above.

8           401. Pursuant to each and every franchise agreement with the Plaintiffs,  
9 PremierGarage owed a number of contract-in-fact and contract-in-law obligations to  
10 Plaintiffs, as set forth in the franchise agreements, amendments thereto, oral  
11 commitments, and the course of dealing between the parties, which include but are not  
12 limited to:

- 13           • That PremierGarage franchisees could expect to receive profits  
14           between \$461.30 and \$1,294.55 per job, before labor.
- 15           • That the epoxy/polyurethane floor coating materials sold to  
16           franchisees would cure properly to the garage floors during the  
17           winter months and that the use of heating implements in the winter  
18           months was allowed.
- 19           • That the PremierOne and PremierOne Plus floor coating systems  
20           could be installed in temperatures down to 32 degrees Fahrenheit.
- 21           • That the PremierOne and PremierOne Plus floor coatings were  
22           moisture tolerant.
- 23           • That the PremierOne and PremierOne Plus floor coating systems  
24           had been tested prior to being sold to franchisees for installation.
- 25           • That PremierGarage would provide appropriate and effective  
26           advertising for the franchisees at no charge to the franchisees.



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RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of September, 2007.

DADY & GARNER, P.A.

By /s/ Barbara A. Bagdon- #018979

Scott Korzenowski  
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ORIGINAL of the foregoing electronically  
filed this 20<sup>th</sup> day of September, 2007, with:

Clerk, United States District Court  
District of Arizona  
Sandra Day O'Connor U.S. Courthouse  
401 West Washington Street  
Phoenix, Arizona 85003

By /s/ Julie Markie