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STATE OF IDAHO } SS
COUNTY OF KOOTENAI
FILED:

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CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, through **ATTORNEY GENERAL LAWRENCE G. WASDEN**, Plaintiff, vs. **COINUTS, INC.**, an Idaho corporation; **KEVIN EVRARD MITCHELL**, individually and as an owner and officer of COINUTS, INC., and **SARAH MARIE MITCHELL**, individually and as an operator of COINUTS, INC., Defendants.	**CASE NO.** CV13-2769 **COMPLAINT**

The State of Idaho, acting through Attorney General Lawrence G. Wasden ("the Attorney General"), and pursuant to his authority under Idaho Code § 48-606, brings

Lorna L. Hayes COPY

this Complaint against CoiNuts, Inc., Kevin Evrard Mitchell, and Sarah Marie Mitchell, and alleges as follows:

INTRODUCTION

1. CoiNuts, Inc., Kevin Evrard Mitchell, and Sarah Marie Mitchell (collectively "Defendants") have engaged in multiple and repeated violations of Idaho's consumer protection laws. Specifically, Defendants have engaged in false and deceptive business practices by failing to deliver gold and silver coins, along with other goods, to consumers who prepaid Defendants thousands of dollars. The Attorney General brings this action to enjoin Defendants from further violating Idaho's consumer protection laws, to recover restitution for consumers who lost money to Defendants, and to require Defendants to pay the Attorney General civil penalties, fees, and investigative costs.

PARTIES

2. Lawrence G. Wasden is the Attorney General for the State of Idaho and is authorized under Idaho Code § 48-606 to bring this action on behalf of the State of Idaho and its citizens to enforce the Idaho Consumer Protection Act, title 48, chapter 6, Idaho Code.

3. CoiNuts, Inc. ("CoiNuts") was formally registered with the Idaho Secretary of State's Office as an Idaho corporation, but its registration was administratively terminated on February 11, 2013. CoiNuts originally registered as a corporation on November 15, 2007, and, on December 7, 2011, CoiNuts reported its business mailing

address as 296 W. Sunset, Ste. 32, Coeur d'Alene, Idaho 83815. CoiNuts reported its registered agent's address as 1423 Tyrell Lane, Boise, Idaho 83706.

4. Kevin Evrard Mitchell ("K. Mitchell") resides at 37593 E. Hayden Lake Rd., Hayden, Idaho 83835. K. Mitchell is the president of CoiNuts. He accepted money from consumers for their purchases, made false and deceptive promises to consumers about the delivery of consumers' purchases, and personally profited from consumers' losses. Furthermore, K. Mitchell formulated, directed, controlled, had the authority to control, participated in, acquiesced to, or should have known about and prevented the false and deceptive practices or omissions described in this Complaint.

5. Sarah Marie Mitchell ("S. Mitchell") resides at 37593 E. Hayden Lake Rd., Hayden, Idaho 83835. S. Mitchell operated CoiNuts, accepted money from consumers for their purchases, made false and deceptive promises to consumers about the delivery of consumers' purchases, and personally profited from consumers' losses. Furthermore, S. Mitchell formulated, directed, controlled, had the authority to control, participated in, acquiesced to, or should have known about and prevented the false and deceptive practices or omissions described in this Complaint.

JURISDICTION

6. This Court has subject matter jurisdiction in this action pursuant to the Idaho Consumer Protection Act, title 48, chapter 6, Idaho Code.

7. This Court has personal jurisdiction over Defendants pursuant to Idaho Code §§ 48-602(2) and 5-514.

VENUE

8. Venue for this proceeding is proper in Kootenai County pursuant to Idaho Code § 48-606.

DEFENDANTS' BUSINESS PRACTICES

9. Defendants primarily advertise, offer for sale, and sell gold and silver coins to consumers.

10. Defendants, however, failed to deliver to consumers the coins that consumers purchased even though Defendants received full payment for the coins from consumers.

11. Consumers contacted Defendants to find out when consumers would receive their purchased coins from Defendants. Defendants often gave consumers excuses for the delivery delays.

12. Consumers requested refunds from Defendants, but Defendants refused or failed to provide the refunds.

13. The following paragraphs illustrate how 10 consumers (a representative portion of Defendants' victims) suffered from Defendants' false and deceptive business practices:

E.G.

a. E.G. paid Defendants $100,000 for 5,000 ounces of silver. At the beginning of each month, E.G. contacted K. Mitchell in person to find out the status of his order. Each time, K. Mitchell gave E.G. a small amount of silver. When it became obvious to E.G. that K. Mitchell was never going to fulfill E.G.'s order, E.G. complained to K. Mitchell who turned E.G.'s account over to S. Mitchell, who, according to K. Mitchell,

would obtain the silver. Neither S. Mitchell nor K. Mitchell delivered E.G.'s complete order. Defendants owe E.G. between $22,000 and $25,000.

H.L.

b. H.L. paid $103,800 to Defendants to buy 60 gold coins. A month later, after receiving only two of the coins, H.L. demanded his money back. Defendants failed to provide him with the remaining 58 coins he purchased and never returned his remaining $100,340.

P.B.

c. P.B. purchased 30 ounces of silver from Defendants for $1,047 in cash. Defendants told P.B. they expected to receive the silver in an upcoming shipment, but P.B. never heard from Defendants. Every time P.B. called to inquire about the status of the shipment she was directed to Defendants' full voice mail where she could not leave a message. A couple of weeks later she discovered CoiNuts had closed.

E.A.

d. E.A. bought 40 ounces of silver from Defendants for $1,429. Five months later he received only 20 ounces. Defendants promised to deliver the remaining 20 ounces as soon as they received it from their supplier, but CoiNuts closed shortly thereafter.

G.R.

e. G.R. paid Defendants $34,200 for silver coins and 20 gold coins and was told Defendants would contact him when his order arrived. Over the next several months, Defendants gave G.R. multiple excuses as to why the coins were not available. G.R. finally received the silver coins, but never received the gold coins. He called Defendants many times and left messages, but Defendants never returned his calls.

J.W. & G.W.

f. J.W. and G.W. paid Defendants $6,000 in cash to obtain four gold coins. After two months, the couple received only one coin. Months later they

went to CoiNuts and confronted S. Mitchell about the missing coins. S. Mitchell provided the couple with two coins, stating that was all she had. After additional time had passed, J.W. and G.W. contacted S. Mitchell to inquire about the remaining coin. S. Mitchell claimed she had too many customers waiting for gold, and, because the sale of gold is regulated, she received only a limited amount. S. Mitchell promised J.W. and G.W., however, that they were first in line. J.W. and G.W. never received their final coin.

S.C.

g. S.C. paid Defendants $25,000 for 250 ounces in silver and eight gold coins. S.C. received some of the silver and gold at the time of purchase. S. Mitchell said it would take a few months to get the remaining silver and gold. More than a year later, however, Defendants still owed S.C. approximately $10,000 in silver and gold. S.C. called Defendants many times, but Defendants never answered their phone.

M.H.

h. M.H. paid Defendants over $50,029 for 20 ounces of gold and 520 ounces of silver with the understanding from K. Mitchell that the purchased gold and silver would arrive within two to four weeks. Two months later, M.H. tried to contact Defendants about the status of his order, but never received a response.

L.T.

i. L.T. paid Defendants $18,025 for 11 ounces of gold and 300 ounces of silver. L.T. spoke to S. Mitchell via telephone about L.T.'s order two months after the purchase and spoke to K. Mitchell and S. Mitchell in person. They said L.T.'s gold and silver would arrive by the end of the month, but L.T. never received her merchandise.

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D.B.

j. D.B. paid Defendants $20,000 for gold and silver coins. K. Mitchell said D.B. would receive her gold coins in six weeks and her silver coins in six months. During the next few months, D.B. contacted K. Mitchell in person to check the status of her order, but K. Mitchell always had an excuse as to why he did not have her coins. Approximately eight months later, D.B. learned that CoiNuts had closed. She never received her merchandise or her money.

COUNT I

IDAHO CONSUMER PROTECTION ACT
Title 48, Chapter 6, Idaho Code

14. Plaintiff re-alleges all prior paragraphs of this Complaint.

15. Idaho Code § 48-603(10) and (17) read:

> The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows or in the exercise of due care should know, that he has in the past, or is:
>
> (10) Advertising goods or services with intent not to sell them as advertised;
>
> (17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer.

16. Defendants' conduct as described in this Complaint constitutes multiple and separate violations of Idaho Code § 48-603(10) and (17).

17. Defendants' multiple and separate violations of Idaho Code § 48-603(10) and (17) expose Defendants to (a) a judgment declaring they violated title 48, chapter 6, Idaho Code; (b) an injunction prohibiting them from advertising, offering for sale, or selling goods or services in Idaho; (c) an order requiring them to pay restitution to all

damaged consumers; (d) an order requiring them to pay civil penalties of up to $5,000 for each violation; (e) an order requiring them to pay the Attorney General's fees and costs.

COUNT II

IDAHO RULES OF CONSUMER PROTECTION
IDAPA 04.02.01000 et seq.

18. Plaintiff re-alleges all prior paragraphs of this Complaint.

19. IDAPA 04.02.01031 provides:

> The responsibility for truthful advertising which does not have the capacity, tendency, or effect of deceiving or misleading consumers acting reasonably under the circumstances rests with the seller. Sellers must be able to substantiate all claims or offers made before such claims or offers are advertised. Sellers must maintain sufficient records to substantiate all representations made in their advertisements.

20. IDAPA 04.02.01140 provides:

> In connection with any sale, except mail order sales, it is an unfair and deceptive act or practice for a seller to:
>
> 01. Offer or promise prompt delivery or performance unless, at the time of the offer or promise, the seller has taken reasonable action to ensure such prompt delivery or performance; or
>
> 02. Fail to deliver goods or perform services, which have been ordered in person or otherwise within a reasonable time following a specified delivery or performance date or within a reasonable time following the receipt of payment, unless the seller can show circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the specified delivery date and unless the seller can further show that he has given timely notice to the consumer of any such delay.

21. Defendants' conduct as described in this Complaint constitutes multiple and separate violations of IDAPA 04.02.01031 and 04.02.01140.

22. Defendants' multiple and separate violations of IDAPA 04.02.01031 and 04.02.01140 expose Defendants to (a) a judgment declaring they violated title 48, chapter 6, Idaho Code, IDAPA 04.02.01031, and 04.02.01140; (b) an injunction prohibiting them from advertising, offering for sale, or selling goods or services in Idaho; (c) an order requiring them to pay restitution to all damaged consumers; (d) an order requiring them to pay civil penalties of up to $5,000 for each violation; (e) an order requiring them to pay the Attorney General's fees and costs.

PRAYER FOR RELIEF

WHEREFORE the Attorney General asks this Court to:

1. Declare that Defendants jointly and severally violated title 48, chapter 6, Idaho Code and IDAPA 04.02.0100 et seq.

2. Enjoin Defendants from advertising, offering for sale, or selling goods or services in Idaho.

3. Order Defendants to pay restitution to all damaged consumers. In the event Defendants fail to appear in this action and a default judgment is entered, the Attorney General asks this Court to order Defendants to pay $664,326 in consumer restitution to the Attorney General. The Attorney General calculated this figure from the reports of 18 consumers.

4. Order Defendants to pay civil penalties to the Attorney General of up to $5,000 for each violation of title 48, chapter 6, Idaho Code, and IDAPA 04.02.0100 et

seq. In the event Defendants fail to appear in this action and a default judgment is entered, the Attorney General asks this Court to order Defendants to pay $90,000 in civil penalties to the Attorney General. The Attorney General calculated this figure by multiplying the number of identified consumers (18) by the maximum civil penalty allowed under Idaho Code § 48-606 ($5,000).

5. Order Defendants to pay to the Attorney General his attorney's fees and costs. In the event Defendants fail to appear in this action and a default judgment is entered, the Attorney General asks this Court to order Defendants to pay $5,000 to the Attorney General to reimburse him for his attorney's fees and costs.

6. Grant such further relief as provided for by law or equity or as the Court deems appropriate and just.

DATED this 12th day of April 2013.

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Stephanie Guyon
Deputy Attorney General