

CLERK OF CIRCUIT COURT  
CRIMINAL/TRAFFIC DIV.  
2011 JUN -7 AM 10:15

STATE OF WISCONSIN,

Plaintiff,

v.

JAMES D. GARDETTO  
D.O.B.: 5/30/1965  
Last Known Address:  
269 N. Chicago Ave.,  
South Milwaukee, WI 53172

Case No. 11-CM- 1115

Defendant.

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SUMMONS

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THE STATE OF WISCONSIN TO SAID DEFENDANT:

The Complaint, a copy of which is attached, having been made before me accuses the defendant of the following crimes:

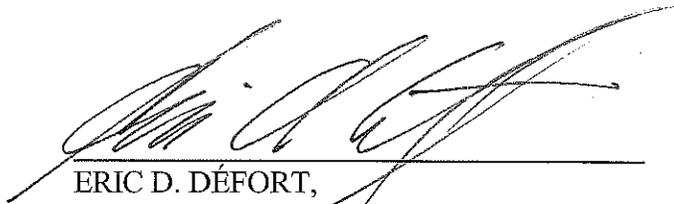
- COUNT 1:** MANDATORY DISCLOSURE PRIOR TO SALE, in violation of Wis. Admin. Code ATCP §127.64(1)(d), and Wis. Stat. §100.26(3).
- COUNT 2:** SPECIAL ORDER VIOLATION – ATTEMPT TO ENFORCE PROHIBITED CONTRACT CLAUSE, in violation of Wis. Stat. §100.26(3).
- COUNT 3:** MANDATORY DISCLOSURE PRIOR TO SALE, in violation of an order issued under Wis. Stat. § 100.20(2), Wis. Admin. Code ATCP §127.64(1)(d), and Wis. Stat. §100.26(3).
- COUNT 4:** MISREPRESENTATION IN FACE TO FACE TRANSACTION, in violation of Wis. Admin. Code ATCP § 127.72(7), and Wis. Stat. § 100.26(3).
- COUNT 5:** SPECIAL ORDER VIOLATION – REFUSAL TO RETURN PROPERTY, in violation of Wis. Stat. § 100.26(3).
- COUNT 6:** SPECIAL ORDER VIOLATION – ATTEMPT TO ENFORCE PROHIBITED CONTRACT CLAUSE, in violation of Wis. Stat. § 100.26(3).
- COUNT 7:** MANDATORY DISCLOSURE PRIOR TO SALE, in violation of Wis. Admin. Code ATCP § 127.64(1)(d), and Wis. Stat. § 100.26(3).
- COUNT 8:** FALSE REPRESENTATION IN FACE TO FACE TRANSACTION, in violation of Wis. Admin. Code ATCP § 127.72(15), and Wis. Stat. § 100.26(3).

You, James D. Gardetto, are, therefore, summoned to appear in the Circuit Court of Waukesha County at the courthouse in the City of Waukesha (located at 515 W. Moreland Blvd.,

Waukesha, WI 53188) in Room CG-49, before Judicial Court Commissioner Thomas J. Pieper, to answer said Complaint, on Wednesday the 29<sup>th</sup> day of June, 2011, at 10:00 a.m. in the morning.

**In case you fail to appear, a warrant for your arrest may be issued.**

Dated this 6th day of June, 2011.



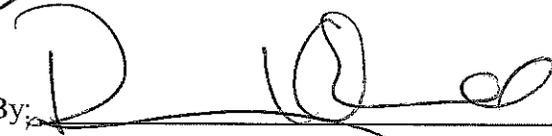
ERIC D. DÉFORT,  
State Bar No. 1041760  
Assistant Attorney General

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-8514

ADMISSION OF SERVICE

I certify and admit that I have received this summons.

Signed:  Date: 6/7/11  
JAMES D. GARDETTO

Served By:  Date: 6/7/11  
700

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THE STATE OF WISCONSIN,

Plaintiff,

v.

JAMES D. GARDETTO  
D.O.B.: 5/30/1965  
Last Known Address:  
269 N. Chicago Ave.,  
South Milwaukee, WI 53172

Case No. 11-CM-\_\_\_\_\_

Defendant.

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CRIMINAL COMPLAINT

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**COUNT 1: MANDATORY DISCLOSURE PRIOR TO SALE**

On or about July 1, 2009, in the County of Waukesha, the above-named defendant did, as a seller in a face to face transaction, fail to obey an order issued under Wis. Stat. § 100.20(2) by failing to disclose the mailing address of the principal seller to a consumer, in writing, before the consumer enters into any purchase contract and before the seller accepts any payment from the consumer, in violation of Wis. Admin. Code ATCP §127.64(1)(d), and Wis. Stat. §100.26(3).

Upon conviction of this offense, an Unclassified Misdemeanor, the penalty for this crime is a fine of not less than \$25 nor more than \$5,000, or imprisonment of not more than twelve (12) months in the county jail, or both.

**COUNT 2: SPECIAL ORDER VIOLATION – ATTEMPT TO ENFORCE  
PROHIBITED CONTRACT CLAUSE**

On or about July 3, 2009, in the County of Waukesha, the above-named defendant did fail to obey an order issued under Wis. Stat. §100.20(3) that prohibits the defendant from attempting to enforce a prohibited contract clause (to wit: “Once a repair is started, the repair will not be interrupted and will reach a conclusion by us of either a technical estimate or a total repair.”), in violation of Wis. Stat. §100.26(3).

Upon conviction of this offense, an Unclassified Misdemeanor, the penalty for this crime is a fine of not less than \$25 nor more than \$5,000, or imprisonment of not more than twelve (12) months in the county jail, or both.

**COUNT 3: MANDATORY DISCLOSURE PRIOR TO SALE**

On or about October 26, 2009, in the County of Waukesha, the above-named defendant did, as a seller in a face to face transaction, fail to obey an order issued under Wis. Stat. § 100.20(2) by failing to disclose the mailing address of the principal seller to a consumer, in

writing, before the consumer enters into any purchase contract and before the seller accepts any payment from the consumer, in violation of an order issued under Wis. Stat. § 100.20(2), Wis. Admin. Code ATCP §127.64(1)(d), and Wis. Stat. §100.26(3).

Upon conviction of this offense, an Unclassified Misdemeanor, the penalty for this crime is a fine of not less than \$25 nor more than \$5,000, or imprisonment of not more than twelve (12) months in the county jail, or both.

#### **COUNT 4: MISREPRESENTATION IN FACE TO FACE TRANSACTION**

On or about October 26, 2009, in the County of Waukesha, the above-named defendant did, as a seller in a face to face transaction, misrepresent a material term of the seller's cancellation policy (to wit: Gardetto promised a 3-day right to cancel, knowing that he would never abide by that promise), in violation of Wis. Admin. Code ATCP § 127.72(7), and Wis. Stat. § 100.26(3).

Upon conviction of this offense, an Unclassified Misdemeanor, the penalty for this crime is a fine of not less than \$25 nor more than \$5,000, or imprisonment of not more than twelve (12) months in the county jail, or both.

#### **COUNT 5: SPECIAL ORDER VIOLATION – REFUSAL TO RETURN PROPERTY**

Between October 26, 2009, and November 24, 2009, in the County of Waukesha, the above-named defendant did fail to obey an order issued under Wis. Stat. § 100.20(3) that prohibits the defendant from refusing to return a customer's property if the consumer has tendered payment for services rendered to date, in violation of Wis. Stat. § 100.26(3).

Upon conviction of this offense, an Unclassified Misdemeanor, the penalty for this crime is a fine of not less than \$25 nor more than \$5,000, or imprisonment of not more than twelve (12) months in the county jail, or both.

#### **COUNT 6: SPECIAL ORDER VIOLATION – ATTEMPT TO ENFORCE PROHIBITED CONTRACT CLAUSE**

On or about October 26, 2009, in the County of Waukesha, the above-named defendant did fail to obey an order issued under Wis. Stat. § 100.20(3) that prohibits the defendant from attempting to enforce a prohibited contract clause (to wit: "Once a repair is started, the repair will not be interrupted and will reach a conclusion by us of either a technical estimate or a total repair."), in violation of Wis. Stat. § 100.26(3).

Upon conviction of this offense, an Unclassified Misdemeanor, the penalty for this crime is a fine of not less than \$25 nor more than \$5,000, or imprisonment of not more than twelve (12) months in the county jail, or both.

#### **COUNT 7: MANDATORY DISCLOSURE PRIOR TO SALE**

On or about December 3, 2010, in the City and County of Waukesha, the above-named defendant did, as a seller in a face to face transaction, fail to obey an order issued under Wis. Stat. § 100.20(2) by failing to disclose the mailing address of the principal seller to a consumer, in writing, before the consumer enters into any purchase contract and before the seller accepts any payment from the consumer, in violation of Wis. Admin. Code ATCP § 127.64(1)(d), and Wis. Stat. § 100.26(3).

Upon conviction of this offense, an Unclassified Misdemeanor, the penalty for this crime is a fine of not less than \$25 nor more than \$5,000, or imprisonment of not more than twelve (12) months in the county jail, or both.

### **COUNT 8: FALSE REPRESENTATION IN FACE TO FACE TRANSACTION**

On or about December 3, 2010, in the City and County of Waukesha, the above-named defendant did, as a seller in a face to face transaction, fail to obey an order issued under Wis. Stat. § 100.20(2) by making a false representation to a consumer (to wit: Gardetto falsely represented that the law does not allow a consumer to collect her own property from the seller's place of business), in violation of Wis. Admin. Code ATCP § 127.72(15), and Wis. Stat. § 100.26(3).

Upon conviction of this offense, an Unclassified Misdemeanor, the penalty for this crime is a fine of not less than \$25 nor more than \$5,000, or imprisonment of not more than twelve (12) months in the county jail, or both.

### **FACTUAL BASIS**

1.) The complainant is a Wisconsin Department of Agriculture, Trade, and Consumer Protection ("DATCP") Investigator and bases this complaint upon information and belief, her review of DATCP records, her personal observations, the statements of adult citizen witnesses and the statements of James D. Gardetto.

2.) The complainant has reviewed DATCP special order Docket No. 03-C-51 against James D. Gardetto. The order was entered on July 17, 2003, as a result of the stipulation by Mr. Gardetto consenting to the entry of the order. The order describes Gardetto's known business practices related to an "electronic equipment repair service" and finds that "Gardetto's business practices are unfair trade practices in business in violation of Wis. Stat. 100.20(1)."

Therefore, the order declares that "GARDETTO may not do any of the following:"

- "Refuse to provide the customer's merchandise or return the customer's property to the consumer if the consumer has tendered payment for services rendered to date in accordance with the terms of the written disclosure."
- "Require a person to pay a penalty fee of 'five times the face check value, double all legal, attorney and court expenses', or any similar fees or penalties unless awarded by a court or competent jurisdiction."

• “Impose or attempt to impose any term or condition of the agreement ... which is otherwise prohibited by order.” The order prohibits Gardetto from using “any provision similar to any of the following:”

***“Once a repair is started, the repair will not be interrupted and will reach a conclusion by us of either a technical estimate or a total repair.”***

3.) The complainant is aware that the special order was promulgated under the Wis. Stat. § 100.20(3) as an order of the Wisconsin Department of Agriculture, Trade and Consumer Protection, a violation of which is a crime under Wis. Stat. § 100.26(3).

4.) The complainant is aware that Wis. Adm. Code Ch. 127 is promulgated under Wis. Stat. § 100.20(2) as an order of the Wisconsin Department of Agriculture, Trade and Consumer Protection, a violation of which is a crime under Wis. Stat. § 100.26(3).

5.) The complainant is aware that to prove a crime under Wis. Stat. § 100.26(3), the State need only show that Gardetto neglected or failed to comply with the order. Intent need not be shown pursuant to the Wisconsin Supreme Court decision in *State v. Stepniewski*, 105 Wis. 2d 261, 314 N.W.2d (1982).

#### ***The Polentinis (Counts 1-2)***

6.) The complainant spoke with Mark and Susie Polentini, adult citizen witnesses. Mark Polentini said that he called Elmbrook Electronics in June of 2009 and asked that they come out to give him an estimate on a television repair so that he could submit the estimate to his insurance company because his television was damaged during a lightning storm. Mr. Polentini said that he did not intend on getting the television repaired the day of the estimate. Mark Polentini said that he understood that the cost of doing the estimate would be \$79.00.

7.) Susie Polentini states that on July 1, 2009, that Mr. James Gardetto came to her home, located in the City of Hartland, County of Waukesha, for the purpose of giving an estimate on the repair of her family's television. Mr. Gardetto told her that the television was worth \$4000.00 to \$5000.00 and that it would cost \$825.00 to repair it. Mr. Gardetto asked her for a deposit of \$475.00, which she paid by check, provided her with a contract, and then took possession of the television. On the morning of July 2, 2009, Mark Polentini called Elmbrook Electronics and spoke with someone who identified himself as Steve Schmidt. Mr. Polentini requested that Elmbrook Electronics return the television and offered to pay for the trip charges. The individual on the phone refused to return the television. Mr. Polentini then looked up the corporate address of Elmbrook Electronics on file with the Department of Financial Institutions. The address was listed as 14410 W. Bluemound Road, Brookfield, Wisconsin. Mr. Polentini then drove to the area where the address should be located and realized that the address does not exist. Mr. Polentini then went home and cancelled the check that Susie Polentini wrote the day before.

8.) Susie Polentini stated that on July 3, 2009, she contacted Mr. Gardetto by phone and requested the return of the television in exchange for the trip charges. Mr. Gardetto refused. During the conversation, Gardetto told Mrs. Polentini that, according to the contract, he was going to keep the television until he was done fixing it. He also told Mrs. Polentini that it did not matter whether or not he had performed any work on the television.

9.) Susie Polentini also sent an email to Elmbrook Electronics requesting the return of the television in exchange for any trip charges or fees.

10.) In September of 2009, the Polentinis obtained legal counsel and later sued Elmbrook Electronics and Gardetto. On June 11, 2010, Gardetto appeared in court in response to the lawsuit for a hearing. During the hearing Mr. Gardetto verified under oath that he was the one

that spoke with Susie Polentini on July 3, 2009. Further, Gardetto went on to testify that when he took possession of the television, he took it to an undisclosed location and gave it to an individual in a van. He testified that he did not know the name of the individual but claimed that he had seen him many times in the past. The trial court rendered a judgment against Gardetto for double damages, court fees, and legal fees. Gardetto never returned the television to the Polentinis.

11.) The complainant has reviewed the Elmbrook Electronics service contract that was given to Susie Polentini by Mr. Gardetto. There is no disclosure of the mailing address for the principal place of business.

12.) Further, the contract includes a provision that is specifically prohibited by the special order referenced in Section 2 of this complaint, above. Specifically, the contract includes a provision that states the following:

*“Once a repair is started, it will not be interrupted and will reach a conclusion by us. Of either a technical estimate or total repair.”*

#### *The Conrads (Counts 3 – 6)*

13.) The complainant spoke with Christopher J. Conrad, an adult citizen witness. Conrad said that Mr. James Gardetto came to Conrad’s home on October 26, 2009, in the City of Pewaukee, County of Waukesha for the purpose of doing a TV repair. After discussing the 3-day right to cancel with Mr. Gardetto, Mr. Conrad wrote out a check for the deposit on the repair (\$550.00) and signed the Elmbrook Electronics service contract that Gardetto presented to Mr. Conrad. The Elmbrook Electronics service contract lists an email address and a phone number. Gardetto then took Mr. Conrad’s TV and left. That same evening, Mr. Conrad’s wife, Wendy Gunderson,

called to cancel the repair order. Further, the following day, Mr. Conrad sent an email message cancelling the repair order.

14.) Despite, the promise to honor the 3-day right to cancel, Gardetto cashed the check on October 27, 2009.

15.) The complainant has also reviewed a letter written to Elmbrook Electronics dated October 30, 2009, by Wendy Gunderson. Ms. Gunderson describes her and her husband's prior communications expressing their desire to cancel the service order, requests a refund of \$480.00, representing the amount of the \$550.00 deposit check minus the \$70.00 fee for the inspection of the television. Gunderson also requests advice on when she and Mr. Conrad may pick up their property.

16.) The complainant has reviewed a copy of Mr. Conrad's cashed check. The front of the check reflects that it was written on October 26, 2009, to Elmbrook Electronics, by Christopher J. Conrad in the amount of \$550.00. The back of the check reflects that it was processed on October 27, 2009.

17.) The complainant has also reviewed a deposition of Mr. Gardetto from March 2, 2010. During the deposition Gardetto admitted to being the person who spoke with Mr. Conrad at Mr. Conrad's residence in October 2009. Further, during the deposition Mr. Conrad asked Gardetto the following question: *"Sir, when Ms. Gunderson and I requested cancellation of the contract for services, why did you not return the TV?"* Mr. Gardetto responded as follows: *"Um, the contract clearly states within it that once repair has begun it will be done to completion. You have an obligation to fulfill and so do we."* Later in the deposition Gardetto states the following: *"Okay. About halfway down the contract it clearly states, 'Once a repair is started, it will not be interrupted and will reach a conclusion by us.'"* Mr. Conrad then asked the following:

*“When was the repair started, sir?” Gardetto responded: “It was started in your home the moment you signed the contract.”*

18.) Mr. Conrad reports that if he had known that Mr. Gardetto was lying when he promised a 3-day right to cancel, Mr. Conrad would never have signed the check for \$550.00.

19.) The complainant spoke with Wendy Gunderson, an adult citizen witness. Gunderson stated that she and Mr. Conrad initiated a lawsuit against Elmbrook Electronics. Gunderson stated that James Gardetto came to court in response to the lawsuit. Gunderson stated that the court ordered a \$19,000.00 judgment against James Gardetto. As a result of the judgment, Gardetto has paid \$2000.00 and he has returned the television.

20.) The complainant has reviewed the court record of events for *Conrad v. Elmbrook Electronics*, Waukesha County Case No. 09CV4395. The record reflects that on November 24, 2009, the trial court ordered Mr. Gardetto to return the television immediately to Mr. Conrad.

21.) The complainant has reviewed the Elmbrook Electronics service contract that was given to Mr. Conrad by Mr. Gardetto. There is no disclosure of the mailing address for the principal place of business.

22.) Further, the contract includes a provision that is specifically prohibited by the special order referenced in Section 2 of this complaint, above. Specifically, the contract includes a provision that states the following

*“Once a repair is started, it will not be interrupted and will reach a conclusion by us. Of either a technical estimate or total repair.”*

***The Blankenships (Counts 7 – 8)***

23.) The complainant spoke with Nancy Blankenship, an adult citizen witness. Blankenship stated that on December 3, 2010, that Mr. Gardetto came to her home in the City and County of

Waukesha, to repair Blankenship's television. Mr. Gardetto did not disclose to Blankenship his business's address. Further, Gardetto told Blankenship that by law she could not pick the television up from his place of business and that it would have to be delivered back to Blankenship and put back the way it started. Gardetto then told Blankenship that each trip charge would be \$49.99 but was included in the total estimate for television repair services. Blankenship signed the contract for services and gave Gardetto a deposit of \$450.00 by check.

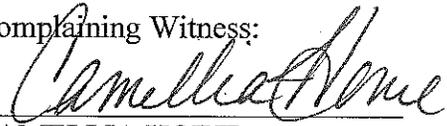
24.) There is no law that prohibits a consumer from collecting their property from the seller's place of business.

25.) The complainant has reviewed the contract for services. There is no disclosure of the mailing address for the principal place of business.

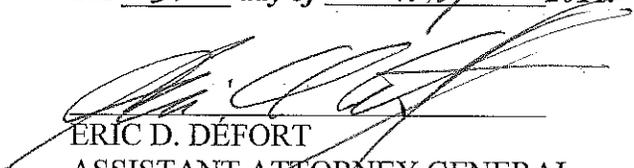
**\*\* END OF COMPLAINT \*\***

Dated this 31 day of May, 2011.

Complaining Witness:

  
CAMELLIA HOWE  
Wisconsin Department of Agriculture,  
Trade, and Consumer Protection

*Subscribed and sworn to before me and approved for filing  
this 31<sup>st</sup> day of May, 2011.*

  
ERIC D. DEFORT  
ASSISTANT ATTORNEY GENERAL  
WISCONSIN DEPARTMENT OF JUSTICE  
17 W. Main Street, Madison, Wisconsin 53707  
State Bar No. 1041760