

1  EXPEDITE  
2  No Hearing Set  
3  Hearing is Set  
4 Date:  
5 Time:

The Honorable Christine A. Pomeroy

7  
8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON**

9 STATE OF WASHINGTON,

NO. 10-2-00884-2

10 Plaintiff,

11 v.

CONSENT JUDGMENT

12 **CREDEXX CORPORATION**, a California  
13 corporation, d/b/a Auto One Warranty  
Specialists; and **DAVID J. TABB**, an  
14 individual,

(CLERK'S ACTION REQUIRED)

15 Defendants.

16 **I. JUDGMENT SUMMARY**

17	Judgment Creditor:	State of Washington
18	Judgment Debtor:	Credexx Corporation and David J. Tabb
19	Principal Judgment Amount:	
20	a. Civil Penalties:	\$70,000 (\$70,000 suspended per paragraphs 6.2)
21	b. Costs and Attorney Fees:	\$ 5,000
22	Total Judgment:	\$ 5,000
23	Post Judgment Interest Rate:	12% per annum
24	Attorneys for Judgment Creditor:	Mary C. Lobdell Assistant Attorney General
25	Attorney for Judgment Debtors:	Shane Stafford, Esq. Shanberg Stafford, LLP
26		

1           **1.1** Plaintiff, State of Washington, commenced this action on April 29, 2010,  
2 pursuant to the Unfair Business Practices - Consumer Protection Act ("Consumer Protection  
3 Act"), chapter 19.86 RCW; chapter 80.36 RCW – Automatic Announcing and Dialing Devices  
4 Act; and chapter 19.158 – Commercial Telephone Solicitation Act.

5           **1.2** Plaintiff is appearing by and through its attorneys Robert M. McKenna,  
6 Attorney General, and Mary C. Lobdell, Assistant Attorney General. Defendants Credexx  
7 Corporation and David J. Tabb, an individual, are appearing by and through their attorneys,  
8 Shane Stafford, Esq., of Shanberg Stafford, LLP and local counsel, Nathan L. Kortokrax.

9           **1.3** The State of Washington and the Defendants have agreed on a basis for  
10 settlement of the matters alleged in the Complaint, and to the entry of this Consent Judgment  
11 against the Defendants without the need for trial or adjudication of any issue of law or fact.  
12

13           **1.4** The State of Washington and Defendants agree that this Consent Judgment does  
14 not constitute evidence or an admission regarding the existence or non-existence of any issue,  
15 fact, or violation of any law alleged by Plaintiff.  
16

17           **1.5** Defendants recognize and state that this Consent Judgment is entered into  
18 voluntarily and that no promises or threats have been made by the Attorney General's Office or  
19 any member, officer, agent or representative thereof to induce it to enter into this Consent  
20 Judgment, except as provided herein.  
21

22           **1.6** Defendants waive any right they may have to appeal from this Consent  
23 Judgment.  
24

25           **1.7** Defendants agree that they will not oppose the entry of this Consent Judgment  
26 on the grounds the Consent Judgment fails to comply with Rule 65(d) of the Rules of Civil



1           **2.3** For purposes of this Judgment, “service contract” or “motor vehicle service  
2 contract” means a contract or agreement: (a) that contains a separately stated consideration or a  
3 specific duration to perform the repair, replacement or maintenance of a motor vehicle and  
4 includes vehicle protection products; or (b) that provides indemnification for repair,  
5 replacement or maintenance of a motor vehicle due to an operational or structural defect in  
6 materials, workmanship or normal wear and tear; and (c) may or may not include additional  
7 provision for incidental payment of indemnity under limited circumstances, including but not  
8 limited to, towing, rental and emergency road service.  
9

10           **2.4** For purposes of this Judgment, a “person” shall include natural persons,  
11 corporations, trust, unincorporated associations, limited liability companies, partnerships, sole  
12 proprietorships and any other entity.  
13

14           **2.5** For purposes of this Judgment, “trade or commerce” shall mean the sale of  
15 assets or services and any commerce directly or indirectly affecting the people of the state of  
16 Washington as that term is defined in RCW 19.86.010.

17           **2.6** For purposes of this Judgment, an “authorized telemarketer” or “telemarketer”  
18 means a business or other entity that conducts telemarketing or generates leads on Defendants’  
19 behalf in connection with the offer or sale of vehicle service contracts or other products and  
20 includes all definitions found in Washington State or federal law.  
21

22           **2.7** For purposes of this Judgment, “telemarketing” or “telephone solicitation”  
23 means any telephone call or message for the purpose of encouraging or inducing the purchase  
24 of goods or services and includes any definition provided by federal, state or local law.  
25 Nothing in this Judgment affects, limits, waives or alters the definition of “telemarketing”  
26

1 under state or federal law or limits the authority of the Attorney General to enforce applicable  
2 federal and state statutes.

3           **2.8** For purposes of this Judgment, “spoofing” means using any means to block,  
4 disguise or falsify the identity of the caller.  
5

### 6                           **III. REPRESENTATIONS AND WARRANTIES**

7           **3.1** Defendants warrant and represent that they and their predecessors, successors  
8 and assigns were engaged in the business of marketing, selling and promoting the sales of  
9 motor vehicle service contracts to consumers. Defendants further acknowledge that they are  
10 the proper parties to this Judgment. Defendants warrant and represent that the individual(s)  
11 signing this Judgment on behalf of Defendants is doing so in his or her corporate capacity and  
12 individual capacity and is fully authorized to enter into this Judgment and to legally bind each  
13 Defendant to all of the terms, conditions and injunctions of this Judgment.  
14

15           **3.2** Defendants warrant and represent that they negotiated the terms of this  
16 Judgment in good faith.

### 17                           **IV. ALLEGED VIOLATIONS**

18           The State of Washington alleges that Defendants violated chapter 19.86 RCW, 80.36  
19 RCW, 19.158 RCW and applicable federal statutes and rules by selling and marketing motor  
20 vehicle service contracts to Washington consumers in a false, deceptive and misleading  
21 manner, including but not limited to the following:  
22

23           **4.1** Representing that a consumer’s motor vehicle warranty expired, is expiring or is  
24 about to expire when such statement is not true or cannot be substantiated.  
25  
26

1           **4.2**   Representing or implying that a consumer’s vehicle may be unsafe or subject to  
2 recall, when such is not the case or is not known.

3           **4.3**   Misrepresenting the nature of the motor vehicle service contract as a  
4 “warranty,” “factory warranty” or “extended warranty,” when the product being sold is not a  
5 “warranty,” “factory warranty” or “extended warranty”.  
6

7           **4.4**   Representing that Defendants have a preexisting relationship with a consumer  
8 when such a relationship does not exist.

9           **4.5**   Representing or implying to a consumer that a solicitation is a final or limited  
10 time offer when such is not or was not the case.

11           **4.6**   Representing or implying to a consumer that a solicitation is a final offer when  
12 the offer was never previously made to the same consumer.

13           **4.7**   Creating a false sense of urgency that an offer will expire when no actual  
14 expiration date for the offer exists.  
15

16           **4.8**   Representing to a consumer that the offer is “exclusive” when such is not the  
17 case.

18           **4.9**   Creating confusion in consumers as to the source, sponsorship, approval or  
19 certification of the service contracts offered by Defendants, including misrepresenting or  
20 causing confusion that Defendant Credexx is the company with which consumers had their  
21 original motor vehicle warranty.  
22

23           **4.10** Representing or implying an affiliation, connection or association with, or  
24 certification by a third party, such as a manufacturer, government agency or other entity, when  
25 Defendants have no such relationship with the third party.  
26

1           **4.11** Misrepresenting or implying that the service contracts Defendants sell or offer  
2 have uses, benefits, standards, grades or qualities that they do not have.

3           **4.12** Failing to disclose all material terms of a service contract offer in solicitations  
4 and marketing contacts with consumers.

5           **4.13** Refusing to allow a consumer an opportunity to review the complete written  
6 service contract agreement upon request.

7           **4.14** Misleading consumers as to the nature of Defendants' relationship with the  
8 service contract provider.

9           **4.15** Engaging in violations of state and federal do-not-call laws by failing to scrub  
10 telephone numbers, making calls to consumers on state and federal do-not-call lists, making  
11 calls to cell phones, failing to transmit caller identification information, spoofing, failing to  
12 register as a telemarketer and failing or refusing to place consumers on internal do-not call lists  
13 upon the consumer's request.

14           **4.16** Engaging in violations of state and federal laws in the use of automatic dialing  
15 and announcing devices (ADAD) and state and federal do-not-call laws and the Telephone  
16 Consumer Protection Act (TCPA), 47 U.S.C. § 227 *et seq.*, including, but not limited to,  
17 placing calls into the state of Washington in which such calls are prohibited for commercial  
18 purposes, calling cell phones, emergency lines and hospitals, spoofing, using such devices in  
19 violation of state and federal do-not-call laws and using such devices in a manner that the  
20 consumer is unable to place his or her phone number on an internal do-not-call list.

21           **4.17** Providing false or misleading caller identification information, including  
22 preventing the display of caller identification, using methods that bypass, circumvent, or  
23

24  
25  
26

1 disable caller identification, or using methods that mislead the caller as to the identification of  
2 the caller or the caller's phone number.

3       **4.18** Selling or offering for sale, service contracts in violation of state licensing or  
4 registration laws, including the licensing or registration of Defendant Credexx as a marketer, as  
5 licensed or registered sales staff, and the licensing or registration of the motor vehicle service  
6 contracts sold by Defendants.

7  
8       **4.19** Engaging in a pattern or practice of failing to provide prompt refunds to  
9 consumers, issuing refunds that were less than the amount required by contract or state law,  
10 denying valid refunds and/or failing to pay valid refunds.

11       **4.20** Obtaining, directly or indirectly, consumers' personal information as that term  
12 is defined in the Drivers' Privacy Protection Act (DPPA), 18 U.S.C. § 2721 *et seq.*, from a  
13 state department of motor vehicle without the express consent of the person to whom such  
14 personal information pertains, in violation of the DPPA; and

15  
16       **4.21** Obtaining, directly or indirectly, consumers' credit information without using  
17 that information for a permissible purpose within the meaning of the Fair Credit Reporting Act  
18 (FCRA), 15 U.S.C. § 1681, *et seq.*

19       **4.22** The Plaintiff alleges that Defendant Tabb (a) participated personally in the  
20 design, establishment, and approval of Defendant Credexx' advertising, marketing and sales  
21 practices; (b) established and implemented Credexx' refund policies and practices; (c) hired  
22 and fired sales personnel and other representatives of Credexx whom Defendant Tabb directed  
23 to and who did carry out Credexx' advertising, marketing and sales practices; and (d) trained,  
24 directed and oversaw sales personnel and other representatives of Credexx.  
25  
26





1 The injunctive provisions contained in this Section V shall not expire.

2 **VI. PAYMENT TO THE STATE**

3 **6.1** Pursuant to RCW 19.86.140, Plaintiff shall recover and Defendants shall pay  
4 civil penalties in the amount of \$70,000 under terms as set forth below.

5 **6.2** Civil penalties under Section 6.1 shall be suspended contingent on Defendants'  
6 full compliance with the terms of this Judgment. Civil penalties are to or for a governmental  
7 unit and are not for pecuniary loss.

8 **6.3** Upon execution of the Consent Judgment, Defendants shall pay to the Plaintiff  
9 the sum of five thousand dollars (\$5,000) for attorneys' fees and costs. A payment of \$1,000  
10 is due within thirty-days (30) of entry of this Judgment by a court of law. Monthly payments  
11 shall be made thereafter due on the 15th day of the month in the amount of \$300 for the next  
12 thirteen (13) consecutive months with a final payment of \$100 in the fourteenth (14) month.

13 **6.4** No post-judgment interest shall accrue on the unpaid balance as long as the  
14 payments made in paragraph 6.3 are current.

15 **6.5** All payments due under this Judgment shall be by cashier's check made  
16 payable to the order of the "Attorney General-State of Washington" and sent to the Office of  
17 the Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager, 800  
18 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-3188.

19 **6.6** Should the Defendants fail to timely make any payment as provided in  
20 paragraph 6.3, interest shall accrue on that payment and all subsequent payments at the  
21 statutory judgment interest rate.





1 served upon them. Furthermore, Defendants waive any requirement that this Judgment include  
2 findings of fact and conclusions of law.

3 **IX. MISCELLANEOUS**

4 **9.1** Pursuant to RCW 19.86.140, any violation of the terms of this Consent  
5 Judgment shall form the basis for further enforcement proceedings, including but not limited  
6 to, contempt of Court proceedings, forfeiture, modification or clarification of this Consent  
7 Judgment or a civil penalty of up to \$25,000 for each violation of any injunctive terms of this  
8 Consent Judgment committed after the date of this Judgment.

9  
10 **9.2** Jurisdiction is retained for the purpose of enabling Plaintiff to apply to the Court  
11 at any time to enforce compliance, to modify the terms of this Judgment or to request that any  
12 suspended penalty be entered into the judgment docket upon notice to the Defendants and upon  
13 an offer of proof that the Defendants have violated any injunctive provision in this Judgment.

14  
15 **9.3** Defendants specifically warrant that this Consent Judgment is executed upon  
16 the Plaintiff's reliance upon Defendants' financial statements and representations related to  
17 Defendants' financial condition made during this course of this litigation.

18 **9.4** Defendants acknowledge that representatives of the Office of the Attorney  
19 General shall be permitted, under the Consumer Protection Act, to access, inspect and/or copy,  
20 all business records or documents under control of Defendants and depose any officer, director,  
21 agent, or employee of Defendants, in order to monitor compliance with this Consent Judgment,  
22 provided that the inspection and copying shall be done in such a way as to avoid disruption of  
23 Defendants' business activities, and all shall be subject to a ten (10) day notice.  
24  
25  
26

1           **9.5**    Nothing in this Consent Judgment shall be construed as to limit or bar any  
2 consumer from pursuing other available remedies against Defendants.

3           **9.6**    In any action to enforce the terms of this Consent Judgment, Plaintiff may seek  
4 additional remedies, including, but not limited to, restitution, injunctive relief, and reasonable  
5 attorneys' fees and costs, in addition to any other remedies permitted by law.  
6

7           **9.7**    Defendants agree to waive their right to contest all matters of jurisdiction if the  
8 State enforces the terms of this Consent Judgment.

9           **9.8**    Any signature required to effectuate all or any part of this document, may be  
10 executed by the parties in counterparts, each of which signatures shall be deemed an original,  
11 and any such document executed in counterparts shall have the same effect and authority. One  
12 or more counterparts of this Consent Judgment may be delivered by facsimile or electronic  
13 transmission with the intent that it or they shall constitute an original counterpart hereof.  
14

15           **9.9**    Under no circumstances shall this Consent Judgment or the name of the state of  
16 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their  
17 employees or representatives be used by Defendants in connection with any selling,  
18 advertising, or promotion of products or services, or as an endorsement or approval of  
19 Defendants' acts, practices or conduct of business.  
20

21           **9.10** This proceeding in all other respects is hereby dismissed with respect to  
22 Credexx Corporation and David J. Tabb.

23 \\\

24 \\\

25 \\\

26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

9.11 This Consent Judgment is entered pursuant to RCW 19.86.080.

DONE IN OPEN COURT this \_\_\_\_\_ day of February 2011.

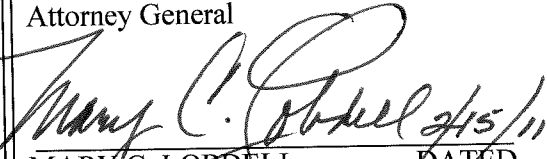
\_\_\_\_\_  
JUDGE

Approved for entry and presented by:

Approved For Entry, Notice of Presentation  
Waived:

ROBERT M. MCKENNA  
Attorney General

SHANBERG STAFFORD, LLP

  
\_\_\_\_\_

 2/14/11  
\_\_\_\_\_

MARY C. LOBDELL DATED  
WSBA #17930  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington

SHANE STAFFORD DATED  
Attorney for Defendants, Credexx Corporation  
and David J. Tabb

TAYLOR LAW GROUP, P.S.

\_\_\_\_\_  
NATHAN L. KORTOKRAX DATED  
WSBA #38555  
Local Counsel for Defendants  
Credexx Corporation and David J. Tabb

  
\_\_\_\_\_  
DAVID J. TABB  
President-Credexx Corporation

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

9.11 This Consent Judgment is entered pursuant to RCW 19.86.080.

DONE IN OPEN COURT this \_\_\_\_\_ day of February 2011.

\_\_\_\_\_  
JUDGE

Approved for entry and presented by:

Approved For Entry, Notice of Presentation  
Waived:

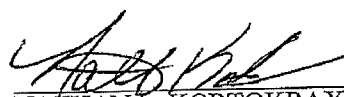
ROBERT M. MCKENNA  
Attorney General

SHANBERG STAFFORD, LLP

\_\_\_\_\_  
MARY C. LOBDELL DATED  
WSBA #17930  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington

\_\_\_\_\_  
SHANE STAFFORD DATED  
Attorney for Defendants, Credexx Corporation  
and David J. Tabb

TAYLOR LAW GROUP, P.S.

  
\_\_\_\_\_  
NATHAN L. KORTOKRAX DATED 2/16/11  
WSBA #38555  
Local Counsel for Defendants  
Credexx Corporation and David J. Tabb

\_\_\_\_\_  
DAVID J. TABB  
President-Credexx Corporation