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5	BEFORE THE OREGON PUBLIC UTILITY COMMISSION	
6	PUBLIC UTILITY COMMISSION OF	
7	OREGON,	
8	Complainant,	Docket No. UM1288
9	v.	ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM
10	VCI COMPANY f/k/a STAN EFFERDING and STANLEY JOHNSON d/b/a VILAIRE, and VCI COMPANY, a Washington	COUNTERCLAIM
11	corporation,	
12	Defendant.	
13		
14	In answer to complainant's allegations in its Complaint, defendants respond as follows:	
15		1.
16	Defendants admit the substance of paragraph 1 of the Complaint, but denies the	
17	characterization of the findings in the PUC audits. Such audits speak for themselves.	
18		2.
19	Defendants deny the allegations in paragraph 2 of the Complaint.	
20		3.
21	Defendants admit the procedural facts in paragraph 3 of the Complaint, but deny that it	
22	received overpayments from the Commission.	
23		4.
24	Defendants admit the facts in paragrap	h 4 of the Complaint.
25		5.
26	Defendants admit the facts in paragrap	h 5 of the Complaint.
Page	1 - ANSWER	SCHWABE, WILLIAMSON & WYATT, P. Attorneys at Law Pacwest Center 1211 SW 5th Ave., Suite 1900

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1	6.
2	Defendants admit the facts in paragraph 6 of the Complaint.
3	7.
4	Defendants admit the facts in paragraph 7 of the Complaint.
5	8.
6	Defendants admit the facts in paragraph 8 of the Complaint.
7	9.
8	The allegations in paragraph 9 of the Complaint are merely quotations of Oregon Revised
9	Statutes and Oregon Administrative Rules. These statutes and rules speak for themselves and
10	their interpretation is purely a question of law.
11	10.
12	Defendants deny that it has only a ten-day period to answer the Complaint. Defendants
13	deny that VCI Company, or any of them, have been overpaid by \$203,391.97. Defendants'
14	Answer is filed pursuant to Commission rules, including but not limited to OAR 860-013-0025,
15	OAR 860-013-0050, and OAR 860-013-0065.
16	11.
17	To the extent not specifically admitted above, defendants deny each and every remaining
18	allegation in complainant's Complaint.
19	FIRST AFFIRMATIVE DEFENSE
20	(Violation of Due Process)
21	12.
22	It appears that this proceeding has involved extensive and improper ex parte
23	communications and advocacy without notice to defendants, without opportunity for defendants
24	to be heard and outside the public process, all of which has resulted in depriving defendants of
25	their right to a fair and unbiased adjudication of the claims subject to this Complaint. The extent
26	of the due process violations has apparently so tainted this proceeding that the only remedy for

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1	such violations is dismissal of all claims against defendants.
2	SECOND AFFIRMATIVE DEFENSE
3	(Damages Speculative)
4	13.
5	The complainant acknowledges that the amounts claimed are based on a statistical
6	sampling and that the conclusion is merely an estimate. Complainant's damages are speculative
7	and unreliable and do not support its claim.
8	THIRD AFFIRMATIVE DEFENSE
9	(Contributory Fault/Alternative Causation)
10	14.
11	The complainant, through the OTAP program, directed VCI Company on when and how
12	requests for reimbursements were appropriate. VCI Company followed complainant's directions
13	and to the extent complainant believes now it has overpaid VCI Company, it did so of its own
14	accord and under its own interpretation of its rules and agreements. To the extent complainant
15	claims to be damaged, it is the result of its own actions and not the actions of defendants.
16	FOURTH AFFIRMATIVE DEFENSE
17	(Failure to State a Claim Piercing of the Corporate Vail)
18	15.
19	To the extent that complainant's complaint seeks to impose personal liability for the
20	amounts claimed on the individuals Stan Efferding and Stanley Johnson, complainant has failed
21	to state a claim against these persons individually and has failed to state any basis to pierce the
22	corporate vail of VCI Company, a Washington corporation.
23	CONTERCLAIM
24	(By VCI Company for Breach of Contract)
25	16.
26	On or about September 2006, complainant reduced VCI Company's reimbursement

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1	submittal by approximately 3039 customers. On information and belief, a majority of these
2	rejected claims represented eligible customers and VCI Company is rightfully entitled to
3	reimbursement under the OTAP program on those eligible customer accounts. VCI Company
4	has already passed on the benefit of the reimbursements to the customers. Discovery is
5	necessary to determine the total number of eligible customers and the dollar amount of the claim
6	which will be established at trial, but it is estimated at approximately \$30,000.
7	WHEREFORE, defendants request that complainant's Complaint be dismissed in its
8	entirety and that VCI Company be awarded the damages proven at trial on its counterclaim, plus
9	prejudgment interest from September 2006, its costs and disbursements herein, and whatever
10	additional remedies that the Commission deems just and equitable.
11	Dated thisday of October, 2007.
12	SCHWABE, WILLIAMSON & WYATT, P.C.
13	11/4/1/
14	By: William J. Ohle, OSB #913866
15	wohle@schwabe.com Facsimile: 503.796.2900
16	Of Attorneys for VCI COMPANY f/k/a STAN EFFERDING and STANLEY
17	JOHNSON d/b/a VILAIRE, and VCI COMPANY, a Washington corporation
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1	<u>CERTIFICATE OF SERVICE</u>	
2	I hereby certify that on this day of October 2007, I served the foregoing ANSWER	
3	on the following party at the following address:	
4	David B. Hatton Assistant Attorney General	
5	1162 Court Street NE Salem, OR 97301-4096	
6	David.Hatton@state.or.us	
7	by electronic filing, emailing and mailing to him a true and correct copy thereof, certified by me	
8	as such, placed in a sealed envelope addressed to him at the address set forth above, and	
9	deposited in the U.S. Post Office at Portland, Oregon on said day with postage prepaid.	
10		
11	William J. Ohle	
12	William U. Cinc	
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CERTIFICATE OF SERVICE

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