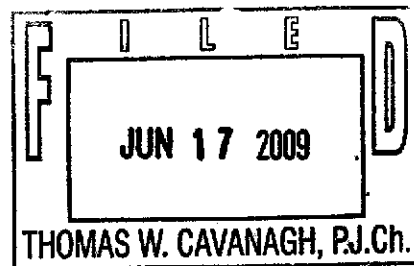


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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. 0-127-09

ANNE MILGRAM, Attorney General of the State
of New Jersey, and DAVID M. SZUCHMAN,
Director of the New Jersey Division of Consumer
Affairs,

Plaintiffs,

v.

SPECTRUM HOME FURNISHINGS, INC.,
CHARLES SEROUYA & SON, INC. a/k/a
GALLERY, CS&S, INC., CHARLES SEROUYA,
INC., JANE and JOHN DOES 1-10, individually
and as owners, officers, directors, shareholders,
founders, managers, agents, servants, employees,
representatives and/or independent contractors of
SPECTRUM HOME FURNISHINGS, INC.,
CHARLES SEROUYA & SON, INC. a/k/a
GALLERY, CS&S, INC., CHARLES SEROUYA,
INC., and XYZ CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Anne Milgram, Attorney General of the State of New Jersey ("Attorney General"),
with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and David M. Szuchman,

Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. The purchase of furniture and/or home furnishings is a necessary and quite often, significant expenditure for consumers. At present, many retailers have advertised, offered for sale and/or sold furniture and home furnishings through the internet and/or direct mailings, which not only have made such shopping convenient, but also have made merchandise available to consumers nationwide. If consumers opt to purchase merchandise through the internet and direct mailings, however, they cannot physically see the merchandise prior to purchase. As a result, many consumers rely on the ability to return or exchange an item. At the very least, consumers depend on the ability to reach a customer service representative who can provide some relief in the instances where consumers are not satisfied with their orders.

2. At least since June 2005, Spectrum Home Furnishings, Inc. ("Spectrum"), Charles Serouya & Son, Inc. ("Charles Serouya & Son"), CS&S, Inc. ("CS&S"), and Charles Serouya, Inc. ("Charles Serouya") (collectively, "Defendants"), have engaged in the advertisement and sale of furniture and home furnishings through the internet, direct mailings and magazines. In so doing, Defendants have: (1) delivered defective and non-conforming merchandise, (2) failed to provide consumers with merchandise on the promised delivery date or at all; (3) advertised merchandise in an assembled state, yet delivered merchandise consisting of hundreds of pieces, frequently with pieces missing; (4) refused to provide consumers with a refund irrespective of the reason for the consumers' dissatisfaction; and (5) ignored consumers and/or made it very difficult for them to submit complaints and/or seek relief. Defendants' deceptive conduct constitutes multiple violations

of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), as well as the regulations promulgated thereunder, N.J.A.C. 13:45A-1 et seq. ("CFA Regulations").

PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA, N.J.S.A. 56:8-1 et seq., and the CFA Regulations, N.J.A.C. 13:45A-1 et seq. The Director is charged with the responsibility of administering the CFA and the CFA Regulations on behalf of the Attorney General.

4. By this action, the Attorney General and the Director (collectively, "Plaintiffs") seek injunctive relief and other relief for violations of the CFA and the CFA Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19. Venue is proper in Monmouth County, pursuant to R. 4:3-2, because it is a county in which Defendants have maintained their principal business address and otherwise conducted business.

5. Defendant Spectrum is a Domestic Profit Corporation established in the State of New Jersey ("State" or "New Jersey") on December 24, 1996. At all relevant times, Spectrum has maintained principal business addresses of 100 Park Road, Tinton Falls, New Jersey 07724 and/or 510 Sqaunkum Yellow Brook Road, Farmingdale, New Jersey 07727. Spectrum's registered agent in the State is Charles Serouya, who maintains a mailing address of 100 Park Road, Tinton Falls, New Jersey 07724.

6. Upon information and belief, Defendant Charles Serouya & Son is a New York corporation established on May 11, 1967. As of August 6, 1981, Charles Serouya & Son was authorized to conduct business in New Jersey. At all relevant times, Charles Serouya & Son has

maintained principal business addresses of 100 Park Road, Tinton Falls, New Jersey 07724 and/or 510 Squankum Yellow Brook Road, Farmingdale, New Jersey 07727. Charles Serouya & Son's registered agent in the State is Abraham Serouya, who maintains a mailing address of 510 Squankum Yellow Brook Road, Farmingdale, New Jersey 07727 and/or 46 Runyan Avenue, Deal, New Jersey 07723.

7. Defendant Charles Serouya & Son is registered to do business in this State under the alternate name of "Gallery" for the period of November 2, 2007 to November 2, 2012.

8. Defendant CS&S is a Domestic Profit Corporation established in the State on December 22, 1997. At all relevant times, CS&S has not maintained a principal business address. CS&S's registered agent in the State is Charles Serouya & Son.

9. Defendant CS&S was registered to do business in the State under the alternate name of Charles Serouya & Son during the period of February 11, 1998 to February 11, 2003.

10. Defendant Charles Serouya is a Domestic Profit Corporation established in the State on August 3, 1981. At all relevant times, Charles Serouya maintained a main business address of 46 Runyan Avenue, Deal, New Jersey 07723. Charles Serouya's registered agent in the State is Abraham Serouya, who maintains a mailing address of 46 Runyan Avenue, Deal, New Jersey 07723 and/or 510 Squankum Yellow Brook Road, Farmingdale, New Jersey 07727.

11. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, and/or representatives of Spectrum, Charles Serouya & Son, CS&S and Charles Serouya who have been involved in the conduct that gives rise to this Complaint, but are

heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

12. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to the Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

13. At all relevant times, Defendants have advertised and engaged in the retail sale of merchandise to consumers in the State and elsewhere including, but not limited to, chandeliers, lighting, "crystal parts and trimmings" for chandeliers, clocks, ceiling fans, pianos, theater seating, bedding, as well as household furniture such as living room, bedroom, kitchen and casual dining room sets.

14. At all relevant times, Defendants have advertised and conducted retail sales of merchandise to consumers in the State and elsewhere through internet websites including, but not limited to: (a) www.greatchandeliers.com; (b) www.greatchandelier.com; (c) www.Gallery84.com; (d) www.gallery840.com; (e) www.gallery803.com; (f) www.gallery87.com; (g) www.freedomcrystal.com; (h) www.crystalfreedom.com; (i) www.spectrumhome4.com; (j) www.spectrumhome3.com; (k) www.spectrumhome.com; (l) www.gspncrystal.com; and (m) www.wholesalechandeliers.com; (collectively, "Defendants' Websites").

15. At all relevant times, Defendants have advertised and conducted retail sales of merchandise to consumers in the State and elsewhere through direct mailings and/or magazines

including, but not limited to, "Clipper Magazine," "Better Homes and Gardens," and "Traditional Home" (collectively, "Magazines").

16. At all relevant times, Defendants' Magazine advertisements directed consumers to "call to order," "visit us on the web," and "visit our websites." The advertisements provided the phone number "(877)-885-0510", as well as Defendants' Websites, specifically "www.gallery87.com" and "www.gallery84.com."

17. At all relevant times, the advertisements on Defendants' Websites as well as in Magazines were accompanied by a picture or illustration of merchandise in an assembled condition. Upon information and belief, these advertisements did not include any statement or notation that merchandise would be sold unassembled.

18. Upon information and belief, at all relevant times, Defendants provided some consumers with merchandise of a different quality or condition than the merchandise the consumers ordered based upon depictions in Defendants' advertisements.

19. At all relevant times, Defendants maintained a warehouse located at 510 Squankum Yellowbrook Road, Farmingdale, New Jersey 07727.

20. At all relevant times, Defendants did not maintain any retail locations.

21. At all relevant times, Defendants conducted retail sales through Defendants' Websites and/or by telephone.

22. At all relevant times, Defendants did not maintain at their warehouse an available inventory or stock of furniture or home furnishings other than chandeliers.

23. At all relevant times, Defendants satisfied consumer orders for furniture and home furnishings by obtaining the merchandise from various suppliers.

24. Upon information and belief, at all relevant times, Defendants did not directly manufacture the merchandise sold to consumers.

25. At all relevant times, when consumers visited Defendants' Websites, they were able to place an order for merchandise on the internet, without speaking to a customer representative.

26. At all relevant times, in order to purchase merchandise on Defendants' Websites, consumers chose an item and placed it in their "shopping cart." The consumer then proceeded to "checkout" by inputting credit card, billing and shipping information.

27. At all relevant times, after consumers completed their orders on Defendants' Websites, they received an electronic confirmation of their online purchase with an Order Number, the consumers' billing and shipping information, and the payment method.

28. At all relevant times, the electronic order confirmation did not contain any information as to delivery date and/or a consumer's options upon non-delivery or a late delivery.

29. At all relevant times, Defendants' return policy did not appear on those portions of Defendants' Websites that consumers accessed while selecting merchandise, placing it in the "shopping cart" and proceeding to "checkout."

30. At all relevant times, a consumer was required to click on the "Our Policies" portion of Defendants' Website to view Defendants' return policy, which stated as follows:

WE GUARANTEE OUR ITEMS WILL ARRIVE TO YOU IN GOOD WORKING ORDER. IF AN ITEM ARRIVES TO YOU DAMAGED WE WILL REPLACE THAT ITEM AT NO ADDITIONAL CHARGE. DUE TO THE FACT THAT OUR ITEMS ARE FRAGILE AND COSTLY TO SHIP BACK AND FORTH, WE DO NOT OFFER A MONEY BACK GUARANTEE.

31. Upon information and belief, at all relevant times, Defendants failed to provide consumers who ordered merchandise over the telephone with any contract or sales document that

contained information as to delivery date and/or a consumer's options upon non-delivery or a late delivery.

32. Upon information and belief, at all relevant times, consumers who ordered merchandise from Defendants received damaged and/or non-conforming merchandise.

33. Upon information and belief, at all relevant times, Defendants failed to deliver to consumers ordered merchandise on the promised delivery date, or at any time thereafter.

34. Upon information and belief, at all relevant times, Defendants made only partial deliveries of merchandise to consumers.

35. Upon information and belief, at all relevant times, Defendants failed to respond to consumer complaints and inquiries, placed consumer calls on hold for extended periods of time and/or hung up on consumers who called them.

36. Upon information and belief, at all relevant times, Defendants refused to provide refunds to consumers who receive damaged, non-conforming or partial deliveries, as well as to consumers who returned non-conforming or damaged merchandise to the Defendants.

COUNT I

VIOLATION OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES)

37. Plaintiffs repeat and reallege the allegations contained in paragraph 1 through 36 above as if set forth more fully herein.

38. The C.F.A., N.J.S.A. 56:8-2 prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such

concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...

[N.J.S.A. 56:8-2.]

39. The CFA defines "merchandise" as including "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale." N.J.S.A. 56:8-1 (c).

40. In their advertisement and sale of merchandise, Defendants have engaged in the use of unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

41. Defendants' conduct in violation of the CFA includes the following unconscionable commercial practices:

- a. Accepting payment for merchandise and then failing to deliver the ordered merchandise;
- b. Failing to provide consumers with a contract form, sales document or invoice setting forth a promised delivery date and the consumers' rights in the event of non-delivery on the promised delivery date;
- c. Failing to deliver merchandise on the promised delivery date or at all;
- d. Selling new merchandise that is defective or damaged;
- e. Delivering merchandise to consumers that is of a different quality or condition than the merchandise ordered;
- f. Failing to provide consumers with merchandise that was the same as the merchandise depicted on Defendants' Websites and/or in Magazines from which consumers placed their orders;

- g. Advertising merchandise as assembled and then providing consumers with unassembled merchandise accompanied by inadequate or unclear assembly instructions;
- h. Charging consumers for merchandise that was canceled prior to delivery;
- i. Failing to conspicuously post Defendants' return policy at the point of sale on Defendants' Website;
- j. Failing to respond to consumer complaints, inquiries and/or reports of defective and/or damaged merchandise, non-conforming merchandise and refunds in a timely and appropriate manner or at all; and
- k. Failing to provide consumers with refunds after non-conforming and/or damaged merchandise is returned to Defendants.

42. Each unconscionable commercial practice by Defendants constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATION OF THE CFA BY DEFENDANTS (FALSE PROMISES, MISREPRESENTATIONS AND KNOWING OMISSIONS OF MATERIAL FACT)

43. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 42 above as if set forth more fully herein.

44. Defendants' conduct in violation of the CFA includes, but is not limited to, the following false promises and/or misrepresentations:

- a. Misrepresenting to consumers the expected delivery date of merchandise;
- b. Misrepresenting to consumers that a refund is forthcoming, when such is not the case; and
- c. Misrepresenting to consumers that certain merchandise was of a certain brand or made by a certain manufacturer, when such was not the case.

45. Defendants' conduct in violation of the CFA includes, but is not limited to, the following knowing omissions of material fact:

- a. Failing to notify consumers of Defendants' refund policy when consumers ordered merchandise over the telephone; and
- b. Advertising merchandise as assembled when it is actually to be sold unassembled, then failing to include any statement or notation in the advertisement that the merchandise will be sold unassembled.

46. Each false promise, misrepresentation and/or knowing omission of material fact by Defendants constitutes a separate violation under CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATION OF THE CFA BY DEFENDANTS (BAIT AND SWITCH)

47. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 46 above as if set forth more fully herein.

48. The CFA prohibits the practice commonly known as "bait and switch" and provides:

The advertisement of merchandise as part of a plan or scheme not to sell the item or service so advertised or not to sell the same at the advertised price is an unlawful practice and in violation of the act to which this act is a supplement.

[N.J.S.A. 56:8-2.2.]

49. In their advertisement and sale of merchandise to consumers, Defendants have engaged in "bait and switch" by providing consumers with merchandise that did not resemble, or was of a different quality or condition, than the merchandise advertised on Defendants' Websites and/or in Magazines.

50. Each instance where Defendants advertised merchandise as part of a plan or scheme not to sell the merchandise advertised constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.2.

COUNT IV

**VIOLATION OF THE CFA BY DEFENDANTS
(ADVERTISEMENT OF UNASSEMBLED MERCHANDISE AS ASSEMBLED)**

51. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 50 above as if set forth more fully herein.

52. The CFA further prohibits the advertisement of merchandise as assembled when assembly is required, as follows:

It shall be an unlawful practice for a person to advertise merchandise for sale accompanied by a picture or illustration of the merchandise in an assembled condition when it is intended to be sold unassembled, unless the advertisement bears the notation that the merchandise is to be sold unassembled.

[N.J.S.A. 56:8-2.4.]

53. In their advertisements, Defendants have included merchandise for sale accompanied by a picture or illustration of the merchandise in an assembled condition, which merchandise was intended to be sold as unassembled, without any notation that the merchandise is to be sold unassembled.

54. Each instance where Defendants advertised merchandise in such manner constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.4.

COUNT V

**VIOLATION OF THE CFA BY DEFENDANTS
(FAILURE TO POST A REFUND POLICY)**

55. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 54 above as if set forth more fully herein.

56. The Refund Policy Disclosure Act, N.J.S.A. 56:8-2.14 et seq. (“Refund Act”) requires that:

Every retail mercantile establishment shall conspicuously post its refund policy as to all merchandise on a sign in at least one of the following locations:

- a.. Attached to the item itself, or
- b. Affixed to each cash register or point of sale, or
- c. So situated as to be clearly visible to the buyer from the cash register,
or
- d. Posted at each store entrance used by the public.

[N.J.S.A. 56:8-2.16.]

57. The Regulations Governing the Disclosure of Refund Policy in Retail Establishment, N.J.A.C. 13:45A-15.1 et seq. (“Refund Regulations”), specifically N.J.A.C. 13:45A-15.2(a)(1), set forth similar requirements.

58. At all relevant times, Defendants conducted the retail sale of merchandise through Defendants’ Websites.

59. To the extent Defendants purport to post a refund policy on Defendants’ Websites, it is not: (a) affixed to the description of each item; (b) clearly visible to the purchaser at the point of sale; and/or (c) posted on the home page of Defendants’ Websites.

60. Each of Defendants' Websites in which a refund policy is not posted, or is posted in a manner that is clearly not visible, constitutes a separate violation of the Refund Act and Refund Regulations, each of which constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT VI

VIOLATION OF THE MAIL ORDER REGULATIONS BY DEFENDANTS

61. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 60 above as if set forth more fully herein.

62. The Deceptive Mail Order Practices Regulations, N.J.A.C. 13:45A-1.1 et seq., ("Mail Order Regulations") promulgated pursuant to the CFA, require a seller to deliver merchandise by the promised date, but no later than six (6) weeks or to notify consumers in writing if delivery cannot occur by the promised date and to provide consumers with an option to cancel.

63. Specifically, N.J.A.C. 13:45A-1.1(b) provides:

- (b) It is an unlawful practice in connection with the advertisement or sale of merchandise for a person conducting a mail order or catalog business to accept money through the mail or by electronic transfer medium, for merchandise ordered by mail, telephone, facsimile transmission or electronic mail and then permit six weeks to elapse without either:
1. Delivering or mailing the merchandise order; or
 2. Making a full refund; or
 3. Sending the consumer a letter or notice advising the consumer of the duration of an expected delay or the substitution of merchandise of equivalent or superior quality, and offering to send a refund within one week if so requested. If a proposal to substitute merchandise is made, it shall describe, in specific detail, how the substituted merchandise differs from the merchandise ordered; or

4. Sending the consumer substituted merchandise of equivalent or superior quality, together with:
 - i. A written notice offering, without reservation, to accept the return of the merchandise at the seller's expense within 14 days of receipt of the merchandise and, upon request, the consumer's choice of either, a refund of cash paid, including the amount of postage to return the item, or a credit; and
 - ii. A postage-paid letter or card on which the consumer may indicate whether he wishes the purchase price to be refunded or credited to his account within 14 days of receipt of the letter or card by the seller. The consumer's request entered on such a letter or card must be honored by the seller; and
 - iii. The written notice and postage-paid letter or card, as stated in (b)4i and ii above, need not be sent with the merchandise, if in lieu thereof, a statement that the seller will accept the return of the merchandise for a period of at least 14 days without reservation is printed in the catalog itself.

[N.J.A.C. 13:45A-1.1(b)(1),(2),(3),(4)(i),(ii),(iii).]

64. Upon information and belief, Defendants accepted money through the mail or through electronic transfer mediums, for merchandise ordered over the telephone and over Defendants' Websites.

65. Defendants have violated the Mail Order Regulations by engaging in certain conduct that includes, but is not limited to:

- a. Failing to deliver merchandise within the required six (6) weeks (N.J.A.C. 13:45A-1.1(b)(1));
- b. Failing to deliver merchandise within the required six (6) weeks and then failing to provide a full refund (N.J.A.C. 13:45A-1.1(b)(2));
- c. Failing to deliver merchandise within the required six (6) weeks and then failing to provide consumers with written notice advising of the delay and offering consumers the option of a refund or substituted merchandise (N.J.A.C. 13:45A-1.1(b)(3)); and

- d. Failing to deliver merchandise within the required six (6) weeks and then failing to provide consumers with substituted merchandise of equivalent or superior quality (N.J.A.C. 13:45A-1.1(b)(4)).

66. Each violation of the Deceptive Mail Order Regulations constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

COUNT VII

VIOLATION OF THE FURNITURE REGULATIONS BY DEFENDANTS

67. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 66 above as if set forth more fully herein.

68. The Regulations Governing the Delivery of Household Furniture and Furnishings Regulations, N.J.A.C. 13:45A-5.1 et seq., promulgated pursuant to the CFA (“Furniture Regulations”), require the seller to deliver furniture by the promised date or to notify consumers in writing if delivery cannot occur by the promised date and to provide consumers with an option to cancel.

69. Specifically, N.J.A.C.13:45A-5.1 provides, in pertinent part:

- (a) Any person who is engaged in the sale of household furniture for which contracts of sale or sale orders are used for merchandise ordered for furniture delivery shall:
1. Deliver all of the ordered merchandise by or on the promised delivery date; or
 2. Provide written notice to the consumer of the impossibility of meeting the promised delivery date. The notice shall offer the consumer the option to cancel said order with a prompt, full refund of any payments already made or to accept delivery at a specified time. Said written notice shall be mailed on or prior to the delivery date.

- (b) In the event a seller fails to deliver all of the ordered merchandise on the promised delivery date and makes only a partial delivery, the seller shall comply with the notice requirement of (a) above. Said notice shall offer the consumer the option of cancelling the order with a prompt, full refund of any payments already made or accepting delivery of the balance of the ordered merchandise at a specified later date.
- (c) Failure to comply with (a) above shall constitute a deceptive practice under the Consumer Fraud Act.

[N.J.A.C. 13:45A-5.1(a), (b), (c).]

70. The Furniture Regulations also provide that delivery of damaged or non-conforming merchandise does not constitute delivery. Specifically, N.J.A.C. 13:45A-5.1(e) provides:

- (e) For purposes of this section, delivery of furniture or furnishings that are damaged or that are not the exact size, style, color or condition indicated on the sales contract, shall not constitute delivery as required by (a)(1) above.
 - 1. Upon the receipt of such non-conforming merchandise, the consumer shall have the option of either accepting the furniture or of exercising any of the options set forth in (a)(2) above.

[N.J.A.C. 13:45A-5.1(e).]

71. The Furniture Regulations further require a seller of furniture to specify on the sale order the date of delivery of the furniture or the length of time agreed upon with the purchaser for delivery. Specifically, N.J.A.C. 13:45A-5.2 provides, in pertinent part:

- (a) The contract forms or sales documents shall show the date of the order and shall contain the following sentence in ten-point bold face type:

The merchandise you have ordered is promised for delivery to you on or before (insert date or length of time agreed upon).

- (b) The blank for the delivery date referred to in (a) above shall be filled in by the seller at the time the contract of sale is entered into by the parties or when the sales documents are issued, either as a specific day of a specific month or as a length of time agreed upon by the buyer and seller (for example, "six weeks from date of order").

[N.J.A.C. 13:45A-5.2(a),(b).]

72. Moreover, the Furniture Regulations require a seller to specify on the contract forms or sales documents that the purchaser has the opportunity to cancel the order if the merchandise is not delivered by the promised delivery date. Specifically, N.J.A.C. 13:45A-5.3 provides, in pertinent part:

- (a) The contract forms or sales documents shall conspicuously disclose the seller's obligations in the case of delayed delivery in compliance with N.J.A.C. 13:45A-5.1 and shall contain, on the first page of the contract form or sales document, the following notice in ten-point bold face type:

If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.

[N.J.A.C. 13:45A-5.3(a).]

73. In their sale of merchandise to consumers, Defendants have violated the Furniture Regulations by engaging in certain conduct including, but not limited to:

- a. Failing to deliver the ordered merchandise by or on the promised delivery date (N.J.A.C. 13:45A-5.1(a)(1));
- b. Failing to deliver merchandise by the promised delivery date and then failing to provide consumers with written notice, among other things, informing them of their option to cancel for a full refund or to accept delivery at a later date (N.J.A.C. 13:45A-5.1(a)(2));
- c. Making only a partial delivery of merchandise, and then failing to provide consumers with written notice, among other things, informing them of their option to cancel for a full refund or to accept delivery at a later date. (N.J.A.C. 13:45A-5.1(b));
- d. Delivering merchandise that is damaged, defective or otherwise non-conforming and then failing to provide consumers with the option of cancelling the order for a full refund or accepting delivery at a later date (N.J.A.C. 13:45A-5.1(e)(1));

- e. Refusing to issue a refund when requested by consumers after Defendants failed to deliver merchandise or delivered non-conforming merchandise (N.J.A.C. 13:45A-5.1(a), (e));
 - f. Failing to provide consumers with contract forms or sales documents in compliance with N.J.A.C. 13:45A-5.2(a) and (b); and
 - g. Failing to provide consumers with contract forms or sales documents in compliance with N.J.A.C. 13:45A-5.3(a).
74. Each violation of the Furniture Regulations constitutes a per se violation of the CFA,

N.J.S.A. 56:8-1 et seq.

COUNT VIII

VIOLATION OF THE ADVERTISING REGULATIONS BY DEFENDANTS

75. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 75 above as if more fully set forth herein.

76. The Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq., promulgated pursuant to the CFA (“Advertising Regulations”), address, among other issues, general advertising practices and price reduction advertisements.

77. Specifically, N.J.A.C. 13:45A-9.4 provides, in pertinent part:

(a) An advertiser offering an item of merchandise specifically advertised for sale at a price of \$100.00 or more shall, in addition to complying with the provision of N.J.A.C. 13:45A-9.2:

- 2. State the former price or price range or the amount of the reduction in dollars;

[N.J.A.C. 13:45A-9.4(a)2.]

78. The Advertising Regulations also prohibit false or misleading advertising. Specifically, N.J.A.C. 13:45A-9.2 provides, in pertinent part:

- (a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

....

9. The making false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

[N.J.A.C. 13:45A-9.2(a)(9).]

79. In their advertisement and sale of merchandise to consumers, Defendants have violated the Advertising Regulations by engaging in certain conduct including, but not limited to:

- a. Failing to state the former price, price range, or amount of reduction in advertisements offering merchandise specifically advertised for sale of \$100.00 or more; and
- b. Advertising merchandise of a certain quality or condition, then delivering to consumers merchandise of a different or inferior quality or condition.

80. Each violation of the Advertising Regulations constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, the Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) Finding that the acts and omissions of Defendants constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Refund Act, N.J.S.A. 56:2-14 et seq., and the CFA Regulations, specifically the Mail Order Regulations, N.J.A.C. 13:45A-1.1 et seq., the Furniture Regulations, N.J.A.C. 13:45A-5.1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., and the Refund Regulations, N.J.A.C. 13:45A-15.1 et seq.;
- (b) Permanently enjoining Defendants and their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, corporations, independent contractors and all other entities

directly under its control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Refund Act, N.J.S.A. 56:2-14 et seq., and the CFA Regulations, specifically the Mail Order Regulations, N.J.A.C. 13:45A-1.1 et seq., the Furniture Regulations, N.J.A.C. 13:45A-5.1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., and the Refund Regulations, N.J.A.C. 13:45A-15.1 et seq.;

- (c) Directing the assessment of restitution amounts against Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the CFA and the CFA Regulations, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorneys' fees, against Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Sabina P. McKinney
Sabina P. McKinney
Deputy Attorney General

Dated: June 17, 2009
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in this action involving the aforementioned violations of the CFA, N.J.S.A. 56:8-1 et seq., the Refund Act, N.J.S.A. 56:2-14 et seq., and the CFA Regulations, specifically the Mail Order Regulations, N.J.A.C. 13:45A-1.1 et seq., the Furniture Regulations, N.J.A.C. 13:45A-5.1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., and the Refund Regulations, N.J.A.C. 13:45A-15.1 et seq., is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendants, but have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Sabina P. McKinney
Sabina P. McKinney
Deputy Attorney General

Dated: June 17, 2009
Newark, New Jersey