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JOHN F. MALONE
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
UNION COUNTY
DOCKET NO. C-48-12

JEFFREY S. CHIESA, Attorney General of the
State of New Jersey, and ERIC T. KANEFSKY,
Acting Director of the New Jersey Division of
Consumer Affairs,

Plaintiffs,

Civil Action

LAFLAT, INC., LAFLAT GROUP, INC.,
LAFURNITURE & DESIGN, LTD., LA
FURNITURE CORP., LA FURNITURE GROUP,
INC., TYGER FURNITURE, INC., a/k/a TG
FURNITURE GROUP; LEV STANIK and
ROMAN TYGER, JANE and JOHN DOES 1-10,
individually and as owners, officers, directors,
shareholders, founders, managers, agents,
servants, employees representatives and/or
independent contractors of LAFLAT, INC.,
LAFLAT GROUP, INC., LAFURNITURE &
DESIGN, LTD., LA FURNITURE CORP., LA
FURNITURE GROUP, INC., TYGER
FURNITURE, INC., a/k/a TG FURNITURE
GROUP, and XYZ CORPORATIONS 1-10.

Defendants.

COMPLAINT

COMPUTER
MAY 02 2012
SECTION

Plaintiffs Jeffrey S. Chiesa, Attorney General of the State of New Jersey ("Attorney General") and Eric T. Kanefsky, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Newark, New Jersey, by way of this Complaint state:

PRELIMINARY STATEMENT

1. The purchase of furniture and/or home furnishings is a necessary and quite often, significant expense for consumers. Currently, many retailers have advertised, offered for sale and/or sold furniture and home furnishings through the internet. The internet provides consumers with the ability to shop at home and makes merchandise available to consumers nationwide. However, consumers shopping on the internet are not able to physically see the merchandise prior to purchase, and many are not able to go to a physical store location if they have any issues with the merchandise. As a result, consumers must rely on the internet retailer to provide them with the correct merchandise, as well as the ability to reach a customer service representative who can provide relief when consumers are not satisfied with their orders.

2. At all relevant times, Lev Stanik ("Stanik") and Roman Tyger ("Tyger"), who have conducted business under the names LaFlat, Inc., LaFlat Group, Inc., LaFurniture & Design, Ltd., La Furniture Corp., La Furniture Group, Inc., and Tyger Furniture, Inc. a/k/a TG Furniture Group (collectively "Defendants"), have engaged in the advertisement and sale of furniture and home furnishings through the internet and through their showrooms and warehouses in New Jersey, as well as in other States. In so doing, Defendants have: (1) accepted payment from consumers and failed to provide consumers with merchandise on the promised delivery date or at all; (2) promised consumers repeatedly that merchandise would be delivered and failed to deliver or respond to

consumer inquiries; (3) delivered defective or non-conforming merchandise; (4) failed to provide consumers with a refund for merchandise that was not delivered; (5) provided consumers with refund checks that bounced due to insufficient funds; (6) ignored consumers and/or made it very difficult for them to submit complaints and/or seek relief; and (7) failed to provide refunds or exchanges for damaged or non-conforming furniture. As detailed below, Defendants' 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-1-1 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 based upon Defendants' 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 Union County, pursuant to R. 4:3-2, because it is a county in which Defendants have maintained a principal business address and otherwise conducted business.

5. Defendant LaFlat, Inc., is a Domestic For Profit Corporation established in the State of New Jersey ("State" or "New Jersey") on January 13, 2005. LaFlat, Inc., has maintained business addresses at the following locations: 970-J New Brunswick Avenue, Rahway, New Jersey 07065; 535 Bergen Boulevard, Ridgefield, New Jersey 07657; and 205 B Chubb Avenue, Lyndhurst, New

Jersey 07101. LaFlat, Inc.'s registered agent in the State is Stanik with a registered office address of 13-51a River Road, Fair Lawn, New Jersey 07410.

6. Defendant LaFlat Group, Inc., is a Domestic For Profit Corporation established in New Jersey on October 19, 2005. At all relevant times, LaFlat Group, Inc., has maintained business addresses at the following locations: 970-B and 970-J New Brunswick Avenue, Rahway, New Jersey; 535 Bergen Boulevard, Ridgefield, New Jersey 07657; and 205 B Chubb Avenue, Lyndhurst, New Jersey 07101. LaFlat Group Inc.'s registered agent in the State and one of the initial Directors is Stanick, with a registered office address of 970-B New Brunswick Avenue, Rahway, New Jersey 07065.

7. Defendant LaFurniture Corp., is a Domestic For Profit Corporation established in the State of New Jersey on January 7, 2009. LaFurniture Corp., has maintained business addresses at the following locations: 12-24 River Road, Fair Lawn, New Jersey 07410; and 970-J New Brunswick Avenue, Rahway, New Jersey 07065. LaFurniture Corp.'s registered agent in this State is Stanik with a registered office address of 12-24 River Road, Fair Lawn, New Jersey 07410.

8. Defendant LaFurniture & Design, Ltd., is a Domestic For Profit Corporation established in the State of New Jersey on February 7, 2011, with a main business address of 240 Mill Road, Edison, New Jersey 08817. LaFurniture & Design, Ltd.'s registered agent in this State is Stanick, with a registered office address of 80 East Milton Avenue Apartment 1615, Rahway, New Jersey 07065.

9. Defendant LaFurniture Group, Inc., is a Domestic For Profit Corporation established in the State of New Jersey on February 27, 2009, with an address of 12-24 River Road, Fair Lawn,

New Jersey 07410. LaFurniture Group, Inc.'s registered agent in this State is Mirra Kuznetsov, with a registered office address of 12-24 River Road, Fair Lawn, New Jersey 07410.

10. Defendant Tyger Furniture Inc. a/k/a TG Furniture Group is a Foreign For Profit Corporation established in the State of New York on September 21, 2009, with a main business address of 70 East 8th Street, Apartment 7F, Brooklyn, New York, 11218. At all relevant times, Tyger Furniture Inc., has also maintained business addresses at the following locations: 970-J New Brunswick Avenue, Rahway, New Jersey 07065; 535 Bergen Boulevard, Ridgefield, New Jersey 07657; and 205 B Chubb Avenue, Lyndhurst, New Jersey 07101. Tyger Furniture Inc.'s registered agent in this State is Roman Tyger, with a registered office address of 970-J New Brunswick Avenue, Rahway, New Jersey 07065.

11. Upon information and belief, since 2009, Tyger has been an operator and/or director of Tyger Furniture, Inc. a/k/a TG Furniture Group. Since 2009, Tyger has maintained business addresses at the following locations: 70 East 8th Street, apt 7F, Brooklyn, New York, 11218; and 970-J New Brunswick Avenue, Rahway, New Jersey 07065.

12. Since at least 2005, Stanik has been an owner and/or director of LaFlat, Inc., LaFlat Group, Inc., LaFurniture & Design, Ltd., LaFurniture Corp., LaFurniture Group, Inc. Since 2005, Stanik has maintained business addresses of: 12-24 River Road, Fair Lawn, New Jersey 07410; 80 East Milton Avenue, Apt. 615, Rahway, New Jersey 07065; 970-J and 970-B New Brunswick Avenue, Rahway, New Jersey 07065; 535 Bergen Boulevard, Ridgefield, New Jersey 07657; and 205 B Chubb Avenue, Lyndhurst, New Jersey 07101. Stanik has also been an operator of Tyger Furniture, Inc. a/k/a TG Furniture Group.

13. 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 LaFlat, Inc., LaFlat Group, Inc., LaFurniture & Design, Ltd., LaFurniture Corp., LaFurniture Group, Inc., and Tyger Furniture, Inc., a/k/a TG Furniture Group, 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.

14. 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

15. 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, household furniture such as kitchen, living room, bedroom, dining room, and outdoor furniture.

16. 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.laflat.com; (b) www.la-classic.com; (c) www.la-decor.com; (d) www.modernfurnituredeal.com; (e) www.modernfurniture-boston.com; (f) www.monmodernfurniture-la.com; (g) www.modern-furniture-miami.com; (h) www.modernfurniture-nj.com; (i) www.modernfurniture-ny.com; (j) www.modernroomfurniture.com; (k) www.tygerfurniture.com; and (l) www.furniture3000.com; (collectively, "Defendants' Websites").

17. At all relevant times, Defendants have conducted retail sales through their showrooms, warehouses, and Defendants' Websites, and/or by telephone.

18. At all relevant times, Defendants attempted to sell merchandise in their showrooms without a tag or a label displaying the selling price or without displaying the selling price at the point where the merchandise was sold.

19. At all relevant times, when consumers accessed Defendants' Websites, they were able to place an order for merchandise through the website without speaking to a customer representative.

20. 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.

21. 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 as well as the consumer's billing and shipping information ("Electronic Order Confirmation").

22. At all relevant times, Defendants failed to provide consumers with an Electronic Order Confirmation, a contract form and/or sales document that contained a section to be filled in by the seller with respect to an expected delivery date.

23. At all relevant times, Defendants failed to provide consumers with an Electric Order Confirmation, a contract form and/or sales document that conspicuously disclosed the seller's obligations in case of delayed delivery and/or delivery of damaged or non-conforming merchandise.

24. At all relevant times, Defendants provided consumers with contract forms or sales documents that contained provisions such as: "We cannot accept the return of any merchandise. Cancellations not accepted on any special order."

25. At all relevant times, the Electronic Order Confirmation, sales document and/or contract form provided to consumers contained language that contradicted Defendants' obligations with respect to delayed delivery.

26. At all relevant times, Defendants failed to deliver merchandise by the promised delivery date and then failed to provide consumers with a written notice informing them of their option to cancel for a full refund or to accept delivery at a later date.

27. At all relevant times, Defendants made partial deliveries of merchandise to consumers, and failed to provide consumers with a written notice informing them of their option to cancel for a full refund or to accept delivery at a later date.

28. At all relevant times, Defendants made deliveries of merchandise to consumers that was damaged, defective or otherwise non-conforming and then failed to provide consumers with the option of cancelling the order for a full refund or accepting delivery at a later date.

29. At all relevant times, consumers who ordered merchandise from Defendants received damaged and/or non-conforming merchandise.

30. At all relevant times, Defendants accepted payment from consumers and then failed to deliver merchandise to consumers on the promised delivery date or anytime thereafter.

31. At all relevant times, Defendants refused to issue a refund when requested by consumers, after Defendants failed to deliver merchandise or delivered damaged merchandise, non-conforming merchandise and/or partial deliveries.

32. At all relevant times, Defendants failed to provide accurate delivery times for consumers who inquired about delivery dates.

33. At all relevant times, Defendants failed to deliver merchandise within six (6) weeks and failed to provide consumers with written notice advising of the delay and offering consumers an option of a refund or substituted merchandise of equivalent or superior quality.

34. At all relevant times, Defendants made only partial deliveries of merchandise to consumers.

35. 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 did not return consumer calls.

36. At all relevant times, Defendants promised consumers that merchandise was going to be delivered on a date certain and then failed to deliver the merchandise.

37. At all relevant times, Defendants made misrepresentations to consumers regarding delivery dates, the status of consumer orders and/or the whereabouts of merchandise ordered by consumers.

38. At all relevant times, Defendants provided refund checks to consumers which bounced due to insufficient funds.

39. At all relevant times, Defendants' return policy was not conspicuously posted or did not appear at all on Defendants' Websites.

40. At all relevant times, Defendants failed to conspicuously post a refund policy in Defendants' showrooms or warehouses.

41. Upon information and belief, at all relevant times, Defendants failed to designate on their Websites which merchandise was of damaged or in any way of lesser quality than that depicted on Defendants' Websites.

42. Upon information and belief, at all relevant times, Defendants failed to designate on their Websites which merchandise was discontinued and/or no longer available.

COUNT I

**VIOLATION OF THE CFA BY DEFENDANTS
(UNCONSCIONABLE COMMERCIAL PRACTICES)**

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

44. 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...

45. 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).

46. In their advertisement and sale of merchandise, Defendants have engaged in the use of the following unconscionable commercial practices.

47. 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. Accepting payment for furniture that had been discontinued;
 - c. 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;
 - d. Failing to deliver merchandise on the promised delivery date or at any time thereafter;
 - e. Delivering merchandise to consumers that is of a different quality or condition than the merchandise ordered;
 - f. Advertising merchandise without designating which merchandise is damaged or discontinued;
 - g. Failing to respond to consumer complaints and/or inquiries regarding undeliverable merchandise, damaged merchandise and/or non-conforming merchandise in an appropriate or timely matter, or at all;
 - h. Failing to replace defective or non-conforming merchandise delivered to consumers;
 - i. Failing to provide consumers with refunds after Defendants failed to deliver merchandise to consumers;
 - j. Charging consumers for merchandise that was cancelled prior to delivery;
 - k. Including language in contracts and sales documents that is contradictory to Defendants' obligations upon delayed delivery;
 - l. Advising consumers that refund checks would be issued and then sending consumers checks with insufficient funds; and
 - m. Failing to post Defendants' return policy conspicuously or at all, on Defendants' Websites or in Defendants' showrooms and warehouses.
48. 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 (FAILURE TO DISPLAY SELLING PRICE)

49. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 48 above as if set forth more fully herein.

50. The CFA requires that persons offering merchandise for sale display the selling price, as follows:

It shall be an unlawful practice for any person to sell, attempt to sell or offer for sale any merchandise at retail unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign either affixed to the merchandise or located at the point where the merchandise is offered for sale.

[N.J.S.A. 56:8-2.5.]

51. In addition, the CFA provides:

For purposes of this act, each day for which the total selling price is not marked in accordance with the provisions of this act for each group of identical merchandise shall constitute a separate violation of this act and the act of which this act is a supplement.

[N.J.S.A. 56:8-2.6.]

52. Each instance and each day where Defendants advertised furniture and/or home furnishings without labeling or displaying the total selling price constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.5 and N.J.S.A. 56:8-2.6.

COUNT III

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

53. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 52 above as if set forth more fully herein.

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

- a. Misrepresenting to consumers that merchandise would be delivered on a certain date when such was not the case; and
- b. Misrepresenting to consumers that a refund was forthcoming when such was not the case.

55. 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 on Defendants' Websites; and
- b. Failing to notify consumers of a delay in delivery of merchandise or that Defendants would not deliver the merchandise at all.

56. 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 IV

VIOLATION OF THE CFA BY DEFENDANTS (BAIT AND SWITCH)

57. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 56 above as if set forth more fully herein.

58. 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.]

59. In their advertisement and sale of merchandise to consumers, Defendants have engaged in “bait and switch” by:

- a. 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 showrooms.

60. 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 V

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

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

62. 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.]

63. At all relevant times, Defendants conducted the retail sale of merchandise through Defendants' Websites as well as through showrooms and warehouses.

64. 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 conspicuously, or at all, on the home page of Defendants' Websites.

65. To the extent Defendants purport to post a refund policy at their showrooms and warehouses, it is not: (a) affixed to the description of each item; (b) clearly visible to the purchaser at the point of sale; (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.

66. Each of Defendants' Websites, showroom and/or warehouses in which a refund policy is not posted, or is posted in a manner that is not clearly visible, constitutes a separate violation of the Refund Act, 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

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

68. 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 from the date that money is accepted 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-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)-(4).]

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

71. 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)).

72. 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

73. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 72 above as if set forth more fully herein.

74. The Regulations Governing the Delivery of Household Furniture and Furnishings, N.J.A.C. 13:45A-5.1 et seq., ("Furniture Regulations") promulgated pursuant to the CFA, 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.

75. 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 later 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)-(c).]

76. 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).]

77. 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).]

78. 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.

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- (c) It shall be unlawful for any person to use any contract or sales agreement that contains any terms, such as "all sales final" or "no cancellations", which violate or are contrary to the rights and responsibilities provided for by this rule. Any contract or sales agreement which contains such a provision shall be null and void and unenforceable. See new language – I did not see that you alleged this provision in the General allegations did a consumer have a problem with this provision?

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

79. 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);

- g. Failing to provide consumers with contract forms or sales documents in compliance with N.J.A.C. 13:45A-5.3(a); and
- h. Including language in contracts or sales agreements that contain terms which violate N.J.A.C. 13:45A-5.3.

80. 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

81. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 80 above as if more fully set forth herein.

82. The Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq., (“Advertising Regulations”) promulgated pursuant to the CFA 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 of 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).]

83. The Advertising Regulations further require the advertiser to designate within the advertisement which merchandise possess limiting factors. Specifically, N.J.A.C. 13:45A-9.2 provides, in pertinent part:

2. The failure of an advertiser to specifically designate within an advertisement which merchandise items possess special or limiting factors relating to price, quality, condition or availability. By way of illustration, and not by limitation, the following shall be deemed violative of this subparagraph:

....

- ii. The failure to specifically designate which merchandise items are below cost, if any, are damaged or in any way less than first quality condition;
- iii. The failure to specifically designate merchandise as floor models, discontinued models or one of a kind, when applicable.

....

[N.J.A.C. 13:45A-9.2(a)2.ii, iii.]

84. 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 designate within an advertisement on Defendants' Websites, which merchandise was damaged or in any way of less than first quality condition; and
- b. Failing to designate within advertisements on Defendants' Websites, which merchandise was discontinued, or no longer available.

85. 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., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq.;
- (b) Permanently enjoining Defendants and their owners, officers, directors, shareholders, founders, members, managers, agents, servants, employees, representatives, corporations, independent contractors and all other entities directly under their 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., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 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.

JEFFERY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

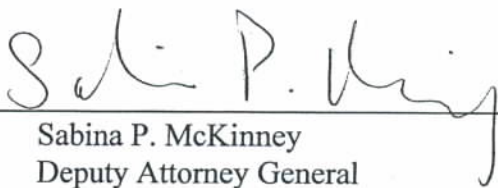
By: Sabina P. McKinney
Sabina P. McKinney
Deputy Attorney General

Dated: May 1, 2012
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., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 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. I certify that there is no other party who should be joined in this action at this time.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Sabina P. McKinney
Deputy Attorney General

Dated: May 1, 2012
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-(c).

JEFFERY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

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

Dated: May 1, 2012
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Deputy Attorney General Sabina P. McKinney is hereby designated as trial counsel for the Plaintiffs in this action.

JEFFERY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

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

Dated: May 1, 2012
Newark, New Jersey