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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MORRIS COUNTY  
DOCKET NO.

JOHN J. HOFFMAN, Acting Attorney General of the  
State of New Jersey, and ERIC T. KANEFSKY, Director  
of the New Jersey Division of Consumer Affairs,  
Plaintiffs,

Civil Action

v.

JLT MILLWORKS INC. D/B/A LUMBER JANE  
MILLWORKS D/B/A LUMBER JANE WIDE PLANK  
FLOORING D/B/A LUMBER JANE RECLAIMED  
BARN BEAMS D/B/A LUMBER JANE RUSTIC  
MANTELS D/B/A LUMBER JANE ANTIQUE BARN  
SIDING, JANICE TUPPER individually and as officer,  
director, shareholder, founder, owner, agent, servant  
and/or employee of JLT MILLWORKS INC. D/B/A  
LUMBER JANE MILLWORKS D/B/A LUMBER JANE  
WIDE PLANK FLOORING D/B/A LUMBER JANE  
RECLAIMED BARN BEAMS D/B/A LUMBER JANE  
RUSTIC MANTELS D/B/A LUMBER JANE ANTIQUE  
BARN SIDING, JANE AND JOHN DOES 1-20,  
individually and as officers, directors, shareholders,  
founders, owners, managers, agents, servants, employees,  
representatives, sales representatives and/or independent  
contractors of JLT MILLWORKS INC. D/B/A LUMBER  
JANE MILLWORKS D/B/A LUMBER JANE WIDE  
PLANK FLOORING D/B/A LUMBER JANE  
RECLAIMED BARN BEAMS D/B/A LUMBER JANE  
RUSTIC MANTELS D/B/A LUMBER JANE ANTIQUE  
BARN SIDING, and XYZ CORPORATIONS 1-20,  
Defendants.

COMPLAINT

RECEIVED & FILED  
SUPERIOR COURT  
2013 NOV 22 P 1:26  
MORRIS COUNTY  
CIVIL DIVISION

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey, and Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs, with offices located at 124 Halsey Street, Newark, New Jersey, by way of Complaint state:

**PRELIMINARY STATEMENT**

1. When a consumer is required to provide money as a deposit in advance of receiving contracted-for merchandise, the consumer trusts the seller will provide the merchandise. Similarly, when a consumer is provided with a promised delivery date by the seller for that merchandise, the consumer trusts delivery of the merchandise will occur on the promised date, and arranges to receive the merchandise on that promised date. As a result, a seller who does not: (a) provide merchandise after receiving a deposit; and/or (b) deliver merchandise on the promised date, abuses a consumer's trust.

2. At all relevant times, defendants JLT Millworks Inc. d/b/a Lumber Jane Millworks d/b/a Lumber Jane Wide Plank Flooring d/b/a Lumber Jane Reclaimed Barn Beams d/b/a Lumber Jane Rustic Mantels d/b/a Lumber Jane Antique Barn Siding ("JLT Millworks") and Janice Tupper ("Tupper") (collectively, "Defendants") engaged in the advertisement, offering for sale and sale of household furniture and furnishings, consisting of, among other things, wood flooring, beams, mantels and siding, through the internet in the State of New Jersey ("State" or "New Jersey") and elsewhere. In doing so, Defendants have, among other things: (1) received immediate, non-refundable deposits of at least fifty percent (50%) of the purchase price of household furniture and/or furnishings and not provided the contracted-for household furniture and/or furnishings; (2) not provided consumers with adequate notice that delivery would not occur on promised dates, needlessly causing consumers to incur costs in making

arrangements to receive delivery; (3) not delivered on promised dates; and (4) after not delivering on promised dates, renewed their promise to deliver and time after time did not deliver. Ultimately, after much frustration, many consumers were left without contracted-for household furniture and/or furnishings or a refund of any kind.

3. As set forth below, Defendants' conduct constitutes numerous violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA") and the Regulations Governing Delivery of Household Furniture and Furnishings, N.J.A.C. 13:45A-5.1 et seq. ("Furniture and Furnishings Regulations").

### **PARTIES AND JURISDICTION**

4. The Attorney General of New Jersey ("Attorney General") is charged with the responsibility of enforcing the CFA and all regulations promulgated thereunder, specifically the Furniture and Furnishings Regulations. The Director of the New Jersey Division of Consumer Affairs ("Director") is charged with the responsibility of administering the CFA and the Furniture and Furnishings Regulations on behalf of the Attorney General.

5. By this action, the Attorney General and Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA and the Furniture and Furnishings 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/or 56:8-19. Venue is proper in Morris County, pursuant to R. 4:3-2, because it is a county in which Defendants have maintained a business address and otherwise conducted business.

6. On July 9, 2011, JLT Millworks was established as a Domestic For-Profit Corporation in the State. Upon information and belief, JLT Millworks has maintained a business and mailing address of P.O. Box 514, Mendham, New Jersey 07945.

7. JLT Millworks' registered agent in the State is Tupper, with a mailing address of

[REDACTED]

8. Upon information and belief, at varying times, JLT Millworks has previously maintained a business and mailing address of 14A Jules Lane, New Brunswick, New Jersey 08901.

9. Upon information and belief, at all relevant times, Tupper has been an owner, Chief Executive Officer, President, officer, manager, director, employee, representative and/or agent of JLT Millworks and has controlled, directed and participated in the management and operation of this entity.

10. Upon information and belief, Tupper's current and/or last known mailing address is [REDACTED]

11. Upon information and belief, Jane and John Does 1 through 20 are fictitious individuals meant to represent the officers, directors, shareholders, founders, owners, managers, agents, servants, employees, representatives, sales representatives and/or independent contractors of JLT Millworks who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these Defendants are identified, Plaintiffs shall amend the Complaint to include them.

12. Upon information and belief, XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

**A. Defendants' Business Generally:**

13. Upon information and belief, since at least 2011, Defendants have been engaged in the advertisement, offering for sale and sale of merchandise in this State and elsewhere.

14. Upon information and belief, Defendants have been engaged in the advertisement, offering for sale and sale of household furniture and furnishings which include, among other things, wood flooring, beams, mantels and siding (collectively, "Wood Furnishings" or "Furnishings").

15. Upon information and belief, the Wood Furnishings are custom-made, meaning they are manufactured according to specifications provided by consumers.

16. Upon information and belief, Defendants engaged in the advertisement of Wood Furnishings in this State and elsewhere through internet websites, including, but not limited to: <http://www.jlmillworks.com>; <http://www.lumber-jane.com>; <http://www.lumberjanelogblog.com>; <http://www.lumberjanewideplankflooring.com>; <http://www.ljwvf.com>; <http://www.in-stock-plank-lock.com>; <http://www.lumberjanereclaimedbarnbeams.com>; <http://www.ljrbb.com>; <http://www.lumber-jane-rustic-mantels.com>; <http://www.lj-rm.com>; <http://www.reclaimed-barn-siding.com> and <http://www.ljrbs.com>.

**B. Defendants' Sale of Wood Furnishings:**

17. When potential customers initially expressed interest in purchasing Wood Furnishings from Defendants, Tupper was highly communicative, regularly answering their telephone calls and/or emails.

18. Often, after a potential customer initially expressed interest in purchasing Wood Furnishings from Defendants, Tupper would travel to meet with the person to show him or her samples of the Wood Furnishings.

19. During such meetings, Tupper would appear highly knowledgeable about JLT Millworks' Wood Furnishings and wood products more generally, impressing many potential customers.

20. At all relevant times, Tupper processed consumer orders for the sale of Wood Furnishings, whether through an in-person meeting, a telephone call or an email.

21. Defendants required immediate, non-refundable deposits of at least fifty percent (50%) of the purchase price of Wood Furnishings to commence orders.

22. In connection with the sale of Wood Furnishings, generally, Defendants provided consumers with a contract/agreement in the form of a one or two page "Invoice", which, among other things, included the consumer's name and address, a cursory description of the Furnishings to be provided, the total purchase price, the deposit amount paid, and the balance due ("Contract for Sale of Wood Furnishings").

23. The Contract for Sale of Wood Furnishings, however, did not include the following notices: (a) "[t]he merchandise you have ordered is promised for delivery to you on or before" the date or length of time agreed upon for delivery; and (b) "[i]f the merchandise ordered by you is not delivered by the promised delivery date, [JLT Millworks] 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."

24. In some instances, the Contract for Sale of Wood Furnishings included a "lead time."

25. Upon information and belief, "lead time" referred to the length of time in which the contracted-for Wood Furnishings were to be manufactured according to specifications provided by the consumer.

26. Generally, the Contract for Sale of Wood Furnishings did not include a date or length of time agreed upon for delivery, and Tupper would provide consumers with a delivery date by telephone call and/or email.

27. At varying times, the Contract for Sale of Wood Furnishings included some or all of the following terms: (a) "50 % non-refundable deposit required to commence any order"; and/or (b) "A NON-REFUNDABLE DEPOSIT is required to commence all orders. We apologize for the inconvenience but as a custom wood mill, this is a required practice. We cannot put a knife to wood unless a commitment has been made".

28. After receiving from consumers immediate, non-refundable deposits of at least fifty percent (50%) of the purchase price of contracted-for Wood Furnishings, Defendants generally failed to respond to consumers, only sporadically or not at all answering their telephone calls and/or emails.

29. Additionally, after receiving deposits for Wood Furnishings, Defendants did not deliver, partially delivered and/or delivered damaged, defective or otherwise non-conforming Furnishings.

30. Prior to promised delivery dates, Defendants did not provide written notice to consumers that delivery would not occur. In some instances, Defendants did not provide any notice that delivery would not occur.

31. After not delivering on promised delivery dates, Defendants did not provide consumers with written notice of their option to cancel their order and receive a full refund or to accept delivery at a specified later time.

32. After partially delivering Wood Furnishings, Defendants did not provide consumers with written notice of their option to cancel their order and receive a full refund or to accept delivery of the balance of the ordered Furnishings at a specified later time.

33. After delivering damaged, defective or otherwise non-conforming Wood Furnishings, Defendants did not provide consumers with written notice of their option to cancel their order and receive a full refund or to accept delivery of the balance of the ordered Furnishings at a specified later time.

34. After consumers did not receive Wood Furnishings on promised delivery dates, received partial delivery of Furnishings or received damaged, defective or otherwise non-conforming Furnishings, they attempted to contact Defendants, generally multiple times by telephone, mail and/or email.

35. Some consumers who reached Defendants were provided with subsequent promised delivery dates. However, subsequent promised delivery dates came and went without actual delivery.

36. Some consumers who reached Defendants requested a refund. Generally, such requests were refused and/or ignored. In those cases where consumers were promised a refund, they never received a refund.

37. Some consumers were never able to reach Defendants at all, despite multiple attempts to contact them by telephone call, mail and/or email.

**COUNT I**

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



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

39. The CFA, 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 . . . .

40. 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).

41. At all relevant times, Defendants have been engaged in the advertisement and sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically the advertisement and sale of Wood Furnishings.

42. Defendants have engaged in the use of unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

43. Defendants’ conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices:

- a. Receiving deposits for merchandise then not providing the contracted-for merchandise or a refund;
- b. After not delivering, partially delivering and/or delivering damaged, defective or otherwise non-conforming merchandise, refusing and/or ignoring consumers’ requests for refunds;
- c. Promising to issue refunds and then not providing refunds;

- d. Providing inadequate or no notice at all that delivery would not occur on promised delivery dates;
- e. After not delivering merchandise on promised dates, repeatedly promising to deliver on subsequent dates and not delivering on those dates; and
- f. Not responding to consumers' telephone calls, mail, and/or emails, in a timely manner or at all.

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

### COUNT II

#### **VIOLATION OF THE CFA BY THE DEFENDANTS (FALSE PROMISES AND/OR MISREPRESENTATIONS)**

45. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 44 as if more fully set forth herein.

46. 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 they would receive merchandise;
- b. Misrepresenting to consumers the date of delivery of merchandise;
- c. Misrepresenting to consumers that they would receive refunds; and
- d. Misrepresenting to consumers that Defendants would respond to telephone calls, mail, and/or emails.

47. Each false promise and/or misrepresentation by Defendants constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

### COUNT III

#### **VIOLATION OF THE FURNITURE AND FURNISHINGS REGULATIONS BY DEFENDANTS**

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

49. The Furniture and Furnishings Regulations, N.J.A.C. 13:45A-5.1 et seq., promulgated pursuant to the CFA, require the seller to deliver household furniture and/or furnishings 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. The Furniture and Furnishings Regulations further require a seller to provide consumers an option to cancel if the seller only makes partial delivery.

50. Specifically, N.J.A.C. 13:45A-5.1(a)-(d) provides:

- (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 future 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.
- (d) For purposes of this rule, "household furniture" includes, but is not limited to . . . such items as carpets and draperies.

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

51. The Furniture and Furnishings Regulations also provide that delivery of damaged or non-conforming household furniture and/or furnishings does not constitute delivery. Specifically, N.J.A.C. 13:45A-5.1(e) provides:

- (e) For the 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 [N.J.A.C. 13:45A-5.1(a)(1)].
  - 1. Upon 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 [N.J.A.C. 13:45A-5.1(a)(2)].

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

52. The Furniture and Furnishings Regulations further require a seller of household furniture and/or furnishings to specify on the contract forms or sales documents the promised delivery date or the length of time agreed upon for delivery. Specifically, N.J.A.C. 13:45A-5.2(a)-(b) provides:

- (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 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).]

53. Additionally, the Furniture and Furnishings 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 household furniture and/or furnishings are not delivered by the promised delivery date. Specifically, N.J.A.C. 13:45A-5.3 provides, in relevant 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.**

....

- (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" or "no refunds," 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.

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

54. Defendants sell "household furniture" within the definition of N.J.A.C. 13:45A-5.1(d).

55. Defendants have violated the Furniture and Furnishings Regulations by engaging in certain conduct including, but not limited to:

- a. Not delivering Wood Furnishings by the promised date, and after doing so, not providing written notice to consumers of their right to cancel their order and receive a full refund or accept delivery at a later specified time (N.J.A.C. 13:45A-5.1(a));
- b. Making partial delivery of Wood Furnishings, and after doing so, not providing written notice to consumers of their right to cancel their order and receive a full refund or accept the balance of the contracted-for Furnishings at a later specified time (N.J.A.C. 13:45A-5.1(b));
- c. Delivering defective, damaged or otherwise non-conforming Wood Furnishings, and after doing so, not providing written notice to consumers of their right to

cancel their order and receive a full refund or accept the balance of the contracted-for Furnishings at a later specified time (N.J.A.C. 13:45A-5.1(a), (e));

- d. Not providing consumers with contract forms or sales documents in compliance with N.J.A.C. 13:45A-5.2(a) and (b);
- e. Not providing consumers with contract forms or sales documents in compliance with N.J.A.C. 13:45A-5.3(a); and
- f. Using terms in contract forms or sales documents such as “50 % non-refundable deposit required to commence any order” and “A NON-REFUNDABLE DEPOSIT is required to commence all orders”, which violate or are contrary to the rights and responsibilities provided for by the Furniture and Furnishings Regulations (N.J.A.C. 13:45A-5.3(c)).

56. The conduct of Defendants constitutes multiple violations of the Furniture and Furnishings Regulations, N.J.A.C. 13:45A-5.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

#### COUNT V

#### VIOLATION OF THE CFA AND THE FURNITURE AND FURNISHINGS REGULATIONS BY TUPPER

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

58. At all relevant times, Tupper has been an owner, Chief Executive Officer, President, officer, manager, director, employee, representative and/or agent of JLT Millworks and has controlled, directed and/or participated in the management and operation of that entity, including the conduct alleged in this Complaint.

59. Tupper’s conduct makes her personally liable for the violations of the CFA and the Furniture and Furnishings Regulations committed by JLT Millworks.

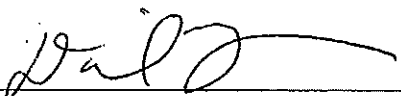
## PRAYER FOR RELIEF

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

- (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. and the Furniture and Furnishings Regulations, N.J.A.C. 13:45A-5.1 et seq.;
- (b) Permanently enjoining Defendants, along with their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or 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. and the Furniture and Furnishings Regulations, N.J.A.C. 13:45A-5.1 et seq., including, but not limited to the acts and practices alleged in this Complaint;
- (c) Permanently enjoining Tupper from managing or owning any business organization within this State and from serving as an officer, director, trustee, member of an executive board or similar governing body, principal, manager or stockholder owning 10% or more of the aggregate outstanding capital stock of all classes of any corporation doing business in this State, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Permanently vacating and/or annulling the corporate charter in the State of JLT Millworks, as authorized by the CFA, N.J.S.A. 56:8-8;
- (e) Directing the assessment of amounts against the 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;
- (f) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the CFA in accordance with N.J.S.A. 56:8-13;
- (g) Directing the assessment of costs and fees, including attorneys' fees, against the 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

(h) Granting such other relief as the interests of justice may require.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
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David M. Reap  
Deputy Attorney General

Dated: November 21, 2013  
Newark, New Jersey