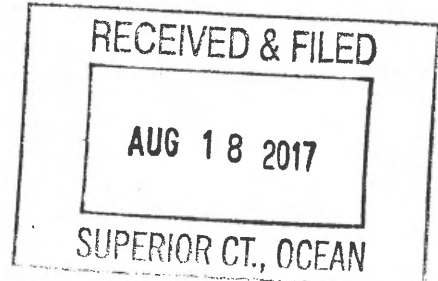


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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, OCEAN COUNTY
DOCKET NO. C-174-17

CHRISTOPHER S. PORRINO, Attorney General of the
State of New Jersey, and STEVE C. LEE, Director of the
New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

TMB SERVICES LIMITED LIABILITY COMPANY
a/k/a TMB SERVICES, LLC a/k/a TMB SERVICES;
TRACEY MCCLAIN a/k/a TRACEY JACOBS,
individually and as owner, officer, director, founder,
member, manager, representative and/or agent of TMB
SERVICES LIMITED LIABILITY COMPANY; JANE
AND JOHN DOES 1-20, individually and as owners,
officers, directors, shareholders, founders, members,
managers, employees, servants, agents, representatives
and/or independent contractors of TMB SERVICES
LIMITED LIABILITY COMPANY; and XYZ
CORPORATIONS 1-20,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Christopher S. Porrino, Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Steve C. Lee, Director of the New Jersey Division of Consumer Affairs ("Director") (collectively,

“Plaintiffs”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. In the wake of the devastation caused by Superstorm Sandy, it became necessary for homeowners across the State of New Jersey (“New Jersey” or “State”), to repair and/or elevate their existing homes to protect them from future storms. The Reconstruction, Rehabilitation, Elevation and Mitigation (“RREM”) Program was established by the New Jersey Department of Community Affairs (“DCA”) to provide grants to homeowners for, among other things, home repair, home elevation and new home construction.

2. At all relevant times, defendants TMB Services Limited Liability Company a/k/a TMB Services, LLC a/k/a TMB Services (“TMB Services”) and Tracey McClain a/k/a Tracey Jacobs (“McClain”) (collectively, “Defendants”), were engaged in the offer for sale, sale and performance of various home improvements and home elevations in New Jersey. TMB Services was among the contractors approved by the RREM Program for use by grant recipients.

3. The New Jersey Division of Consumer Affairs (“Division”) has received consumer complaints regarding the home improvements and/or home elevations performed by Defendants. The complaints have revealed multiple violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), the Contractors’ Registration Act, N.J.S.A. 56:8-136 et seq., and the regulations promulgated thereunder, specifically, the Regulations Governing Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. (“Contractor Registration Regulations”), the Regulations Governing Home Elevation Contractors, N.J.A.C. 13:45A-17A.1 et seq. (“Home Elevation Regulations”), and the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. (“Home Improvement Regulations”). Among other things, these alleged

violations arise from Defendants' failure to: (a) begin and/or complete the contracted-for home improvements and/or home elevations after receipt of RREM Program funds; (b) make the necessary repairs to correct substandard home improvements and/or home elevations; and (c) include required information in or with home improvement contracts or home elevation contracts. The Attorney General and the Director commence this action to halt Defendants' deceptive business practices and to obtain consumer restitution and other monetary relief.

PARTIES AND JURISDICTION

4. The Attorney General is charged with the responsibility of enforcing the CFA, the Contractors' Registration Act, and the regulations promulgated thereunder, specifically the Contractor Registration Regulations, the Home Elevation Regulations and the Home Improvement Regulations. The Director is charged with the responsibility of administering the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Elevation Regulations and the Home Improvement Regulations on behalf of the Attorney General.

5. By this action, the Attorney General and Director seek injunctive relief and other relief for violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Elevation Regulations and the Home Improvement 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.

6. Venue is proper in Ocean County, pursuant to R. 4:3-2, because it is a county in which Defendants have conducted business.

7. On May 22, 2013, TMB Services was registered as a foreign limited liability company in the State. On December 16, 2016, TMB Services' status was revoked for failure to pay annual fees.

8. At all relevant times, TMB Services has maintained the following business and/or mailing addresses: 1974 Ormond Blvd., Suite F, Destrehan, Louisiana 70047; and 303 Ormond Village Drive, Destrehan, Louisiana 70047 ("303 Ormond Village Drive").

9. TMB Services' registered agent in the State is Incorp Services Inc., with a mailing address of 208 West State Street, Trenton, New Jersey 08608.

10. At all relevant times, McClain has been an owner, President, officer, director, founder, member, manager, representative and/or agent of TMB Services and has controlled, directed and participated in the management and operation of TMB Services. McClain's current address is 303 Ormond Village Drive.

11. John and Jane Does 1 through 20 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, members, managers, agents, servants, employees, representatives and/or independent contractors of TMB Services 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. XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional business entities 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. Since at least September 2013, Defendants have been engaged in the offer for sale, sale and performance of home improvements in the State.

14. Since at least April 2014, Defendants have been engaged in the offer for sale, sale and performance of home elevations in the State.

15. At all relevant times, TMB Services was designated as an approved contractor with the RREM Program.

A. RREM Program:

16. The RREM Program, administered by DCA, consists of \$1.1 billion in federal funding provided through Community Development Block Grant Disaster Recovery funds allocated to New Jersey by the U.S. Department of Housing and Urban Development, to help eligible New Jersey homeowners repair or rebuild their Superstorm Sandy-damaged homes.

17. The RREM Program provides grants to homeowners with an income of \$250,000 or less, for activities necessary to restore their storm-damaged primary residences, including reconstruction, rehabilitation, elevation and/or other mitigation activities.

18. The RREM Program is open to homeowners whose primary residence is located in one of nine counties (Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean or Union) and whose homes suffered a loss of at least \$8,000 or one foot of water on the first floor, as verified by the Federal Emergency Management Agency ("FEMA") or its affiliates.

19. The RREM Program is intended to function as a bridge between the total cost of repairs and other funding the homeowner has received to repair or rebuild his or her home. The calculation of the RREM grant takes into consideration the cost of the repair or rebuilding and

funds the homeowner has received from other sources, such as insurance, FEMA, and non-profit organizations. The RREM grant may not exceed \$150,000 per homeowner.

20. The RREM Program Pathway B (“Pathway B”) is a program that allows eligible homeowners to select their own general contractor to repair or rebuild their home. The general contractor must be licensed and/or registered with the State, and compliant with all State and Federal regulations applicable to the RREM Program.

21. The RREM Program Pathway C (“Pathway C”) involves a pool of pre-qualified general contractors that have been pre-validated through a formal RREM Program process. All rehabilitation or reconstruction work is to be completed by an approved RREM Program contractor. A RREM Project Manager assists the homeowner in the development of a scope of work, contract pricing, and monitoring of construction. The RREM Project Manager assigns a contractor to a homeowner’s construction project. Thereafter, the RREM Project Manager works together with the contractor and homeowner on construction management tasks, forward movement of the project, and compliance with federal, state and RREM Program guidelines.

22. To date, the Division has obtained information regarding losses for three (3) consumers who contracted with Defendants as Pathway B or Pathway C homeowners. These consumers paid Defendants the aggregate amount of \$301,295.70 for home improvements and home elevations, which were not performed in whole or in part. The RREM consumers with identified losses, as well as the funds each paid to Defendants, are as follows:

Last Name	RREM Funds disbursed to consumer	Total RREM Funds Paid to Defendants	Estimated Restitution To Date	Work Contracted	Pathway
Allen	\$150,000.00	\$95,295.70	\$15,000.00	Home Improvements/Home Elevation	C
Hurd	\$147,199.85	\$56,000.00	\$18,087.40	Home Improvements/Home Elevation	B
Regan	\$150,000.00	\$150,000.00	\$56,464.95	Home Improvements/Home Elevation	C
Total	\$447,199.85	\$301,295.70	\$89,552.35		

**B. Home Improvement Contractor and
Home Elevation Contractor Registrations:**

23. On or about June 21, 2013, TMB Services submitted to the Division a Home Improvement Contractor Application for Initial Registration (“TMB HIC Application”) for registration with the Division as a home improvement contractor (“HIC”) in the State.

24. According to the TMB HIC Application, McClain owned fifty-one percent (51%) of TMB Services. On or about February 2, 2015, McClain notified the Division that her ownership interest in TMB Services had increased to seventy-five percent (75%).

25. McClain executed the TMB HIC Application as “President/Manager.”

26. On or about September 20, 2013, the Division registered TMB Services as a HIC and issued it registration number 13VH07679700.

27. TMB Services’ HIC registration with the Division expired on March 31, 2016.

28. On or about October 22, 2014, TMB Services submitted to the Division a Home Elevation Contractor Application for Initial Registration (“TMB HEC Application”) for registration with the Division as a home elevation contractor (“HEC”) in the State.

29. According to the TMB HEC Application, McClain owns seventy-five percent (75%) of TMB Services.

30. McClain executed the TMB HEC Application as “President.”

31. On or about December 11, 2014, the Division registered TMB Services as a HEC and issued it registration number 13HE00003000.

32. TMB Services’ IIEC registration with the Division expired on April 30, 2016.

C. Defendants’ Business Practices Generally:

33. At varying times, Defendants accepted consumer payments, which included RREM funds, and commenced home improvements and/or home elevations, only to abandon the project and not return to the consumers’ homes.

34. On at least one occasion, Defendants accepted consumer payments, which included RREM funds, and failed to begin contracted-for home improvements and home elevations.

35. At varying times, Defendants represented in home improvement contracts, home elevation contracts or otherwise, that they would begin or complete the home improvements and/or home elevations on a date certain or specified timetable, and then failed to do so.

36. At varying times, Defendants failed to give timely written notice to the consumer for any delay in the performance of the home improvements and/or home elevations and when the work would be completed.

37. At varying times, Defendants failed to respond to consumers’ inquiries as to when Defendants would continue and/or complete home improvements and/or home elevations that had been commenced, but then had been abandoned.

38. At varying times, Defendants performed home improvements and/or home elevations in a substandard manner (e.g. unsecured foundation).

39. At varying times, Defendants failed to make the necessary corrective repairs to correct substandard home improvements and/or home elevations.

40. At varying times, Defendants caused damage to a consumer's home and failed to make the necessary corrective repairs (c.g. damaged plumbing lines).

41. At varying times, consumers hired other contractors to correct and complete the home improvements and home elevations performed by Defendants and incurred substantial additional costs to do so.

42. At varying times, Defendants abandoned home improvements and/or home elevations and left the homes uninhabitable, which displaced the consumers and required the consumers to live elsewhere.

43. On at least one occasion, Defendants began a home elevation before the requisite permits were issued.

44. On at least one occasion, a consumer was issued a municipal Notice of Violation due to Defendants' failure to remove debris from a consumer's home and clean the jobsite.

45. On at least one occasion, Defendants failed to pay a subcontractor, which resulted in a lien placed on the consumer's property.

D. Defendants' Contracts and Correspondence:

46. In connection with their sale of home improvements and/or home elevations, Defendants utilized a contract titled "Contract Between Contractor and Owner" ("TMB Contract").

47. At varying times, the TMB Contract did not include: (a) an accurate description of the work to be done and the principal products and materials to be used or installed; (b) the terms and conditions affecting contract price, including the cost of materials and the hourly rate for labor; (c) the required "Notice to Consumer" cancellation language; (d) the toll-free telephone number provided by the Director of the Division for consumers making inquiries concerning HICs and/or HECs; and/or (e) signatures of all parties. Upon information and belief, Defendants did not otherwise provide this information to consumers who entered into TMB Contracts.

48. At varying times, Defendants failed to provide consumers with copies of their required insurance policies.

49. On at least one occasion, Defendants sent correspondence to a consumer that failed to include TMB Services' HIC and/or HEC registration numbers.

50. On at least one occasion, Defendants sent correspondence to a consumer that did not include the informational statement and toll-free telephone number provided by the Director of the Division for consumers making inquiries as to HICs and/or HECs.

E. Defendant Tracey McClain:

51. At varying times, McClain held herself out as President to consumers.

52. At varying times, McClain met with consumers concerning the contracted-for home improvements and/or home elevations.

53. In connection with at least one home elevation project, McClain collected and deposited consumer monies.

54. At varying times, McClain executed TMB Contracts for home improvements and/or home elevations.

55. At varying times, McClain sent correspondence to consumers regarding ongoing home improvements and home elevations.

56. According to McClain's resume, publicly available at <https://www.linkedin.com>, McClain participated in TMB Services' management and operation, as follows:

Tracey McClain

Destrehan, LA 70047

PROFESSIONAL EXPERIENCE

TMB Services, LLC

2008 - 2016

OWNER/PRESIDENT/OPERATIONS MANAGER

- Overseeing daily operations in a construction and home elevation business for 8 years
- Job requirements included: being hands on with certified payroll, accounts payable, accounts receivable, check and balance bank accounts, invoicing, ensuring insurances are in place, taking phone calls and many more daily duties.
- Negotiated, finalized and signed off on contracts ranging from \$10,000 to over \$1.5 Million.
- Attended homeowner outreach meetings and commercial conventions doing everything from setting up to breaking down our booth, made sure we had all needed materials for display and information purposes, answered questions to sell our services, explained what we could do for them that others may not be able to provide and made follow up calls to all that left their contact information.
- Responsible for hiring of employees by ensuring they have the qualifications required for that particular position, is safety conscious and willing to work as a team with fellow employees. Also responsible for firing of employees, if such occasion was necessary.
- Good communication with employees, fellow contractors and customers is the key in reassuring a positive working environment, continued business relationships and satisfied customers.

COUNT I

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

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

58. 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...

59. 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).

60. At all relevant times, Defendants have been engaged in the sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), including, but not limited to, home improvements and home elevations.

61. In the operation of their businesses, Defendants have engaged in the use of unconscionable commercial practices and/or misrepresentations.

62. Defendants have engaged in unconscionable commercial practices including, but not limited to, the following:

- a. Entering into TMB Contracts, accepting consumer payments and/or RREM funds and then failing to begin and/or complete the home improvements and/or home elevations specified in the TMB Contract;

- b. Entering into TMB Contracts and commencing home improvements and/or home elevations, only to abandon the project and fail to return to the consumer's home;
- c. Failing to begin or complete home improvements and/or home elevations on the agreed upon date or time period represented in the TMB Contract or in consumer correspondence;
- d. Failing to provide timely written notice for any delay in the performance of home improvements and/or home elevations, as well as when work would be completed;
- e. Performing home improvements and/or home elevations in a substandard manner (e.g. unsecured foundation) and then failing to make the necessary corrective repairs;
- f. Performing home improvements and/or home elevations in a substandard manner, which required a consumer to hire a second contractor to correct and complete Defendants' work, at substantial cost to the consumer;
- g. Causing damage to a consumer's home and failing to make the necessary corrective repairs (e.g. damaged plumbing lines);
- h. Beginning a home elevation before requisite permits were issued;
- i. Failing to remove debris from a consumer's home and clean the jobsite, which caused a municipal Notice of Violation to be issued against the consumer's property;
- j. Failing to pay a subcontractor, which resulted in a lien placed on the consumer's property;
- k. Abandoning jobs and leaving consumers' homes uninhabitable, thus requiring them to reside elsewhere; and
- l. Failing to respond to consumers' inquiries as to when Defendants would continue and/or complete home improvements and/or home elevations that had been commenced, but then abandoned.

63. 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 DEFENDANTS (MISREPRESENTATIONS)

64. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 63 above as if more fully set forth herein.

65. Defendants' conduct in violation of the CFA includes, but is not limited to, the following misrepresentations:

- a. Representing to consumers through the TMB Contract or otherwise, that Defendants would begin or complete home improvements and/or home elevations on a date certain or specified timetable, when such was not the case.

66. Each misrepresentation by Defendants constitutes a separate violation under CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATION OF THE CONTRACTORS' REGISTRATION ACT 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 Contractors' Registration Act, among other things, governs the registration of home improvement contractors with the Division.

69. The Contractors' Registration Act is applicable to HECs, pursuant to N.J.S.A. 56:8-138.2(a).

70. "Contractor," as defined in the Contractors' Registration Act, N.J.S.A. 56:8-137, includes HECs.

71. "Home Improvement[s]" as defined in the Contractors' Registration Act, N.J.S.A. 56:8-137, includes home elevations.

72. “Home Improvement Contracts” as defined in the Contractors’ Registration Act, N.J.S.A. 56:8-137, includes contracts for home elevations.

73. At all relevant times, Defendants have been “Contractor[s]” within the definition of the Contractors’ Registration Act, N.J.S.A. 56:8-137.

74. At all relevant times, Defendants have offered to perform and performed “Home Improvement[s]” within the definition of the Contractors’ Registration Act, N.J.S.A. 56:8-137.

75. At all relevant times, Defendants have entered into “Home Improvement Contract[s]” within the definition of the Contractors’ Registration Act, N.J.S.A. 56:8-137.

76. At all relevant times, Defendants were not exempt from the Contractors’ Registration Act, pursuant to N.J.S.A. 56:8-140.

77. The Contractors’ Registration Act requires that certain information must be displayed by the Contractor and provides in pertinent part:

All registrants shall prominently display their registration numbers within their places of business, in all advertisements distributed within this State, on business documents, contracts and correspondence with consumers of home improvement services in this State

[N.J.S.A. 56:8-144(a).]

78. The Contractors’ Registration Act further provides that “[t]he Director shall provide a toll-free telephone number for consumers making inquiries regarding contractors.” N.J.S.A. 56:8-149(b). At all relevant times, the Director established and has published such toll-free telephone number.

79. In this regard, the Contractors’ Registration Act requires that:

b. Any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided pursuant to [N.J.S.A. 56:8-149] of this Act.

[N.J.S.A. 56:8-144(b).]

80. Moreover, the Contractors' Registration Act includes a writing requirement for contracts priced in excess of \$500.00 and provides, in pertinent part:

a. On or after December 31, 2005, every home improvement contract for a purchase price in excess of \$500, and all changes in the terms and conditions of the contract, shall be in writing. The contract shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including but not limited to:

. . . .

(2) A copy of the certificate of commercial general liability insurance required of a contractor pursuant to [N.J.S.A. 56:8-142] of this act and the telephone number of the insurance company issuing the certificate; and

(3) The total price or other consideration to be paid by the owner, including the finance charges.

[N.J.S.A. 56:8-151(a).]

81. In addition, the Contractors' Registration Act requires that Home Improvement Contracts include cancellation language as follows:

b. . . . The contract shall contain a conspicuous notice printed in at least 10-point bold-faced type as follows:

“NOTICE TO CONSUMER

YOU MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIVING A COPY OF THIS CONTRACT. IF YOU WISH TO CANCEL THIS CONTRACT, YOU MUST EITHER:

1. SEND A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR

2. PERSONALLY DELIVER A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION TO:

(Name of Contractor)

(Address of Contractor)

(Phone Number of Contractor)

If you cancel this contract within the three-day period, you are entitled to a full refund of your money. Refunds must be made within 30 days of the contractor's receipt of the cancellation notice."

[N.J.S.A. 56:8-151(b).]

82. Defendants have engaged in conduct in violation of the Contractors' Registration Act including, but not limited to, the following:

- a. Failing to include HIC and/or HEC registration numbers on consumer correspondence (N.J.S.A. 56:8-144(a));
- b. Failing to include on TMB Contracts and consumer correspondence, the toll-free telephone number provided by the Director for consumers to call with inquiries or complaints concerning contractors (N.J.S.A. 56:8-144(b));
- c. Failing to set forth the signatures of both parties to the TMB Contract (N.J.S.A. 56:8-151(a));
- d. Failing to include with TMB Contracts a copy of Defendants' certificate of commercial general liability insurance as well as the telephone number of the company issuing the certificate (N.J.S.A. 56:8-151(a)(2));
- e. Failing to include in TMB Contracts all the terms and conditions affecting price (e.g. hourly rate for labor) (N.J.S.A. 56:8-151(a)(3)); and
- f. Failing to include the "Notice to Consumer" required cancellation language in TMB Contracts (N.J.S.A. 56:8-151(b)).

83. Defendants' conduct constitutes multiple violations of the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq.

COUNT IV

**VIOLATION OF THE CONTRACTOR
REGISTRATION REGULATIONS BY DEFENDANTS**

84. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 83 above as if more fully set forth herein.

85. The Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., among other things, provide procedures for the registration of HICs with the Division.

86. HECs and home elevations are included within the respective definitions of HICs and home improvements, pursuant to N.J.A.C. 13:45A-17.2.

87. At all relevant times, Defendants have been a “Home Improvement Contractor” and/or “Contractor” within the definition of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

88. At all relevant times, Defendants have performed “Home Improvement[s]” within the definition of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

89. At all relevant times, Defendants have “advertise[d]” home improvements within the meaning of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

90. At all relevant times, Defendants have entered into “Home Improvement Contract[s]” within the definition of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

91. The Contractor Registration Regulations require that HICs and HECs prominently display certain information and provide, in pertinent part:

(d) A registered home improvement contractor shall prominently display:

. . . .

2. The contractor's registration number on all advertisements distributed within this State, on business documents, contracts and correspondence with consumers of home improvement services within the State.

(f) Any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided by the Division pursuant to (b) of N.J.S.A. 56:8-149 and shall be displayed in all caps in at least 10-point bold-face type as follows: FOR INFORMATION ABOUT CONTRACTORS AND THE CONTRACTORS' REGISTRATION ACT, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS AT 1-888-656-6225.

[N.J.A.C. 13:45A-17.11(d)(2), (f).]

92. Further, the Contractor Registration Regulations provide that:

In addition to the requirements of a home improvement contract pursuant to N.J.A.C. 13:45A-16.2, every home improvement contract in which a person required to be registered as a home improvement contractor is a party shall comply with the provisions of N.J.S.A. 56:8-151.

[N.J.A.C. 13:45A-17.13.]

93. Defendants have engaged in conduct in violation of the Contractor Registration Regulations including, but not limited to, the following:

- a. Failing to include TMB Services' HIC and/or HEC registration numbers on all consumer correspondence (N.J.A.C. 13:45A-17.11(d)(2));
- b. Failing to include on TMB Contracts and consumer correspondence the informational statement and toll-free telephone number provided by the Director for consumers making inquiries regarding contractors (N.J.A.C. 13:45A-17.11(f)); and
- c. Entering into TMB Contracts that did not comply with the requirements of N.J.S.A. 56:8-151 (e.g., failing to include the "Notice to Consumer" required cancellation language) (N.J.A.C. 13:45A-17.13).

94. Defendants' conduct constitutes multiple violations of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 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 HOME ELEVATION
REGULATIONS BY DEFENDANTS**

95. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 94 above as if more fully set forth herein.

96. The Home Elevation Regulations among other things, govern the registration of home elevation contractors with the Division.

97. At all relevant times, Defendants have been a “Home Elevation Contractor” within the definition of the Home Elevation Regulations, N.J.A.C. 13:45A-17A.2.

98. At all relevant times, Defendants have performed “Home Elevation[s]” within the definition of the Home Elevation Regulations, N.J.A.C. 13:45A-17A.2.

99. At all relevant times, Defendants have entered into “Home Elevation Contract[s]” within the definition of the Home Elevation Regulations, N.J.A.C. 13:45A-17A.2.

100. The Home Elevation Regulations, specifically, N.J.A.C. 13:45A-17A.10, require that certain information must be displayed by the HEC and provides in pertinent part:

(d) A registered home elevation contractor shall prominently display:

. . . .

2. The home elevation contractor’s registration number on all advertisements distributed within this State, on business documents and contracts, and on correspondence with consumers of home elevation services in this State.

. . . .

(f) Any invoice, contract, or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided by the Division pursuant to N.J.S.A. 56:8-149(b), which shall be displayed in all caps in at least 10-point boldface type as follows: FOR INFORMATION ABOUT CONTRACTORS AND THE CONTRACTORS’ REGISTRATION ACT, CONTACT THE NEW

JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION
OF CONSUMER AFFAIRS AT 1-888-656-6225.

[N.J.A.C. 13:45A-17A.10(d)(2), (f).]

101. The Home Elevation Regulations require that HECs maintain insurance and provides in pertinent part:

[E]very registered home elevation contractor or applicant seeking to become registered as a home elevation contractor shall secure and maintain in full force and effect during the entire term of registration:

1. Cargo, structural movers cargo, builders risk, riggers liability, care custody and control, or any other insurance policies that together are broad enough to cover the following risk of loss to the homeowner's dwelling, other structures, and personal property during the contracted elevation operations: perils typically insured under a "special form" homeowners policy, including damage caused by the negligence of the contractor and its subcontractors. Certificates of insurance for these policies shall be provided to the homeowner.

[N.J.A.C. 13:45A-17A.11(b)(1).]

102. Defendants have engaged in conduct in violation of the Home Elevation Regulations including, but not limited to, the following:

- a. Failing to include TMB Services' HEC registration number on all consumer correspondence (N.J.A.C. 13:45A-17A.10(d)(2));
- b. Failing to include on consumer correspondence the informational statement and toll-free telephone number provided by the Director for consumers making inquiries regarding HECs (N.J.A.C. 13:45A-17A.10(f)); and
- c. Failing to provide consumers with proof of Defendants' required insurance policies (N.J.A.C. 13:45A-17A.11(b)(1)).

103. Defendants' conduct constitutes multiple violations of the Home Elevation Regulations, N.J.A.C. 13:45A-17A.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

COUNT VI

**VIOLATION OF THE HOME IMPROVEMENT
REGULATIONS BY DEFENDANTS**

104. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 103 above as if more fully set forth herein.

105. The Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., among other things, prohibit certain acts and practices of a seller connected with a sale, advertisement or performance of home improvement contracts.

106. Defendants are “Seller[s]” within the definition of N.J.A.C. 13:45A-16.1.

107. The Home Elevation Contractor Regulations, N.J.A.C. 13:45A-17A.12, provide that the requirements of N.J.A.C. 13:45A-16.2 related to a home improvement contract pertain to every home elevation contract.

108. The Home Improvement Regulations prohibit certain practices with regard to the performance of home improvement contracts, as follows:

- a. Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization by a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder.

. . . .

7. Performance:

. . . .

- ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or.

- iii. Fail to give timely written notice to the buyer of reasons, beyond the seller's control for any delay in the performance and when work will begin or be completed.

....

10. Building Permits:

- i. No seller contracting for the making of home improvements shall commence work until he is sure that all applicable state or local building and construction permits have been issued as required under state laws or local ordinances

[N.J.A.C. 13:45A-16.2(a)(7)(ii-iii), (10)(i).]

109. Additionally, the Home Improvement Regulations include a writing requirement for contracts in excess of \$500.00 and provide, in pertinent part:

- 12. Home improvement contract requirements-writing requirement: All home improvement contracts for a purchase price in excess of \$500.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including, but not limited to, the following:

....

- ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products are to be used, a

description of such products or materials shall be clearly set forth in the contract;

- iii. The total price or other consideration to be paid by the buyer, including all finance charges. If the contract is one for time and materials, the hourly rate for labor and all other terms and conditions of the contract affecting price shall be clearly stated;

[N.J.A.C. 13:45A-16.2(a)(12)(ii)-(iii).]

110. Defendants violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to, the following:

- a. Failing to complete home improvements and/or home elevations on the date or within the time period specified in the TMB Contract or otherwise represented (N.J.A.C. 13:45A-16.2(a)(7)(ii));
- b. Failing to give timely written notice to consumers of reasons, beyond Defendants' control, for any delay in the completion of home improvements and/or home elevations (N.J.A.C. 13:45A-16.2(a)(7)(iii));
- c. Commencing home improvements without obtaining the requisite permits (N.J.A.C. 13:45A-16.2(a)(10)(i));
- d. Failing to include in TMB Contracts the signatures of all parties (N.J.A.C. 13:45A-16.2(a)(12));
- e. Failing to include in TMB Contracts a description of the work to be done and the principal products and materials to be used or installed (N.J.A.C. 13:45A-16.2(a)(12)(ii)); and
- f. Failing to include in TMB Contracts the total price to be paid including the hourly rate for labor and all other terms and conditions affecting price (N.J.A.C. 13:45A-16.2(a)(12)(iii)).

111. Defendants' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

COUNT VII

VIOLATION OF THE CFA, THE CONTRACTORS' REGISTRATION ACT, THE CONTRACTOR REGISTRATION REGULATIONS, THE HOME ELEVATION REGULATIONS, AND/OR THE HOME IMPROVEMENT REGULATIONS BY MCCLAIN

112. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 111 above as if more fully set forth herein.

113. At all relevant times, McClain has been an owner, President, officer, director, founder, member, manager, representative and/or agent of TMB Services and has controlled, directed and participated in the management and operation of TMB Services.

114. In that capacity, McClain, among other things, actively participated in TMB Services' management and operation as follows: (a) oversaw the daily operations of TMB Services; (b) negotiated and executed contracts for home improvements and/or home elevations; (c) sent correspondence to consumers regarding ongoing home improvements and home elevations; (d) collected and deposited consumer monies; (e) met with consumers concerning the contracted-for home improvements and/or home elevations; and (f) held herself out as President to consumers.

115. The conduct of McClain makes her personally liable for the violations of the CFA, the Contractors' Registration Act, the Contractor Registration Regulations, the Home Elevation Regulations, and/or the Home Improvement Regulations committed by TMB Services.

PRAYER FOR RELIEF

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

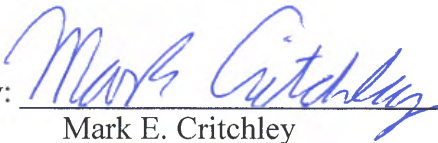
- (a) Finding that the acts and practices of Defendants constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the

Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., the Home Elevation Regulations, N.J.A.C. 13:45A-17A.1 et seq., and/or the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;

- (b) Permanently enjoining Defendants and their owners, officers, directors, shareholders, founders, members, managers, agents, servants, employees, representatives, independent contractors 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., the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., the Home Elevation Regulations, N.J.A.C. 13:45A-17A.1 et seq., and/or the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint, as authorized by the CFA, N.J.S.A. 56:8-8;
- (c) Permanently enjoining Defendants from owning, operating or otherwise managing any business or other entity in the State, whether registered with the Division or not, that advertises, offers for sale, sells and/or performs home improvements, including home elevations, within the State;
- (d) Permanently enjoining Defendants from the advertisement, offer for sale, sale and performance of home improvements, including home elevations, within the State;
- (e) Cancelling the Certificate of Formation in the State for TMB Services;
- (f) Permanently revoking the HIC and HEC registrations issued to TMB Services;
- (g) Directing 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 N.J.S.A. 56:8-8;
- (h) Directing Defendants, jointly and severally, to disgorge to the New Jersey Department of Community Affairs, RREM funds unlawfully acquired or retained, as authorized by N.J.S.A. 56:8-8;
- (i) Directing Defendants, jointly and severally, to pay the maximum statutory civil penalties for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (j) Directing Defendants, jointly and severally, to pay costs and fees, including attorneys' fees, 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

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

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs


By: 
Mark E. Critchley
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: August 17, 2017
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 Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., the Home Elevation Regulations, N.J.A.C. 13:45A-17.1 et seq., and/or the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 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 Defendants, including at least one action involving consumer fraud allegations, entitled Steven & Jeanine Fritts v. State of New Jersey, et al., OCN-L-203-17. I further certify, to the best of my information and belief, 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.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

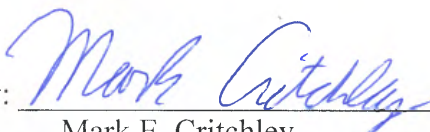
By: 
Mark E. Critchley
Deputy Attorney General
Consumer Fraud Prosecution

Dated: August 17, 2017
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 R. 1:38-7(b).

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

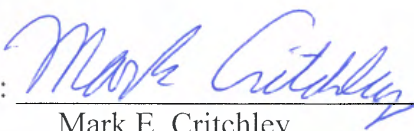
By: 
Mark E. Critchley
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: August 17, 2017
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Mark E. Critchley is hereby designated as trial counsel for the Plaintiffs in this action.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Mark E. Critchley
Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: August 17, 2017
Newark, New Jersey