IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation Appellant(s), v. STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF INSURANCE, a Nevada Administrative agency, Respondent(s).	Case No. 80218 First Judicial District Court No. 17 OC 00269 1B

Appeal First Judicial District Court, State of Nevada, County of Carson
The Honorable James T. Russell, District Judge

RESPONDENT'S APPENDIX
VOLUME II OF V

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Docket 80218 Document 2020-23725

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Exhibit HH: HWAN Files for Complainants (Original Exhibit 1666 Pages) (Redacted for Relevance and Brevity) Included Pages: (16-20, 43-47, 86-90,172-176, 359-363, 465-469, 541-545, 831-835) Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	09/06/17	V	AA003212- AA003251
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Exhibit D: Certificate of Incorporation: Home Warranty Administrator of Oklahoma, Inc. (Certified) Continuation from Appellant's Appendix (Vol. III) Hearing Exhibit List by HWAN (Cause No. 17.0050) (09/06/17)	08/04/10	III	AA003078
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the **RESPONDENT'S APPENDIX (VOLUME II OF V)** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on June 24, 2020.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system as indicated below:

Constance L. Akridge, Esq.
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/s/ Marilyn Millam
an employee of the Office of the Attorney General

Demand for Hearing. The purpose of said Demand for Hearing is to contest the Commissioner's Order to Cease and Desist, No. 10-0199, dated October 21. 2010.

On Monday, November 15, 2010, the undersigned held a first prehearing teleconference in this matter. Mr. Darren Oved, Esq., of Oved & Oved LLP, in New York, New York, appeared on behalf of Respondents. The Commissioner appeared pro se, by and through Mr. Alan M. Singer, Esq., Staff Attorney in the Commissioner's Legal Affairs Division. During said prehearing conference, the undersigned reviewed administrative procedure to be expected at hearing, citing Title 48 RCW, relevant sections of which are set forth in the Order to Cease and Desist, and 34 RCW, the Administrative Procedures Act and addressed all questions and concerns of the parties. By agreement of the parties, a hearing was scheduled to commence at 10:00 a.m. on either January 10, 2011.

During said first prehearing conference, Respondents were advised that RCW 48.04.020(1) does not provide for an automatic stay of the Commissioner's subject Order to Cease and Desist, which was by its terms made effective immediately. The undersigned advised, however, that pursuant to RCW 48.04.020(2), the undersigned would consider a motion for discretionary stay pending the outcome of the hearing. Upon Respondents' request for oral argument on its motion for a discretionary stay, the parties agreed to a schedule for submission of written briefs and agreed that oral argument on Respondents' motion should be held on November 30.

Accordingly, on November 22, 2010, Respondents filed their letter brief in support of their Motion for Discretionary Stay and on November 29 the Commissioner filed his brief in opposition to Respondents' Motion for Discretionary Stay, and on November 30 the parties presented oral argument before the undersigned, by telephone, on this Motion.

Based upon the arguments of the parties both in briefs and during oral argument on Respondents' Motion for Discretionary Stay, and upon RCW 48.04.020, the undersigned has determined that there is insufficient evidence to support a discretionary stay herein, for the reasons stated in the Commissioner's brief. Of particular significance, the Order to Cease and Desist by its terms became effective upon entry on October 21, 2010. While Respondents allege that they have ceased solicitation and sale of the subject product in Washington as ordered (presumably in complete compliance with Order Nos. A through D in the Order to Cease and Desist), said Order also requires that Respondents *shall mail a copy of this order to each Washington resident to whom Respondents have sold a home warranty service contract, and that Respondents report to the OIC all premiums collected or charged for policies they sold covering Washington risks* [i.e. by October 31, 2010]. Respondents argue that 1) the Commissioner is not authorized to include mandates in his Cease and Desist Order such as requiring Respondents to notify their Washington customers or, apparently, reporting to the Commissioner all premiums collected or charged for service contracts they sold covering Washington risks. This argument is without merit: Title 48 RCW and particularly RCW 48.02.080 and related statutes and case law clearly authorize the Commissioner to order Respondents to notify their consumers and report to the Commissioner along with other remedial measures the Commissioner reasonably related to the disciplinary action. Further, 2) Respondents argue that they will suffer irreparable harm if they are required to notify their Washington customers of the Commissioner's action. Based upon the evidence presented,

ORDER ON RESPONDENTS' MOTION FOR DISCRETIONARY STAY
CHW GROUP, INC., No. 10-0199

Respondents have presented insufficient evidence to support a conclusion that they will suffer irreparable harm, and the undersigned has concluded that the benefit to consumers of receiving a copy of the Cease and Desist Order from Respondents outweighs any concern of harm, particularly, as suggested by the Commissioner, because Respondents can include their own reasonable letter explaining that they have appealed the Commissioner's action and a final decision has not been made. Finally, 3) the Commissioner's interest in receiving a report from Respondents detailing all premiums collected or charged for service contracts they sold covering Washington risks by October 31, 2010 causes no potential harm to the Respondents.

Based upon the above activity,

IT IS HEREBY ORDERED that Respondents' Motion for Discretionary Stay herein is DENIED.

IT IS FURTHER ORDERED that, recognizing that Respondents have not yet sent a copy of the Order to Cease and Desist or, apparently, reported to the OIC all premiums collected or charged for policies they sold covering Washington risks as required in the Order to Cease and Desist, Respondents are therefore hereby ordered to send notice to their customers in accordance with the Order to Cease and Desist immediately. Further, if they have not already done so, Respondents are hereby ordered to immediately report to the Commissioner in accordance with the Order to Cease and Desist.

ENTERED AT TUMWATER, WASHINGTON, this 1st day of December, 2010, pursuant to Title 48 RCW, Title 34 RCW regulations applicable thereto.

PATRICIA D. PETERSEN
Chief Hearing Officer
Presiding Officer

DECLARATION OF MAILING
I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to Darren Oved, Esq. & Alan H. Singer, Esq.
DATED this 2nd day of December
at Tumwater, Washington
Signed:

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

CHW GROUP, INC., doing business as CHOICE HOME WARRANTY and www.ChoiceHomeWarranty.com, VICTOR MANDALAWI, "JAMES MOSS," DAVID BAILEY, STEVEN SAFDIEH, MICHAEL GUTHOLC Unauthorized Individuals and Entities, Respondents.	Docket No. 10-0199 OIC'S RESPONSE AND OPPOSITION TO CHOICE HOME WARRANY'S REQUEST FOR A DISCRETIONARY STAY

I. INTRODUCTION

The Washington State Office of the Insurance Commissioner ("OIC") received a Washington consumer's complaint about Choice Home Warranty and its contracts. After learning that Respondents had sold dozens of such contracts to dozens of Washington residents and that none of the Respondents had licenses or other authority to transact insurance or provide service contracts in the State of Washington, OIC entered an Order to Cease and Desist ("Order.")

OIC's Order properly instructed the Respondents immediately to stop transacting the unauthorized business of insurance and stop acting as an unregistered service contract provider. To protect the at least dozens of directly impacted Washington residents, the Order also appropriately directed Respondents to send each such Washington resident a copy of the Order within ten days. In addition, since unauthorized insurers must also pay premium taxes, the Order also appropriately directed the Respondents to inform the OIC of the total amount of Washington premium monies they have collected to date.

Respondents since filed a "letter brief" ("Respondents' Letter Brief"), objecting to the Order and asking for a "discretionary stay." But none of their reasons for a stay has merit:

- They ask for a stay because, essentially, they think the Order is moot. They assert that since they already stopped selling new contracts in Washington, except for "continued fulfillment" of existing contracts, there is no need for an order, so the Order should be stayed. However, Respondents have provided no evidence to back their assertions, even if it is true that no new contracts are being issued, nor have they given legal grounds why alleged mootness of an order would support staying that order.

- They ask for a stay because they believe the Order's requirement to mail a copy to existing Washington customers "far exceeds the OIC's statutory powers" and will cause "irreparable damage to [Choice Home Warranty's] business and goodwill." Not only are such arguments baseless,[1] they are unsupported by evidence, unaccompanied by supporting legal authority, and are even contrary to the Code.

- They ask for a stay because they think the Order is "entirely too broad" by finding that their product is "insurance" (and "entirely erroneous," to boot), and they speculate that the Order will cause "imminent threat of litigation from consumers, potential criminal prosecution, and potential tax liabilities." Such fears are not grounded in any facts in the record. As with the rest of their arguments, this one is also not supported by evidence or citation to any supporting legal authorities. Respondents submitted no credible evidence to prove that specific litigation, prosecution, or 'tax liability' is even remotely *possible*, let alone "imminent," and because of the OIC's Order.

- They ask for a stay because their attorney writes that he thinks that three of their "employees" (with "Vice President" titles) David Bailey, Steven Safdieh, and Michael Gutholc "may be subject to lawsuits against them personally," and "may have their personal credit impacted negatively if the Order is recorded against them." Again, such speculation has no needed evidentiary support, nor has Respondents' Letter Brief cited any legal authority that would purportedly support this as a good reason to grant their request for a stay.

On the other hand, there are numerous questions as to various unsupported assertions in the Letter Brief. For example, page 1 represents that "CHW believed that its activities in Washington were exempt from regulation pursuant to RCW 48.110.015(1)(a),"[2] and then asserts "but in an abundance of caution CHW contacted OIC to provide it with the information necessary to obtain the appropriate registration in the State of Washington[...]."

[1] Not only is the OIC authorized to include such a requirement in its Order, but Choice Home Warranty's assertion that it has *any* "goodwill" seems refuted by reading some of the volume of consumer complaints easily found through a simple Internet search using Google and search terms like "Choice Home Warranty and fraud" or "Choice Home Warranty and scam," for example. *See* e.g., Decl. Singer Exhs. L and M.

[2] The Letter Brief makes this representation without reconciling the definition of "warranty" contained in RCW 48.110.020(21). Nor does the Letter Brief supply any evidence to explain or prove the veracity of the "belief" Choice Home Warranty supposedly held as to its exemption under RCW 48.110.015(1)(a).

Yet, the facts of record appear to show that OIC only began investigating Choice Home Warranty *after* a Washington consumer's complaint to OIC about Choice Home Warranty and its alleged refusal to pay claims, not before. *See* Decl. Singer Exhs. A-B.[3] And while the Letter Brief also asserts that "in the interest of full disclosure, CHW provided OIC with a list of employees working for CHW and a description of the titles within the company," the evidence of record disputes this. The evidence shows that this list was given to OIC only in response to a request for all Choice Home Warranty "owners, officers, and principals," not its employees, and that other known employees were not included in this supposedly "full disclosure" of 'employees.' *See*, e.g., Decl. Singer Exhs. D, E, and F.

This all amplifies the conclusion that there are not good grounds for a stay. Not only does Respondents' Letter Brief fail to dispute that they are not licensed or authorized by OIC, it even appears to concede the Code violations forming the basis of the Order: "at most, CHW is a service contract provider." *See* Letter Brief at p. 2-3. No stay should be granted.

II. EVIDENCE RELIED UPON

This Response and Opposition relies upon the declaration of Alan Michael Singer ("Decl. Singer"), and the Chief Hearing Officer's files and records herein.

III. STATEMENT OF FACTS

On May 28, 2010, a Washington consumer wrote a complaint to OIC about Choice Home Warranty, alleging that the company wrongly denied claims and may have been operating in violation of the Washington Insurance Code. Decl. Singer Exh. A. The New Jersey Better Business Bureau apparently gave the company an "F" rating, and indicated "James Moss" is Choice Home Warranty's President. Decl. Singer Exh. B.[4] OIC Investigator

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[3] In fact, Choice Home Warranty eventually affirmed that it believed its denial of the Washington consumer's claims was "proper." Decl. Singer Exh. K.

[4] *See also* Choice Home Warranty's website blog, Decl. Singer Exh. N.

Michael Bertrand wrote a June 15, 2010 letter to "James Moss" and asked the company to answer a number of questions about its activities in Washington. Decl. Singer Exh. C.

On July 13, 2010, after the company failed to respond to Investigator Bertrand's letter, OIC staff made further attempts to ask Choice Home Warranty questions about its activities in Washington. Decl. Singer Exhs. D-E. The company was asked about the status of the company's responses to the various questions posed in Mr. Bertrand's letter, and was also asked several further questions. One such question asked the company to please provide "a list of [Choice Home Warranty's] owners, officers, and principals," not its employees. Decl. Singer Exh. E.

On July 26, 2010, Choice Home Warranty's (prior) counsel, Art Chartrand, provided the first responses to some of the OIC's earlier unanswered questions to Choice Home Warranty. Decl. Singer Exh. F. Consistent with New Jersey incorporation records for the parent entity "CHW Group, Inc.," Mr. Chartrand's letter identified the company's "officers" as including Victor Mandalawi – who was also Choice Home Warranty's "principal" and "sole stockholder/owner" – and several "Vice Presidents," David Bailey, Steven Safdieh, and Michael Gutholc. *Id.* However, "James Moss" was not among them. *Id.*

On August 9, 2010, Mr. Chartrand was asked a few follow-up questions based on some responses in his July 26, 2010 letter. Decl. Singer Exh. G. On August 11, 2010, Mr. Chartrand sent a responsive e-mail alluding to rolling the Washington Choice Home Warranty customers into some other, unnamed "corporation" entity. Decl. Singer Exh. H. His responsive e-mail also attached a PDF document listing "80-some" actual "current" Washington residents to whom Choice Home Warranty had sold contracts. *Id.*

Meanwhile, on July 23, 2010, the California Insurance Commissioner had issued a four-page cease and desist order against Choice Home Warranty. Decl Singer Exh. I. The order also notified the company that it could face possible monetary penalties as well. *Id.* On August 19, 2010, the California Insurance Commissioner entered another order, this one making its July 23 order against Choice Home Warranty "final," and directing the company to show cause why monetary penalties should not also be imposed. *Id.* On October 12, 2010, the California Insurance Commissioner issued yet another order, this one purporting to impose a $3,530,000 penalty against Choice Home Warranty. *Id.*

On September 1, 2010, the OIC received Victor Mandalawi's August 31, 2010 Application for Registration as a Service Contract Provider in the State of Washington for the corporation entity, "Home Warranty Administrators. Decl. Singer Exh. J. Mr. Mandalawi's biography submitted with this application failed to indicate he had any connection to Choice Home Warranty, though. *Id.*; *cf*, Decl. Singer Exh. F. And even though the State of California had by then issued at least two separate cease and desist orders against Choice Home Warranty and "its officers, directors, employees, trustees, agents, affiliates and service representatives" (*see* Decl. Singer Exh. I), Mr. Mandalawi's application failed to mention such orders existed. Decl. Singer Exh. J. In fact, the application failed to mention "Choice Home Warranty" or "CHW Group, Inc." at al in his application. On September 15, 2010, Mr. Mandalawi withdrew the application. *Id.*

In one threaded consumer complaint on the Internet concerning "National Home Protection," some comments alleged a possible connection between Choice Home Warranty and National Home Protection. *See* Decl. Singer Exh. O. "James Moss" denied any such connection. Decl. Singer Exh. M. On August 31, 2010, Mr. Chartrand was asked to provide a copy of a driver's license of "James Moss" and answer questions about connections between Choice Home Warranty and one of National Home Protection's principals, Victor Hakim. While he promised to provide answers by Friday September 10, 2010, but on Monday, September 13, 2010, Mr. Chartrand withdrew. *See* Decl. Singer at ¶10 and Exhs. P, Q.

On October 18, 2010, Choice Home Warranty provided a letter to the Washington consumer whose complaint led to OIC's investigation, denying nearly all the consumer's claims and indicating that it believed denial was "proper." Decl. Singer Exh. K.

IV. ARGUMENT

A. The OIC is authorized to issue a cease and desist order to unauthorized insurers or unregistered service contract providers.

The Commissioner "must enforce" the Insurance Code and, in doing so, may "conduct investigations to determine whether any person has violated any provision of this code." RCW 48.02.060(2) and (3)(b); *see also* RCW 48.110.120(1). If the Commissioner finds that a person has violated the Code by having issued insurance or service contracts without being properly authorized or registered, the Commissioner may issue a cease and desist order. *See,* e.g, RCW 48.15.023(5)(a)(i), RCW 48.02.080(3)(a), and RCW 48.110.120(2). Protecting Washington consumers is of prime importance. *See*, e.g., RCW 48.01.030.

B. Choice Home Warranty's contract is both "insurance" and a "service contract."

Under Washington's Insurance Code it seems clear that Choice Home Warranty's contract is both "insurance" and a "service contract." The contract's operative terms require consumers to pay an amount over and beyond the home purchase price, for coverage that lasts for a set period or duration.[5] In exchange, Choice Home Warranty undertakes to indemnify the consumer or pay a specified amount upon determinable contingencies. Clearly, this meets RCW 48.01.040's definition of "insurance," but it is also meets RCW 48.110.020(17)'s definition of a "service contract" because Choice Home Warranty promises to pay for the repair or replacement of covered items' failure due to normal wear and tear. This requires Choice Home Warranty to be fully compliant with Chapter 110 of the Code in order to become exempt from other Code provisions. RCW 48.110.033(2).

C. OIC acted well within its authority to issue the Order against Respondents.

OIC learned about Choice Home Warranty because a Washington consumer filed a complaint not unlike the many other complaints about the company on the Internet. *Compare* Decl. Singer Exh. A with Exhs. K-M. Choice Home Warranty solicits its home warranties

[5] The contract is included in the attached Exhibit F to the Declaration of Alan Michael Singer, filed herewith.

through a website (http://www.choicehomewarranty.com/homeowners_whats_covered.php). which indicates that a wide variety of systems and appliances within the home are supposedly "covered" in the event of failure due to normal wear and tear. *See*, e.g., Decl. Singer Exh. F. Yet, despite the website's suggestion of providing broad coverage, many consumer complaints on the Internet appear to allege that the company has acted unfairly and has relied on extensive limitations, conditions, and exclusions from the coverage it purports to offer. *See* Decl. Singer Exh. F; *see also* Decl. Singer Exhs. K-M. Respondents' counsel informed OIC that Victor Mandalawi, David Bailey, Steven Safdieh, and Michael Gutholc were "officers" of the business; and Mr. Chartrand also informed OIC that Respondents had sold dozens of contracts to residents of Washington. Decl. Singer Exhs. F and H. In the complaining Washington consumer's case, Choice Home Warranty felt its denial of almost all of the Washington consumer's claims was "proper." Decl. Singer Exh. K.

In addition, other questions about Choice Home Warranty remain unanswered. For example, despite references to its "President" being "James Moss" (*see* e.g., Decl. Singer Exhs. M and N and http://www.pr.com/press-release/166783) and possible connections to National Home Protection (*see* http://www.ag.ny.gov/media_center/2009/dec/dec15a_09.html and Decl. Singer Exhs. B, M, N, and O), Respondents never explained who "James Moss" is or detail what connections, if any, exist or existed between the principals or business of Choice Home Warranty and any other home warranty companies, including National Home Protection. *See*, e.g., Decl. Singer Exhs. P and Q. In addition, Mr. Mandalawi's recent Chapter 110 registration application failed to note any connection to Choice Home Warranty and incorrectly suggested there were no regulatory actions taken, despite the California department's recent actions. *See* Decl. Singer Exhs. I, J.

Nevertheless, as indicated above, Respondents' contracts are both "insurance" and "service contracts." And since none of the Respondents has any license or authority to transact insurance or provide service contracts in the State of Washington, the OIC's Order was appropriate.

D. Respondents have not presented grounds for a stay.

On the other hand, Respondents' Letter Brief fails to make a credible case for a stay. It fails to offer evidence or citation to legal authority supporting the stay request. In fact, the Letter Brief even arguably undercuts Respondents' position by apparently conceding that Choice Home Warranty is, "at most, […] a service contract provider." Letter Brief at p. 2-3. Consistent with this seeming admission that the Order is at least partly well-founded, Mr. Mandalawi surreptitiously applied for a Chapter 110 registration using a new company name.[6] Nor does OIC's Order appear to articulate any unique findings or conclusions, particularly considering the California insurance regulator's recent orders against Choice Home Warranty.[7] None of these facts supports a stay. Nevertheless, Respondents' Letter Brief raises a number of arguments for why they believe a stay should issue.

One argument for a stay in Respondents' Letter Brief is that they think the Order somehow improperly concluded that Choice Home Warranty's contract is <u>both</u> "insurance" under RCW 48.01.040 and a "service contract" under RCW 48.110.020(17) and (19). Not only does the Letter Brief fail to provide cogent analysis why this is supposedly so, the argument is also incorrect. No Code provision or other law precludes OIC's conclusion that Choice Home Warranty's contract is both "insurance" and a "service contract." In fact, at least one Code provision actually supports OIC's conclusion. This provision, RCW 48.110.033(2), provides that the way for persons to become "exempt from the other provisions of this title" – including provisions like RCW 48.01.040 and RCW 48.15.023 – is for them to "comply[] with this chapter." Thus, the Code allows a service contract provider to be exempt from many of the various insurance provisions of the Code, but only if it complies

[6] However, this application was soon withdrawn. *See* Decl. Singer Exh. J.

[7] *See* Decl. Singer Exh. I.

fully with all requirements contained in Chapter 110. If not, nothing prevents *any* other Code provisions from applying – including RCW 48.01.040.

Respondents also argue that a stay is warranted because the OIC lacks authority to require Respondents to mail a copy of the Order to directly impacted Washington consumers. This argument seems nothing short of astonishing not only because Respondents seem to be trying to prevent a copy of the Order from reaching the hands of the Washington customers who are directly and personally impacted by it, but also because it seems to suggest that the OIC is powerless to share or order to be shared a copy of the Order with those consumers. On both counts, Respondents are wrong. First, RCW 48.02.060(1) not only authorizes the Commissioner to act as *expressly* authorized, but also "as reasonably implied from the provisions of" the Insurance Code. And further, if dozens of known Washington consumers have purchased a product that appears to have been offered illegally, it would be inconsistent with the Insurance Code to not tell them about it immediately. Further, since Washington courts are loathe to construe one statute in such a way as to render other related statutes meaningless,[8] it would be inappropriate to determine that RCW 48.02.060(1) does not authorize it to require unauthorized insurers to share a copy of a cease and desist order with its Washington customers who are directly impacted. For example, RCW 48.15.030 empowers Washington consumers to choose whether to keep illegally effectuated contracts or instead void them to take refunds. If consumers aren't made aware that their contracts may have been illegally effectuated by an unauthorized insurer, those consumers can never choose to seek to void it. A stay would only forestall Washington consumers learning about the Order and thereby prejudice those consumers' rights, since they one day may face the same fate as the Washington consumer whose complaint led to OIC's Order – they could make claims only to

[8] *See*, e.g., *Edmonds Shopping Ctr. v. Edmonds*, 117 Wn. App. 344, 356, 71 P.3d 233 (2003) (Washington law requires courts to "construe statutes as a whole to give effect to all the language and to harmonize all provisions") and *Davis v. Dep't. of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) ("[S]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.")

find them denied. Respondents fail to show why impacted consumers must not receive a copy of the Order *before* their contracts expire or claims arise, rather than after.

Moreover, not only does RCW 48.02.060 authorize the OIC to order illegal insurers and service contract providers to share a copy of the Order with Washington consumes they sold to, it also makes good sense here. Unauthorized entities are uniquely capable of communicating with their customers. They know who their customers are, and often, no one else does. And nothing prevents Respondents from including a letter of their own that sets forth their own position when they send the Order to their Washington customers. If they do this, they can assuage any fears they think could arise. While nothing prevents OIC from sending a copy of the Order to the Washington consumers who bought Choice Home Warranty's products, no one is in a better position to do this than the Respondents.

Finally, the Respondents' Letter Brief also speculates that a number of calamitous events will come true because of the Order if no stay is granted – things like litigation, criminal prosecution, tax liability, personal liability, and so forth. But no evidence supports these dire predictions. And if Respondents send a letter with the Order, explaining their views, such speculative fears become wholly illusory.

E. Established standards dictate against a stay.

RCW 48.04.020(2) contemplates that the Commissioner may entertain a written request for a stay and that an aggrieved person may apply to Thurston County Superior Court if the Commissioner declines to grant the request. Such a request seems akin to a request in a court action for a preliminary injunction, the requirements for which are summarized in *Kucera v. Deptartment of Transportation*, 140 Wn.2d 200, 209-210, 995 P.2d 63 (2000):

> An injunction is distinctly an equitable remedy and is "frequently termed 'the strong arm of equity,' or a 'transcendent or extraordinary remedy,' and is a remedy which should not be lightly indulged in, but should be used sparingly and only in a clear and plain case." 42 Am. Jur. 2d Injunctions sec. 2, at 728 (1969) (footnotes omitted). Accordingly, injunctive relief will not be granted where there is a plain, complete, speedy and adequate remedy at law. *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wn. 2d 298, 312, 553 P.2d 423 (1976).

> The applicable requirements for issuance of a preliminary injunction are well settled: "One who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him." Since injunctions are addressed to the equitable powers of the court, the listed criteria must be examined in light of equity including balancing the relative interests of the parties and, if appropriate, the interests of the public. *Tyler Pipe Indus., Inc. v. Department of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982) (quoting *Port of Seattle v. International Longshoremen's & Warehousemen's Union*, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958); see also RCW 7.40.020 (grounds for issuance of preliminary injunction). (footnote omitted.) If a party seeking a preliminary **injunction fails to establish any one of these requirements,** the requested relief must be denied. *Washington Fed'n*, 99 Wn.2d at 888.

Applying the above considerations here yields the conclusion that no stay should issue. Respondents have "a plain, complete, speedy and adequate remedy at law" since they will receive a hearing. Even assuming Respondents meet the first *Tyler Pipe* element above, they give no evidence to prove a "well-grounded fear of immediate invasion of that right," nor that not staying the Order "will result in actual and substantial injury." The "public interest" – which includes, at minimum, the interest of the dozens of Washington residents who were identified as Choice Home Warranty customers – also weighs heavily against a stay. This is particularly true here, given the "public interest" mandate to "preserv[e] inviolate" the public by preventing deception, dishonesty, and unfairness. RCW 48.01.030.

V. CONCLUSION

Based on the foregoing, the OIC's order should not be subjected to any stay. Respondents should be ordered to issue a copy of the Order to all impacted Washington consumers within five days, and be reminded that they can simply accompany the Order with their own letter to assuage their customers. The Respondents' stay request should be denied.

DATED this 29th day of November, 2010.

OFFICE OF INSURANCE COMMISSIONER

By: ______________________

Alan Michael Singer

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing RESPONSE AND OPPOSITION TO CHOICE HOME WARRANTY'S REQUEST FOR A DISCRETIONARY STAY on the following individuals in the manner indicated:

Copy to:

Darren Oved, Esq.
Oved & Oved, LLP
101 Avenue of the Americas
15th Floor
New York, New York 10013
(XXX) Via U.S. Mail
(XXX) Via E-Mail (Darren@ovedlaw.com)

Original to:

Hon. Patricia Petersen
Chief Hearing Officer
Hearings Unit
Washington State Office of the insurance Commissioner
5000 Capitol Blvd.
Tumwater, WA 98501
(XXX) Via Hand Delivery
(XXX) Via E-Mail to Nicole Kelly (NicoleK@oic.wa.gov)

SIGNED this 29th day of November, 2010, at Tumwater, Washington.

Christine Tribe

Christine Tribe

OVED & OVED LLP
ATTORNEYS AND COUNSELORS AT LAW
101 AVENUE OF THE AMERICAS
15TH FLOOR
NEW YORK NY 10013-1991
WWW.OVEDLAW.COM

TELEPHONE 212 226 2376 FACSIMILE 212 226 7555

November 22, 2010

VIA FACSIMILIE

Honorable Patricia D. Petersen
Administrative Law Judge
Hearings Unit
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Re: Respondents' Request for Discretionary Stay of Order to Cease and Desist, No. 10-0199

Dear Judge Petersen:

This law firm represents Respondents in the above captioned matter and respectfully submit this letter brief in support of Respondents' request that this Court exercise its discretion to stay the implementation of the State of Washington Office of the Insurance Commissioner's ("OIC") Order to Cease and Desist to Respondents dated October 21, 2010 (the "Order").

By way of brief background, CHW Group, Inc. d/b/a Choice Home Warranty ("CHW") sells warranties for household goods providing for the repair or replacement of these goods if they are rendered unusable after ordinary wear and tear. These warranties are paid for by the consumer at the point of sale and are paid for with separate and additional consideration, *i.e.*, they are not included in the purchase price of the goods purchased. Initially, CHW believed that its activities in Washington were exempt from regulation pursuant to RCW 48.110.015(1)(a), but in an abundance of caution CHW contacted OIC to provide it with the information necessary to obtain the appropriate registration in the State of Washington as a service contract provider if such a registration were necessary. In the context of its communication with OIC and in the interests of full disclosure, CHW provided OIC with a list of employees working for CHW and a description of their titles within the company. In June 2010, CHW also voluntarily agreed to cease selling its warranties in the State of Washington until it obtained the requisite registration if a determination was made that CHW was providing services not specifically exempted from Title 48 of the Washington Code. Rather than use the information voluntarily provided by CHW to make these determinations and process any request for registration, OIC used this information to issue the Order.

Honorable Patricia D. Petersen
November 22, 2010
Page 2 of 4

The Order requires CHW to cease and desist from:

A. engaging in or transacting the unauthorized business of insurance or acting as an unregistered service contract provider in the State of Washington;

B. seeking, pursuing and obtaining any insurance or service contract business in the State of Washington and from participating, directly or indirectly, in any act of an insurance company or service contract provider;

C. soliciting Washington residents to sell any insurance or service contract issued or to be issued by an unauthorized insurer or unregistered service contract provider;

D. soliciting Washington residents to induce them to purchase any insurance contract or service contract.

Order at 1.

As noted above, CHW voluntarily ceased all operations in the State of Washington (other than the continued fulfillment of the warranties already sold to Washington residents) so CHW has no activity to cease and desist. The Order, however, also requires CHW to mail a copy of the Order to each Washington resident who purchased a warranty from CHW.

The Order's mandates, which are made against not just CHW but the remaining Respondents the majority of whom are simply employees of CHW, not principals, are based upon OIC's findings that, *inter alia*, the warranties constitute "insurance" under RCW 48.01.040.

Upon receipt of the Order, CHW demanded a hearing and requested a stay of its implementation pending that hearing. At the preliminary conference, held telephonically on November 15, 2010, at Respondents' request, the Court directed Respondents to submit this letter brief in further support of their request for a stay. This Court should exercise its discretion to grant a stay for several reasons.

First, as a threshold matter, that part of the Order requiring a mailing to CHW's existing customers far exceeds the OIC's statutory powers. RCW 48.02.080 explicitly delineates the OIC's enforcement powers in the context of a perceived violation of Title 48, which are to (1) issue a cease and desist order, and/or (2) bring an action for an injunction in any court of competent jurisdiction. It does not grant the OIC, even under the guise of a cease and desist letter, to unilaterally issue a mandatory injunction requiring a respondent to take affirmative action such as the mailing requirement contained in the Order.[1] Accordingly, at the very minimum, the mailing requirement contained in the Order must be stayed because it far exceeds the OIC's enforcement powers.

Next, the Order as written is entirely too broad and its entirely erroneous findings and references to CHW's sale of "insurance" potentially amounts to a binding (albeit erroneous) finding that CHW is an "insurer." As noted in Respondents' demand for a hearing, at most,

[1] In addition, if CHW prevails at its hearing, it cannot be meaningfully compensated for the irreparable damage to its business and goodwill caused by complying with this unilateral mandatory injunction.

CHW is a service contract provider providing its customers with the repair or replacement of goods rendered unusable as a result of normal wear and tear as opposed to indemnity for damage resulting from a calamitous or unexpected event. As such, contrary to the OIC's finding in the Order, it is not an "insurer" as defined in RCW 48.01.050, ("'Insurer' as used in this code includes every person engaged in the business of making contracts of insurance...") and it does not sell "insurance" as that term is defined in RCW 48.01.040 ("Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies."). Indeed, Washington's purposeful statutory carve-out for service contract providers and intentional statutory delineation in RCW 48.110 (entitled "Service Contracts and Product Protection Guarantees") of the difference between an insurer and service contract providers underscores the inapplicability of the majority of the Order to CHW. *See, e.g.*, RCW 48.110.080(1) ("a service contract provider...shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty or surety business.") In fact, the distinction in the statute is both reasonable and logical since service contract providers provide a service no insurer would ever provide – the repair or replacement of goods rendered unusable as a result of normal wear and tear as opposed to indemnity for damage resulting from a calamitous or unexpected event.

This distinction between an insurer and a service contract provider carries significant potential consequences and the OIC's casual use of the terms "insurance" and "service contract" interchangeably subjects Respondents (including the individual employees of Respondent) to the imminent threat of litigation from consumers, potential criminal prosecution, and potential tax liabilities.[2] An insurer is required to pay taxes on the premiums it collects from its customers, a service contract provider is not. RCW 48.110.033(2). In fact, the importance of distinguishing between an insurer and a service contract provider can mean the difference between a person going to jail or not because a person who sells insurance in violation of RCW 48.15.020(1) is subject to criminal prosecution for a class B felony. RCW 49.15.023. A service contract provider is not subject to this provision. RCW 48.110.033(2). The OIC's unilateral finding that CHW sells insurance subjects all Respondents to the imminent threat of criminal prosecution and potential incarceration. In addition, the classification of CHW as an "insurer" subjects Respondents to a significantly more complicated and detailed regulatory scheme, a scheme CHW made the conscious decision not to partake in when it decided it did not want to sell insurance. Moreover, CHW will undoubtedly have to expend significant legal expenses to navigate through this complicated regulatory scheme when it is sued by its customers as an unauthorized insurer if it is forced to comply with the Order's mailing requirement while, at the same time, being hamstrung in its ability to contest its status as an insurer by the OIC's "finding." Accordingly, a stay is necessary to prevent this unnecessary harm.

Finally, the Order, as written, is overbroad in that it includes David Bailey, Steven Safdieh, and Michael Gutholc, in their personal capacity, as Respondents. These individuals are employees of CHW, not officers or principals. The fact that Bailey, Safdieh, and Gutholc hold the title of Vice President of Customer Service, Vice President of Sales and Marketing, and Vice President of Contractor Relations, respectively, does not render them in some way personally liable or responsible for any actions taken by CHW. There are no findings in the Order that

[2] There is no legal authority for treating these terms as fungible as the OIC does in the Order.

these three employees did anything outside the scope of their employment that should subject them to personal liability. If no stay is issued, these individuals may be subject to lawsuits against them personally especially if CHW is required to mail the Order to its Washington customer and may have their personal credit impacted negatively if the Order is recorded against them. Such a result is unjust and inequitable. As such, implementation of the Order must be stayed.

For all of the foregoing reasons, Respondents respectfully request that the Court exercise its discretion to stay the implementation of the Order pending the outcome of the hearing in this matter.

Respectfully submitted,

Darren Oved

cc: Alan M. Singer, Esq. (*via facsimile*)

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

Phone: (360) 725-7000
www.insurance.wa.gov

FILED

2010 NOV -3 A 10: 06

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

DECLARATION OF MAILING
I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to Darren Oved, Esq. & Alan Singer, Esq.
DATED this 3rd day of November, at Tumwater, Washington.
Signed: [signature]

HEARINGS UNIT
Fax: (360) 664-2782

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Nicole Kelly
Paralegal
(360) 725-7002
NicoleK@oic.wa.gov

NOTICE OF RECEIPT OF DEMAND FOR HEARING

To: Mr. Darren Oved, Esq.
Oved & Oved LLP
Attorneys and Counselors at Law
101 Avenue of the Americas
15th Floor
New York, NY 10013-1991

From: Patricia D. Petersen, Chief Hearing Officer PDP

Date: November 2, 2010

Hearing: No. 10-0199

This is to advise you that on Monday, November 1, 2010, the Hearings Unit received and filed your Demand for Hearing.

Unless a date is entered at the end of this Notice, in approximately 5 working days, you will be contacted by the Hearings Unit to schedule a date for a first prehearing conference in this matter. This prehearing conference, which will be held by telephone, will include: 1) Darren Oved, Esq., on behalf of Respondents, and any client representatives and/or others at his request; 2) Alan Michael Singer, Esq., on behalf of the Insurance Commissioner, and any other representatives at his request; and 3) the Chief Hearing Officer. The purpose of the prehearing conference is to discuss basic procedure to be followed before, during and after the hearing. In addition, based upon the fact that the Order to Cease and Desist was by its terms made effective immediately, RCW 48.04.020(1) does not provide for an automatic stay of said Order. Respondents have asked, in the event an automatic stay is not available under RCW 48.04.020(1), that the undersigned grant them a discretionary stay pursuant to RCW 48.04.020(2). For this reason, at the first prehearing conference, the parties should be prepared to indicate whether they would like to submit written argument on this issue and/or present oral argument (by telephone if requested). Due to the nature of this issue, it is expected that presentation of any argument on the issue of a discretionary stay followed by a ruling thereon, will be scheduled promptly.

For your information, we have included a brief outline of hearing procedure below.

If you have any questions concerning this Notice, please contact Nicole Kelly, Paralegal, Hearings Unit, at the above telephone number or address.

HEARING PROCEDURES – OFFICE OF THE INSURANCE COMMISSIONER

The following is a brief summary of hearing procedure. Following the prehearing conference referred to above, a Notice of Hearing will be entered advising you of the date scheduled for the hearing. The specific rules which govern the hearing procedure, which include many more details, can be found primarily at Chapter 34.05 RCW (the Administrative Procedure Act) and Chapter 10-08 WAC. Your hearing will be presided over by an administrative law judge who handles cases where actions of the Insurance Commissioner are appealed, such as yours. It will be conducted in a fairly formal manner; however, it will be as flexible as possible to accommodate the needs of the parties and any witnesses which may appear. You will be allowed to submit documents to support your version of the facts. Testimony may also be presented in the form of live witnesses, including the parties themselves; also, if requested, witnesses are allowed to testify over the telephone at the discretion of the judge.

The hearing normally begins with each party presenting an opening statement summarizing what they intend to prove; then each party presents its case-in-chief which includes presentation of documents and testimony, subject to cross examination by the opposing party; then the hearing concludes with each party presenting its closing arguments summarizing what they believe they have shown.

The judge is an individual who has not had any involvement with this case. The judge will hear and make the final decision in the case without any communication, input or review by the Insurance Commissioner or staff or any other individual who has knowledge of the case. The judge's final decision may 1) uphold the Commissioner's action; 2) reverse the Commissioner's action; or 3) impose penalties which are less than those contained in the Commissioner's action.

Please note that, pursuant to General Rule 24, Washington Rules of Court, attorneys representing individuals or entities in adjudicative proceedings in Washington, such as this proceeding, need <u>not</u> be licensed in Washington State.

OVED & OVED LLP

ATTORNEYS AND COUNSELORS AT LAW
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2010 NOV -1 A 8:38

Patricia D. Petersen
Chief Hearing Officer

November 1, 2010

VIA FACSIMILE
AND ELECTRONIC MAIL

Ms. Carol Sureau
Office of Insurance Commissioner
5000 Capitol Blvd
Tumwater, WA 98501

Re: Demand for Hearing
Order to Cease and Desist, No. 10-0199

Ms. Sureau:

This law firm has been retained by CHW Group, Inc. ("CHW"), in connection with the above-referenced matter. We are in receipt of the October 21, 2010 Order to Cease and Desist (the "Order", a copy of which is attached hereto as **Exhibit A**) issued from the Office of Insurance Commissioner (the "OIC"), and hereby formally demand a hearing before an administrative law judge pursuant to RCW 48.04.10, *et seq.*, to challenge the findings and directions of the Order on the grounds set forth below. Additionally, by virtue of this request and pursuant to RCW 48.04.020, all of the Order's terms, directions, conditions and obligations are automatically stayed pending the outcome of the requested hearing. In the event the OIC disagrees with our interpretation of applicable law as providing for an automatic stay of the Order, CHW hereby requests, in writing, pursuant to RCW 48.04.020 (2), that the OIC grant a stay pending the resolution of the requested hearing.

Specifically, the Order, as so written, is overbroad, unduly burdensome, misstates and assumes untrue statements, and seeks to hold mere employees of CHW, acting within the scope of their employment, personally liable and responsible for CHW's alleged misconduct. In fact, the OIC's power to regulate service contract providers is contained in and limited to the statutory scheme set forth in RCW 48.110, *et seq.*, rendering the Order's numerous references to other statutory provisions regulating insurers, not service contract providers, irrelevant, inapplicable and inapposite. Indeed, Washington's purposeful statutory carve-out for service contract providers and intentional statutory delineation of the difference between an insurer and service contract providers underscores the inapplicability of the majority of the Order to CHW. *See, e.g.,* RCW 48.110.080(1), ("a service contract provider...shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty or surety business.")

In fact, the distinction in the statute is both reasonable and logical since service contract providers provide a service no insurer would ever provide – the repair or replacement of goods rendered unusable as a result of normal wear and tear as opposed to indemnity for damage resulting from a calamitous or unexpected event. Accordingly, the Order is overly broad and generally inapplicable to CHW. As such, full compliance with the Order, as written, will cause irreparable damage to not only CHW's operations in Washington, but also its duly licensed and registered business activities in other states. Indeed, many of the inaccurate premises and conclusions drawn in the Order will serve only to tarnish and slander the name of CHW and its affiliates, despite CHW's past good-faith efforts to comply with Washington's licensing requirements. Accordingly, a stay is necessary pending resolution of the requested hearing in order to prevent this irreparable injury.

As you are undoubtedly well-aware, our client intends to comply with Washington's licensing requirements. To that end, upon receipt of your letter in July of 2010, our client not only voluntarily ceased soliciting new business in Washington, but also formulated a plan, in connection with guidance from the OIC, to issue partial refunds to each and every Washington customer. In light of the foregoing, our client was shocked to receive the Order, as its issuance is markedly inconsistent with our client's continued cooperation with the OIC. As indicated in previous correspondence and conversations with the OIC, CHW's ultimate goal is to maintain and grow its business in the State of Washington pursuant to the full satisfaction of any and all statutes and regulations. As such, and in the interest of foregoing the expense and disruption of further formal proceedings, CHW remains fully committed to informally resolving this matter by way of a settlement agreement. However, given the gravamen of the allegations against our client, we are obligated to pursue this contemporaneous course of action through the administrative hearing process.

CHW reserves the right to advance further and distinct arguments and evidence in support of its position, and this correspondence is not intended as a complete recitation of all of the facts and circumstances in this matter and is written without prejudice to any of our client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

Please do not hesitate to contact us with any questions or concerns.

Very truly yours,

Darren Oved

EXHIBIT A

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

FILED

Phone: (360) 725-7000
www.insurance.wa.gov

2010 NOV -1 A 8:38

OFFICE OF
INSURANCE COMMISSIONER

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

In the Matter of

CHW GROUP, INC, doing business as CHOICE HOME WARRANTY and www.ChoiceHomeWarranty.com, VICTOR MANDALAWI, "JAMES MOSS," DAVID BAILEY, STEVEN SAFDIEH, MICHAEL GUTHOLC
Unauthorized Individuals and Entities,

Respondents.

No. 10-0199

ORDER TO CEASE AND DESIST

Pursuant to RCW 48.02.080, RCW 48.15.020, RCW 48.15.023, RCW 48.110.030, and RCW 48.110.055, the Insurance Commissioner of the State of Washington orders the above-named Respondents, and their officers, directors, trustees, employees, agents, and affiliates ("Respondents") to immediately cease and desist from:

A. engaging in or transacting the unauthorized business of insurance or acting as an unregistered service contract provider in the State of Washington;

B. seeking, pursuing and obtaining any insurance or service contract business in the State of Washington and from participating, directly or indirectly, in any act of an insurance company or service contract provider;

C. soliciting Washington residents to sell any insurance or service contract issued or to be issued by an unauthorized insurer or unregistered service contract provider;

D. soliciting Washington residents to induce them to purchase any insurance contract or service contract.

THIS ORDER IS BASED ON THE FOLLOWING:

1. Respondent CHW Group, Inc. was incorporated in New York by Jack A. Aini and also in New Jersey by Aini & Lazar PLLC. The New York corporation's principal place of business is 244 Madison Avenue, New York, New York, 10016, and the New Jersey corporation's principal place of business is 510 Thornall Street, Edison, New Jersey, 08837. Both corporations do business as Choice Home Warranty and www.ChoiceHomeWarranty.com. The corporations' President is Victor Mandalawi (who is also principal and sole stockholder/owner) and "James Moss." Other CHW Group Inc. officers include David Bailey (Vice President of Customer Service), Steven Safdieh (Vice President of Sales & Marketing), and Michael Gutholc (Vice President of Contractor Relations.) Respondents have sold at least ninety-two (92) home warranty service contracts

to Washington residents covering repair or replacement on major systems and appliances in the purchaser's home and promising that Choice Home Warranty will pay for repair or replacement of such systems and appliances in the event such systems or appliances fail. These contracts constitute both a service contract under RCW Chapter 48.110 *et seq* and also a contract to indemnify another or pay a specified amount upon determinable contingencies – "insurance" under RCW 48.01.040.

2. None of the Respondents is authorized to transact insurance in Washington and none is registered in Washington as a service contract provider.

3. **Respondents' above-described conduct violates the Insurance Code of the** State of Washington, including RCW 48.05.030, certificate of authority required, RCW 48.15.020, solicitation by unauthorized insurer prohibited, and RCW 48.110.030, service contract provider registration required.

IT IS FURTHER ORDERED THAT Respondents, within ten (10) days of the date of this order, shall mail a copy of this order to each Washington resident to whom Respondents have sold a home warranty service contract, and that Respondents report to the OIC all premiums collected or charged for policies they sold covering Washington risks.

IT IS FURTHER ORDERED that nothing herein shall prevent Respondents from fulfilling the terms of contracts formed prior to the effective date of this Order pursuant to RCW 48.15.020(2)(b), from providing a refund when requested by a Washington consumer pursuant to RCW 48.15.030, or, upon request of the OIC, further ordering the replacement of Respondents' Washington contracts with an authorized insurer pursuant to RCW 48.15.020(3).

Any violation of the terms of this Order by Respondents, their officers, directors, agents, or employees, or affiliates, will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, 48.15.023, and other applicable sections of the Insurance Code of the State of Washington.

Respondents have the right to demand a hearing pursuant to RCW Chapters 48.04 and 34.05. This Order shall remain in effect subject to the further order of the Commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED at Tumwater, Washington, this 21st day of October, 2010.

MIKE KREIDLER
Insurance Commissioner

By:
Alan Michael Singer, Staff Attorney
Legal Affairs Division

Featured member

Ritax, Inc.
1043 West 164th Street
Gardena, CA 90247
Phone: (310) 217-1373

Get Quote View Rating Read Reviews

Reputation Report

Choice Home Warranty

File Complaint

Category: Homeowner Insurance and Warranty Services

Address: 1090 King Georges Post Road Bldg 10 Edison, NJ 08837

Phone: (888) 531-5403

Website: http://www.choicehomewarranty....

Social:

Hours: 24 hours a day, 7 days a week at (888) 531-5403.

Primary Contact: Customer Service

Business Started: 6/2/2008

This company's business is providing homeowner warranty services.

1,077 inquiries

Company Rating

The rating assigned to a business is determined by our composite score of such factors as its type of business...

F

Full Rating Explanation →

Membership Information

This business is not a member of Business Consumer Alliance. This fact does not disparage the company in any way.

Are you looking for reputable Homeowner Insurance and Warranty Services?
Browse our Member Directory and shop with confidence!

Member Directory

CHOICE Home Warranty

See more photos and videos on Business Reviews →

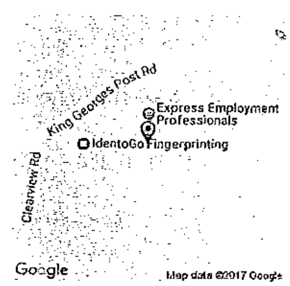
Promote Your Business

Shares

Add our dynamic seal to your website →

Check Our Report
ALLIANCE

Map & Directions



Get Directions →

Additional Information

DBAs:
CHW Group, Inc.

Websites:
http://www.choicehomewarr...

http://www.choicehomewarr...

AA002906

BCA Company Reviews

Reviews for Choice Home Warranty

★☆☆☆☆

based on 1 review.

Customer Reviews Write Review

Ask Question

Licensing

We know of no licensing or registration requirement for companies engaged in this company's stated type of business.

http://www.choicehomew
http://www.choicehomewarr
http://www.choicehomewarr

Contacts:
E. Broadnax
David Bailey (VP Customer Service)
CHW Marketing
Tracy Mleczynski (CHW Customer Advocate)
Victor Mandalawi (President)
Victor Hakim (Principal)

Addresses:
244 Madison Avenue, New York, NY, 10016
510 Thornall Street, Edison, NJ, 08837

Shares

Complaint Closing Statistics

Responses to complaints over the last 3 years:

No. Complaints	Type of Response
3	Making a full refund, as the consumer requested
1	Making a partial refund
1	Agreed to make an adjustment
0	Refusing to make an adjustment
3	Refuse to adjust, relying on terms of agreement
21	Unanswered
0	Unassigned

Total: 29 complaints

Complaint Experience

21%

Complaint Resolution Index (CRI)

CRI Explanantion →

BCA's Summary and Analysis of customer complaints and company responses:

Our complaint history for this company shows that the company responded to and gave proper consideration to most complaints. However, one or more complaints are unresolved meaning the company failed to properly address the complaint allegations or their response was inadequate.

View summaries of the complaint descriptions, responses and text of the complaints.

View Complaints

Comments and Analysis

BCA's Comments and Analysis

We have no further comment about this company's business practices or analysis of its offer that may assist you in your consideration of this company.

Other Considerations

We know of no other matter or practice relating to this company that may assist you in your consideration of this company.

AA002907

Government Actions

Agency: New Jersey Attorney General
Description:

On July 22, 2014, the New Jersey Attorney General ("Attorney General") filed a Complaint against CHW Group, Inc. doing business as, Choice...Read more →

Advertising Reviews

BCA has no information regarding advertising review at this time.

EX 10

NOT FOR PUBLICATION WITHOUT APPROVAL OF THE COMMITTEE ON OPINIONS

AMANDA KERNAHAN, Plaintiff v. HOME WARRANTY ADMINISTRATOR of FLORIDA, INC.; CHOICE HOME WARRANTY, et al. Defendant(s)	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY DOCKET NO. MID-L-7052-15 CIVIL ACTION OPINION

CARTON and RUDNICK
788 Shrewsbury Avenue, Bldg. 2, Suite 204
Tinton Falls, NJ 07724
By: Jonathan Rudnick, Esquire

KEEFE BARTELS, LLC
57 Paterson Street
New Brunswick, NJ 08901
By: Stephen T. Sullivan, Jr., Esquire
Attorneys for Plaintiff

ARCHER & GREINER, P.C.
Riverview Plaza
10 Highway 35
Red Bank, NJ 07701
By: Seth L. Dobbs, Esquire
Attorney for Defendant

Honorable Arnold L. Natali Jr., J.S.C.:

I. Introduction

In this putative class action, Plaintiff Amanda Kernahan ("Plaintiff") alleges in her Complaint that Defendants Home Warranty Administrator of Florida and Choice Home Warranty (collectively "Defendants" or "Home Warranty") violated the New Jersey Consumer Fraud Act

("CFA") (Count One) and the Truth in Consumer Contract, Warranty and Notice Act ("TCCWNA") (Count Two), and also breached implied covenants of good faith and fair dealing (Count Three) based on the improper sale of a home maintenance warranty. Defendants sought to dismiss Plaintiff's November 30, 2015 Complaint (the "Complaint") pursuant to R. 4:6-2(e). In a May 27, 2016 oral Opinion and Order, the Court denied Defendants' motion. In this application, Home Warranty seeks reconsideration of the Court's May 27, 2016 Order. For the reasons that follow, Defendants' motion is denied.[1]

First, the Court's May 27, 2016 decision was not based on a palpably incorrect or irrational basis nor did the Court fail to consider appropriate probative and competent evidence. Stated differently, the Court's decision was neither arbitrary, capricious nor unreasonable. The Court's May 27, 2016 ruling concluded that the Complaint, when viewed with the necessary liberality, stated viable causes of action under New Jersey law.

Second, the "new evidence" submitted in support of this reconsideration application was available and could have been obtained and submitted by Defendants in support of their initial application. It is therefore improper for consideration on the instant motion. Motions for reconsideration should not be used as vehicles for record supplementation. Moreover, the submitted evidence, specifically the Certification of Victor Mandalawi ("Mandalawi Cert.") and attached Exhibits, would improperly transform the initial R. 4:6-2(e) application to a proceeding guided by the standards of R. 4:46. Any application filed pursuant to R. 4:46 would be denied at this stage of the proceedings as the parties have not engaged in any discovery.

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[1]On November 3, 2016, the Court denied Defendants' motion for reconsideration, issued a conforming Order and detailed the bases for its decision in an oral opinion in accordance with R. 1:6-2(f). This written Opinion is provided as further support for the Court's November 3, 2016 Order.

II. Procedural and Factual Background

In or about April 2015, Plaintiff purchased a home maintenance warranty from Defendants for $1,050.00 (the "April 2015 Warranty Contract"). Plaintiff alleges that the April 2015 Warranty Contract is a contract of adhesion to which no negotiation took place with respect to any material term. The first page of the contract describes the contract term as "4/23/2015 – 10/23/2018." **Plaintiff alleges in the Complaint that the three-year plus contract term was material to Plaintiff's** decision to purchase the home maintenance warranty. However, the second page of the April 2015 Warranty Contract, according to Plaintiff, purports to limit its term. It provides:

> Coverage starts 30 days after acceptance of application by Us and receipt of applicable contract fees and continues for 365 days from that date. Your coverage may begin before 30 days if We receive proof of prior coverage, showing no lapse of coverage, through another carrier within 15 days of the order date.

The warranty further contains a limitation on damages provision. Specifically, it limits any damages arising from "claims, judgments and awards" to a maximum of $1,500.00 for out of pocket expenses, precludes the recovery of attorneys' fees, and further contains a clause that purports to require any dispute arising out of the warranty to be resolved through arbitration. The arbitration provision in the April 2015 Warranty Contract is detailed at page five of the five-page document in a section titled "Mediation." It provides:

> **G. Mediation**
>
> **In the event of a dispute over claims or coverage You agree to file a written claim with Us and allow Us thirty (30) calendar days to respond to the claim. The parties agree to mediate in good faith before resorting to mandatory arbitration in the State of New Jersey.** Except where prohibited, if a dispute arises from or relates to this Agreement or its breach, and if the dispute cannot be settled through direct discussion you agree that:
>
> 1. Any and all disputes, claims and causes of action arising out of or connected with this Agreement shall be resolved individually, without resort to any form of class action.

2. Any and all disputes, claims, and causes of action arising out of or connected with this Agreement (including but not limited to whether a particular dispute is arbitrable hereunder) shall be resolved exclusively by the American Arbitration Association in the State of New Jersey under its Commercial Mediation Rules. Controversies or claims shall be submitted to arbitration regardless of the theory under which they arise, including without limitation contract, tort, common law, statutory, or regulatory duties or liability.

3. Any and all claims, judgments, and awards shall be limited to actual out-of-pocket costs incurred to a maximum of $1500 per claim, but in no event attorneys fees.

As noted, Count I of Plaintiff's Complaint alleges a violation of the CFA. Plaintiff avers that Defendant made "affirmative misrepresentations regarding the terms of Plaintiff's and the Class members' warranties." Complaint at Count One, paragraph 31. Plaintiff further states that these actions "constitute knowing omissions, suppressions and/or concealments of material facts, made with the intent that Plaintiff and the Class members rely upon such [...]." Id. at paragraph 32. Finally, Plaintiff asserts that the improper sale of a warranty for a term fewer than the three years represented resulted in Plaintiff sustaining an ascertainable loss causally related to Defendants' wrongful actions. Count II of Plaintiff's Complaint alleges a violation of the TCCWNA. Specifically, Plaintiff maintains that the warranty violates the clearly established right to treble damages and attorney fees under the CFA. Complaint at Count Two, paragraph 37. Count III of Plaintiff's Complaint alleges a breach of the implied covenant of good faith and fair dealing. This count is based upon breaches of the April 2015 Warranty Contract, and violations of the CFA and TCCWNA described above.

III. Contentions of the Parties

Defendants' primary basis for this reconsideration application is their discovery that Plaintiff cancelled the April 2015 Warranty Contract and obtained a full refund from Defendants prior to filing the Complaint. Based upon this information, Defendants argue that Plaintiff does not have standing to bring her claims as the warranty forming the basis of the Complaint was "nonexistent" at the time the Complaint was filed. This new information is proffered through the Certification of Victor Mandalawi, a representative of Defendants. Mr. Mandalawi certifies that Exhibit A, attached to his certification, is a true and correct copy of claim notes related to the April 2015 Warranty Contract. According Mr. Mandalawi, Exhibit A establishes that the warranty was cancelled on June 19, 2015 and that Plaintiff received a "full refund" on June 22, 2015. Also attached to his certification is Exhibit B, which purports to be a true and correct copy of the account summary for a separate warranty, sold by Defendants to Plaintiff. According to Mr. Mandalawi, Exhibit B confirms that Plaintiff made a number of claims under that distinct warranty—including some made during the pendency of this litigation—and has received benefits under that warranty. Mr. Mandalawi further certifies that he had not (not that he could not have) discovered this information prior to the Court's May 27, 2016 Order.

Defendants do not argue that the Court's May 27, 2016 Order was "either (1) . . . based upon a palpably incorrect or irrational basis, or (2) . . . that the Court . . . did not consider, or failed to appreciate the significance of probative, competent evidence." See Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Rather, Defendants assert that reconsideration should be granted based upon the information proffered by Mr. Mandalawi. In support, Defendants rely upon the following portion of the Chancery Division's decision in D'Atria v. D'Atria:

> ...if a litigant wishes to bring new or additional information to the Court's attention which it could not have provided on the first application, the Court should, in the interest of justice (and in the exercise of sound discretion), consider the evidence.

D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

The remainder of Defendants' arguments are identical, or nearly so, to those advanced in their original motion to dismiss. These positions, however, are now supplemented and augmented based upon the information contained in the Mandalawi Certification. For example, Defendants assert that Plaintiff fails to state a claim upon which relief can be granted under the CFA because she cannot claim an ascertainable loss for a warranty that was cancelled and refunded and she cannot prove a misrepresentation or omission as she would have learned that the April 2015 Warranty Contract was a three warranty had she not cancelled the policy prematurely. Likewise, Defendants now assert that Plaintiff's claims under the TCCWNA and her claims for breach of the duty of good faith and fair dealing must be dismissed for failing to state a claim as the warranty forming the basis for these claims did not exist at the time the Complaint was filed. Finally, Defendants assert, based on identical arguments as those made in their motion to dismiss, that the Court should enforce the warranty's arbitration clause and dismiss the case.

In response, Plaintiff argues that Defendants' motion for reconsideration should be denied because Defendants fail to make any showing that the Court's May 27th Order was grounded in a palpably incorrect or irrational basis. Plaintiff next maintains that Defendants' motion should be denied because Defendants failed to establish that the Mandalawi Certification and Exhibits were unavailable at the time the initial application was filed. In this regard, Plaintiff notes that if Mr. Mandalawi is a "representative" of Defendants, then it is fair to assume that he was under Defendants' control. Finally, Plaintiff points out that if the Court were to consider this "new" information, it would convert Defendants' application into a motion for summary judgment as the Mandalawi Certification and Exhibits are materials outside the pleadings.

IV. Conclusions of Law

A. Motion for Reconsideration

R. 4:49-2 provides:

Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred...[2]

Courts generally disfavor the practice of litigants attempting to reargue their positions multiple times due to dissatisfaction with a trial court's decision. Michel v. Michel, 210 N.J. Super. 218, 223-224 (Ch. Div. 1985). The purpose of R. 4:49-2 is to "...allow the losing party to make 'a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred.'" State v. Fitzsimmons, 286 N.J. Super. 141, 147 (App. Div. 1995) (quoting R. 4:49-2). The Appellate Division has instructed that:

> [r]econsideration should be used only for those cases which fall into that narrow corridor in which either (1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence.

Fusco, supra, 349 N.J. Super. at 462 (quoting D'Atria, supra, 242 N.J. Super. at 401).

Furthermore, the moving party carries the heavy burden of showing that the court acted in an arbitrary, capricious or unreasonable manner when rendering its decision. D'Atria, supra, 242 N.J. Super. at 401. As stated by the Appellate Division in Lahue v. Pio Costa, 263 N.J. Super. 575, 598 (App. Div. 1993), R. 4:49-2 was not intended to allow the party moving for reconsideration to raise new issues or make new arguments. Instead, the Rule was designed to ensure that the judge hearing the original matter did not overlook anything that was before the Court when the original motion was heard. Lahue, supra, 263 N.J. Super. at 598 (citing D'Atria, supra, 242 N.J. Super. at 401). "A motion for reconsideration is designed to seek review of an order based on the evidence before the court on the initial motion, not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record." Capital Fin. Co. of Delaware Valley, Inc. v.

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[2]The deadlines contained in R. 4:49-2 apply to final judgments and orders. Interlocutory orders, such as the Court's May 27, 2016 Order, may be reconsidered by the Court at any time prior to final judgment. See Bender v. Walgreen E. Co. Inc., 399 N.J. Super. 584, 593 (App. Div. 2008).

Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) (quotation and internal citation omitted). Simply put, a party may not seek to expand the record by way of a motion for reconsideration. Id. However, new or additional evidence that could have been proffered in the original motion may be properly considered if the evidence addresses an issue that was not originally raised or argued, and the evidence is in furtherance of the movant's argument that the original decision was based on an incorrect basis. Id. at 310-11.

B. Motion to Dismiss

Dismissals for failure to state a claim are governed by R. 4:6-2(e). When considering a motion pursuant to R. 4:6-2(e), a court must search "'...the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.'" Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989) (quotations omitted). As every reasonable inference of fact must be accorded to the plaintiff, a motion under R. 4:6-2(e) is rarely granted by the court, but in the cases where such motion must be granted, the dismissal is ordinarily without prejudice. Id. at 746, 771-72 (citation omitted). "At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." Id. at 746 (citing Somers Constr. Co. v. Bd. of Educ., 198 F. Supp. 732, 734 (1961)). A motion to dismiss for failure to state a claim must be granted only if even a generous reading of the complaint fails to articulate a legal basis for recovery. See Camden Cty. Energy Recovery Assocs., L.P. v. N.J. Dept. of Envtl. Prot., 320 N.J. Super. 59, 64-65 (App. Div. 1999), *aff'd* 170 N.J. 246 (2001). "If a generous reading of the allegations merely suggests a cause of action, the complaint will withstand [a] motion [to dismiss]." F.G. v. MacDonell, 150 N.J. 550, 556 (1997) (citing Printing Mart-Morristown, supra, 116 N.J. at 746); See also Velantzas v. Colgate-Palmolive

Co., 109 N.J. 189, 192 (1988).

1. Consumer Fraud Act

The New Jersey CFA proscribes:

> 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, is declared to be an unlawful practice…

N.J.S.A. 56:8-2 (emphasis added).

"To state a claim under the CFA, a private 'plaintiff must allege each of three elements: (1) unlawful conduct by the defendants; (2) an ascertainable loss on the part of the plaintiff; and (3) a causal relationship between the defendant's unlawful conduct and the plaintiff's ascertainable loss.'" Dabush v. Mercedes-Benz USA, LLC, 378 N.J. Super. 105, 114 (App. Div. 2005) (quoting New Jersey Citizen Action v. Schering-Plough Corp., 367 N.J. Super. 8, 12-13 (App. Div.2003), certif. denied, 178 N.J. 249 (2003) (citation omitted)).

"The purpose of the [CFA] was to prevent deception, fraud or falsity, whether by acts of commission or omission, in connection with the sale and advertisement of merchandise and real estate." Fenwick v. Kay Am. Jeep, Inc., 72 N.J. 372, 376-377 (1977). In establishing a violation of the CFA,

> …a plaintiff need not prove an unconscionable commercial practice. Rather, the [CFA] specifies the conduct that will amount to an unlawful practice in the disjunctive, as 'any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact'… . N.J.S.A. 56:8-2. Proof of any one of those acts or omissions or of a violation of a regulation will be sufficient to establish unlawful conduct under the [CFA].

Cox v. Sears Roebuck & Co., 138 N.J. 2, 19 (1994).

Plaintiff alleges two theories in support of the CFA cause of action. First, Plaintiff alleges that Defendant made affirmative misrepresentations with respect to the terms of the warranty. See Complaint, Count One, paragraphs 31, 1-15. "A violation based on one of the affirmative acts does not require proof that the defendant intended to commit an unlawful act or intended to deceive the plaintiff." Suarez v. Eastern Intern. College, 428 N.J. Super. 10, 30 (App. Div. 2012) (citing Cox, supra, 138 N.J. at 17-18) (citation omitted)). An affirmative misrepresentation is "...one which is material to the transaction and which is a statement of fact, found to be false, made to induce the buyer to make the purchase." Gennari v. Weichert Co. Realtors, 288 N.J. Super. 504, 535 (App. Div. 1996), *aff'd*, 148 N.J. 582 (1997). A fact is material if a reasonable person would deem the fact important in determining his or her course of action. Suarez, supra, 428 N.J. Super. at 33 (citation omitted).

Plaintiff's second theory is that Defendant committed a fraudulent omission, suppression and/or concealment "of material facts, made with the intent that Plaintiff" rely upon such material facts. Complaint at Count One, paragraphs 32; 1-15. "[The CFA] specifically provides that acts of omission must be 'knowing' and committed with 'intent' to induce reliance." Vagias v. Woodmont Properties, L.L.C., 384 N.J. Super. 129, 134 (App. Div. 2006) (citing N.J.S.A. 56:8-2; Chattin v. Cape May Greene, Inc., 243 N.J. Super. 590, 598 (App. Div. 1990), *aff'd per curiam*, 124 N.J. 520 (1991)).

With respect to an ascertainable loss, as noted, Plaintiff asserts that the contract cost is the ascertainable loss as she contends that she believed she obtained, and paid for, a three-year warranty when in fact she purchased a one-year warranty. Complaint at Count One, paragraph 34. The CFA requires a party to sustain an "ascertainable loss of moneys or property" as a result of a CFA violation. N.J.S.A. 56:8-19; Weinberg v. Sprint Corp., 173 N.J. 233, 250 (2002); Carroll v.

Cellco P'ship, 313 N.J. Super. 488, 502 (App. Div. 1988). Because the CFA provides for the enhanced remedies of treble damages and attorneys' fees, "[t]he ascertainable loss requirement operates as an integral check upon the balance struck by the CFA between the consuming public and sellers of goods." Thiedemann v. Mercedes-Benz USA, LLC, 183 N.J. 234, 251 (2005).

Courts have cautioned that it is premature to render a determination about an ascertainable loss on a motion to dismiss. As noted by the Appellate Division:

> Here, Plaintiff alleged in her complaint that she suffered an ascertainable loss. She did not allege the nature of that loss, nor was she so required at that stage. Defendant's motion to dismiss, unlike the summary judgment procedure, did not require, in order to avoid dismissal, that Plaintiff provide evidential material to rebut defendant's contention that she had not sustained an ascertainable loss.

Perkins v. DaimlerChrysler Corp., 383 N.J. Super. 99, 111 (App. Div. 2006).

Viewed through the prism of a R. 4:6-2(e) application, Plaintiff has unquestionably plead a cause of action under the CFA including appropriate allegations detailing an ascertainable loss. Specifically, the complaint avers that when "Plaintiff entered into her consumer contract for the home maintenance warranty, she paid the Defendants approximately $1,050.00 and acquired a single family home maintenance warranty...." See Complaint at paragraph 10. According to Plaintiff, the warranty "expressly states that its term is from April 23, 2015 through October 23, 2018, which would have been three and half years." Id. at paragraph 11. Plaintiff maintains that the length of the warranty was material to her decision to enter the agreement. Plaintiff further maintains that other provisions in the written warranty limit the coverage period to one year. See Complaint, paragraph 12.

As to the ascertainable loss incurred by Plaintiff as a result of the aforementioned alleged affirmative misrepresentations, in paragraph 34 under Count One, titled "New Jersey Consumer Fraud Act", Plaintiff specifically states that she "suffered an ascertainable loss by entering into the consumer contract with the Defendants and purchasing the warranty for a term less than negotiated between Plaintiff and the Defendants." Thus, Plaintiff has alleged that she sustained an ascertainable loss in the amount of the purchase price of the April 2015 Warranty Contract. The ascertainable loss is further tied to the averred misrepresentation. Specifically, Plaintiff paid $1,050.00 for the April 2015 Warranty Contract, believing it was for a three-year term, yet contends she did not receive the benefit of her bargain as she was provided with only a one-year warranty. The Defendants' claim that the April 2015 Warranty Contract was cancelled and therefore Plaintiff had neither standing nor an ascertainable loss rests entirely on evidence outside the pleadings. An untested Certification and unchallenged internal documents cannot properly support dismissal at this stage of the proceedings.[3]

In Defendants' briefs, they advocate for a restrictive interpretation of the term "ascertainable loss" under the CFA that is inconsistent with New Jersey law. For example, in Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 7-8 (2004), plaintiff purchased a carpet and later contended that the carpet sold was defective and smaller than represented at the time of sale. Defendant sought dismissal of plaintiff's complaint and asserted that plaintiff had not suffered an ascertainable loss because it had offered to refund the purchase provide or provide a replacement carpet for an additional amount. Furst, supra, 182 N.J. 1, 1-2. The Supreme Court noted that the

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[3]The Court's decisions denying Defendants' motions to dismiss and for reconsiderations are based on a review and evaluation of the allegations contained in Plaintiff's initial, November 30, 2015, Complaint. However, the Court notes that on September 16, 2016, the Court granted, over Defendants' objection, Plaintiff's request to amend the Complaint. See September 16 Order and Oral Opinion. In that amended pleading, Plaintiffs named additional defendants and detailed additional alleged wrongful activities. Further, Plaintiff included additional claims supporting her claim that she sustained an ascertainable loss. Specifically, the Amended Complaint at paragraphs 47-50 states that plaintiff sustained an ascertainable loss "by defendants denying plaintiff's claims for repair or replacement and/or by being forced to accept "buyouts" of her contract…for hundreds of dollars less than the costs of repairing or replacing Plaintiff's home systems or appliances." Further, plaintiff maintains that she did not receive the "benefit of her bargain with the defendants." Id. at paragraph 49. According to plaintiff "defendants' deceptive business practices … prevented plaintiff from receiving the full value of her contract..." which entitles her to the "contract price." Amended Complaint at paragraphs 49-50.

remedies afforded in the CFA exist "…not only to make whole the victim's loss, but also to punish the wrongdoer and to deter others from engaging in similar fraudulent practices." Id. at 12 (citing Cox, supra, 138 N.J. at 21). In language, particularly relevant to the facts presently before the Court, the Furst court stated that in breach of contract cases, courts seek, primarily, to make the aggrieved party whole. Id. at 13 (citing Cox, supra, 138 N.J. at 21). But, to accomplish that end, it may be necessary to afford "the innocent party... the 'benefit of [her] bargain' and placed in 'as good a position as [she] would have been in had the contract been performed.'" Id. (citation and quotation omitted). Here, plaintiff's ascertainable loss, as plead, need not be limited to any out of pocket expenses (which Defendant maintains do not exist) but rather can include the benefit of the bargain. In the Furst case, that was the replacement value of the carpet. Here, it is the value of the contract and services for which Plaintiff had entered into the contract. Accordingly, the aforementioned factual allegations, in the November 30th Complaint adequately plead a cause of action under the CFA, and specifically, of an ascertainable loss.

2. TCCNWA

Count Two of the Complaint alleges violation of the TCCWNA. Specifically, Plaintiff avers that "Defendants' actions and the terms of their warranties clearly established rights under New Jersey law, including, but not limited to, the right to be awarded treble damages, punitive damages and attorneys 'fees' under the CFA." See Complaint at Count Two, paragraph 37. Defendants contend that the TCCWNA claim should be dismissed because the April 2015 Warranty Contract is not a "writing", and Count Two fails to identify a "clearly established legal right."

The TCCNWA provides in pertinent part:

No seller, lessor, creditor, lender or bailee shall . . . enter into a written consumer contract or give or display any written consumer warranty . . . which includes any

> provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed…

N.J.S.A. 56:12-15.

By its plain terms, the TCCWNA sets forth certain statutory requirements. First, prohibitive conduct must have occurred by a "seller, lessor, creditor, lender or bailee" who targets a consumer or prospective consumer by making an "offer" or entering into a "written consumer contract." N.J.S.A. 56:12-15. Any written contract cannot "include any provision that violates any clearly established legal right of a consumer . . .." Id. Clearly, the TCCWNA applies only to consumers, see Shelton v. Restaurant.com, Inc., 214 N.J. 419, 429 (2013), who are defined to include any "individual who buys, leases, borrowers or bails any money, property, or service which is primarily for personal, family or household purposes." N.J.S.A. 56:12-15.

Defendants' arguments seeking reconsideration of the Court's ruling denying their request to dismiss Plaintiff's TCCWNA claim mirror in large part those made in their initial motion to dismiss. First, Defendants maintain, because Plaintiff cancelled the warranty, no writing exists. Clearly, Plaintiff has plead the existence of a writing – namely the April 2015 Warranty Contract. Again, the Mandalawi Certification and evidence submitted in which Plaintiff purportedly cancelled the contract are improper proofs for consideration on a R. 4:6-2(e) motion. Further, the Court notes that TCCWNA also prohibits the enumerated exhibits from "…offer[ing] to any consumer or prospective consumer or enter[ing] any written consumer contract . . .." See N.J.S.A. 56:12-15 (emphasis supplied); See also Barrows v. Chase Manhattan Mortg. Corp., 465 F. Supp. 2d 347, 361 (D.N.J. 2006).

Second, Defendants maintain there is no "clearly established legal right" for the payment of attorneys' fees under the CFA, particularly because of the purported "fluid state or lack of legal precedent regarding attorneys' fees in this context." See Defendants' Brief in Support of Motion for Reconsideration at p. 12.

Claiming that the right to attorneys' fees under the CFA is not a clearly established right ignores (1) the language of the CFA and (2) a legion of Supreme Court and Appellate Division precedent. First, the plain language of the CFA provides that in successful actions pursuant to the statute, a court "shall . . . award threefold the damages . . . [and] shall also award reasonable attorneys' fees ... ." See N.J.S.A. 56:8-19. This right was recognized by the New Jersey Supreme Court in Cox v. Sears Roebuck & Co., 138 N.J. 2, 24 (1994). See also Delta Funding Corp. v. Harris, 189 N.J. 28, 49 (2006); BJM Insulation & Const., Inc. v. Evans, 287 N.J. Super. 513, 516-17 (App. Div. 1996); Performance Leasing Corp. v. Irwin Lincoln-Mercury, 262 N.J. Super. 23, 33-34 (App. Div. 1993), certif. denied, 133 N.J. 443 (1993).

Defendants maintain that despite the language of the CFA, and the reported decisions interpreting it, a series of unpublished and published federal cases support their position that the right to attorneys' fees under the CFA is not a clearly established right. See Defendants' Brief in Support of Motion for Reconsideration at pp. 10-14 (citing Johnson v. Wynn's Extended Care, Inc., No. 12-00079, 2014 WL 5292318 (D.N.J. 2014), *rev'd*, 635 Fed. Appx. 59 (3d Cir. 2015); McGarvey v. Penske Auto Group, Inc., No. 08-5610, 2011 WL 1325210 (D.N.J. 2011), *aff'd*, 486 Fed. Appx. 276 (3d Cir. 2012); Salvadori v. Option One Mortg. Corp., 420 F. Supp. 2d 349 (D.N.J. 2006).

However, and as counsel for Plaintiff aptly notes, these non-binding cases simply do not support the proposition that the right to attorney fees pursuant to the CFA is not clearly established. For example, in Johnson v. Wynn's Extended Care, Inc., 635 Fed. Appx. 59 (3d Cir. 2015) the trial court concluded, on a motion to dismiss, that an arbitration agreement that precluded the prevailing party from recovering attorney fees was not a violation of the TCCWNA. However, the Third Circuit reversed and specifically held:

> ...we hold that the District Court erred in dismissing this claim at the pleading stage. To find a violation of the TCCWNA, Johnson had to allege that the service contract presented to her by Wynn 'include[d] any provision that violates any clearly established legal right of a consumer . . . as established by State or Federal law.' N.J.S.A. § 56:12-15. Drawing all reasonable inferences in favor of the plaintiff, we conclude that the service contract's provision waiving attorney's fees and splitting costs violates a clearly established legal right under New Jersey law.
>
> This is so because the New Jersey Supreme Court has clearly held that clauses preventing the recovery of attorney's fees and costs, when mandated by statute, are unconscionable. See Delta Funding Corp. v. Harris, 189 N.J. 28, 912 A.2d 104, 114 (N.J. 2006) ('Like the attorney's fees provision discussed above, the [provision requiring the appealing party to bear costs] is unconscionable to the extent that it would bar Harris from being awarded costs if she prevailed on her appeal.') In this case, both the CFA and the TCCWNA mandate the provision of attorney's fees and costs for the prevailing party. N.J.S.A. § 56:8-19 ('In all actions under [the Consumer Fraud Act], . . . the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.'); N.J.S.A. § 56:12-17 ('Any person who violates the provisions of [the TCCWNA] shall be liable to the aggrieved consumer for a civil penalty of not less than $100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs.') N.J.S.A. § 56:12-16 (stating that under the TCCWNA '[n]o consumer contract . . . shall contain any provision by which the consumer waives his rights under this act'). Johnson's TCCWNA claim is therefore sufficient to survive a motion to dismiss. Accordingly, we will reverse the judgment of the District Court only with respect to the alleged violation of the TCCWNA discussed above and will remand for further proceedings.

Johnson, supra, 635 Fed. Appx. at 60-61.

3. Breach of Duties of Good Faith and Fair Dealing

Defendants' also claimed, in their initial motion and on reconsideration, that the Complaint does not plead a cognizable claim under New Jersey law for a breach of the duty of good faith and fair dealing. The Court notes that in its initial brief seeking to dismiss Count Three of the Complaint, Defendants maintained that the lack of good faith and fair dealing counts should be dismissed because "the facts of the complaint do not state a claim under wither the CFA or TCCWNA" and, relatedly, there is no claim that defendants breached the warranty provisions of the April 2015 contract. See Defendants' Brief at p.12. In support of their reconsideration application, Defendants maintain that Count Three should be dismissed because plaintiff "had cancelled the contract before bringing this lawsuit. Because there is no contract upon which [plaintiff] can base her breach of good faith and fair dealing claim, the claim must be dismissed with prejudice." See Defendants Brief in Support of Motion for Reconsideration at p. 14.

Defendants' initial basis to dismiss Count Three, and their re-casted argument in the reconsideration application, is without merit. It is well settled in New Jersey that every contract has an implied covenant of good faith and fair dealing such that "'...neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract[.]'" Wood v. N.J. Mfrs. Ins. Co., 206 N.J. 562, 577 (2011) (quoting Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 366 (2010)). The purpose of these implied duties and obligations is to ensure that each party's "reasonable expectations" are protected and the purpose of the contract is achieved. Sons of Thunder v. Borden, Inc., 148 N.J. 396, 418 (1997) (quotation omitted). The November 30, 2015 Complaint alleges that Plaintiff purchased the April 2015 Warranty Contract from Defendants, that Defendants made affirmative misrepresentations and misrepresentations of ommission and that the warranty, on its face, precluded plaintiff from receiving the full benefit of the contract. See Complaint at Paragraphs 10-15. Plaintiff's claims clearly state a cause of action for a breach of the implied duty of good faith and fair dealing.

4. Arbitration Provision

It is well settled that arbitration is a "favored method of resolving disputes" but like all alternative resolution methods it has limits. See e.g., Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 132 (2001); New Jersey Arbitration Act, N.J.S.A. §§ 2A:23B-1-32. In Martindale v. Sandvik Inc., 173 N.J. 76, 83, 92 (2002), the Court identified a two-step process when evaluating a motion to compel arbitration. The first inquiry requires a court to determine if the arbitration agreement at issue is enforceable. Martindale, supra, 173 N.J. at 83. Second, a judicial determination must be made if the dispute at issue is within the scope of the agreement's arbitration provision. Id. at 92. Only the first question must be answered to resolve the issue presently before the Court.

Defendants' request to dismiss the Complaint in favor of arbitration is denied because the "arbitration provision" in the April 2015 Warranty Contract fails clearly to advise Plaintiff that she is relinquishing her right to prosecute any claims in court. It is therefore inconsistent with the New Jersey Supreme Court decision in Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430 (2014). In Atalese, the Court refused to enforce an arbitration provision in a consumer service agreement (for debt adjustment services) because the clause did not contain language that clearly and unambiguously advised plaintiff that she was waiving her right to seek relief in court. Atalese, supra, 219 N.J. at 446. More specifically, the Court invalidated the ambiguous and unclear arbitration clause in that case because it failed to explain the difference between proceeding in court and arbitration and was not drafted in plain and ordinary language that "...would be clear and understandable to the average consumer that she is waiving statutory rights." Id. The Court held that a proper arbitration provision "...[a]t least in some general and sufficiently broad way, must explain that the plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute. Id. at 447.

The Atalese Court observed that an arbitration provision is like any other contract and, as such, "'must be the product of mutual assent, as determined under customary principles of contract law.'" Id. at 442 (quoting NAACP of Camden Cnty. E. v. Foulke Mgmt. Corp., 421 N.J. Super.

404, 424 (App. Div. 2011), certif. granted, 209 N.J. 96 (2011), and appeal dismissed, 213 N.J. 47 (2013)).

When evaluating the sufficiency of any mutual assent, Justice Albin, writing for a unanimous court stated:

> Mutual assent requires that the parties have an understanding of the terms to which they have agreed. An effective waiver requires a party to have full knowledge of his legal rights and intent to surrender those rights. By its very nature, an agreement to arbitrate involves a waiver of a party's right to have her claims and defenses litigated in court. But an average member of the public may not know – without some explanatory comment – that arbitration is a substitute for the right to have one's claim adjudicated in a court of law.
>
> Moreover, because arbitration involves a waiver of the right to pursue a case in a judicial forum, courts take particular care in assuring the knowing assent of both parties to arbitrate, and a clear mutual understanding of the ramifications of that assent.

Atalese, supra, 219 N.J. at 442-43 (internal citations and quotations omitted).

The Atalese court also stressed that any contractual provision, arbitration or otherwise, that seeks to waive a party's rights, "must be clearly and unmistakably established." Id. at 444 (citation and internal quotations omitted). The Court noted:

> Thus, a clause depriving a citizen of access to the courts should clearly state its purpose. We have repeatedly stated that the point is to assure that the parties know that in electing arbitration as the exclusive remedy, they are waiving their time-honored right to sue.
>
> No particular form of words is necessary to accomplish a clear and unambiguous waiver of rights. It is worth remembering, however, that every consumer contract in New Jersey must be written in a simple, clear, understandable and easily readable way. Arbitration clauses – and other contractual clauses – will pass muster when phrased in plain language that is understandable to the reasonable consumer.

Id. (internal citations and quotations omitted).

Finally, the Atalese court identified three examples that appropriately informed a party that arbitration was an explicit waiver of the right to proceed in court. The Court summarized the holdings as follows:

For example, in [Martindale v. Sandvik, Inc., 173 N.J. 76 (2002)], we upheld an arbitration clause because it explained that the plaintiff agreed 'to waive [her] right to a jury trial' and that 'all disputes relating to [her] employment . . . shall be decided by an arbitrator.' 173 N.J. at 81-82, 96, 800 A. 2d 872 (stating that 'arbitration agreement not only was clear and unambiguous, it was also sufficiently broad to encompass reasonably plaintiff's statutory causes of action'). In [Griffin v. Burlington Volkswagen, Inc., 411 N.J. Super. 515, 518 (App. Div. 2010)], the Appellate Division upheld an arbitration clause, which expressed that '[b]y agreeing to arbitration, the parties understand and agree that they are waiving their rights to maintain other available resolution processes, such as a court action or administrative proceeding, to settle their disputes.' 411 N.J. Super. at 518, 988 A.2d 101. In [Curtis v. Cellco P'ship, 413 N.J. Super. 26 (App. Div. 2010), certif. denied, 203 N.J. 94 (2010)], the Appellate Division found the arbitration provisions were 'sufficiently clear, unambiguously worded, satisfactorily distinguished from the other [a]greement terms, and drawn in suitably broad language to provide a consumer with reasonable notice of the requirement to arbitrate.' 413 N.J. Super. at 33, 992 A.2d 795. The arbitration agreement in Curtis stated:

> Instead of suing in court, we each agree to settle disputes (except certain small claims) only by arbitration. The rules in arbitration are different. There's no judge or jury, and review is limited, but an arbitrator can award the same damages and relief, and must honor the same limitations stated in the agreement as a court would. Id. at 31, 992 A.2d 795 (emphasis omitted).

Id. at 444-45.

Applying these legal principles to the "arbitration provision" in the April 2015 Warranty Contract it is clear that it is non-compliant with Atalese and New Jersey law. The provision is not written in a clear and straightforward manner and is not satisfactorily distinguished from other contract terms. See Atalese, supra, 219 NJ at 445 (citing Curtis, supra, 413 N.J. Super. at 33). Indeed, the provision at issue is contained at page five in a five-page contract of adhesion within a paragraph titled "Mediation." The first two sentences are bolded and advise that the parties shall engage in a two stage dispute resolution process. Initially, the parties agree to mediate disputes "before resorting to mandatory arbitration in the State of New Jersey." The next paragraph provides that any and all disputes arising out of or connected with the April 2015 Warranty Contract shall be resolved individually "without resort to any form of class action." Paragraph two provides that all claims "arising out of or connected with" the April 2015 contract "shall be resolved exclusively by the American Arbitration Association under its Commercial Mediation Rules." Paragraph two continues to require all claims be submitted to arbitration regardless of the theory of liability. Finally, paragraph 3 of the "Mediation" provision limits recovery to $1500 per claim, "but in no event attorneys fees."

Contrary to Defendants' contention, the language that any and all claims be resolved "exclusively" by arbitration does not adequately inform Plaintiff that she is waiving her right to proceed in court. For sure, the April 2015 Warranty Contract is utterly silent as to the right of Plaintiff to a jury trial and that by agreeing to the "Mediation" provision she is waiving this significant right, unlike the acceptable arbitration provision in Martindale, supra. Nor does it, when read in context and without improper parsing and truncation of certain words and phrases, advise Plaintiff she was waiving other available resolution processes such as court actions, as the arbitration clause in Griffin, supra, informed. Finally, while paragraph 2 identifies AAA and the commercial arbitration rules, it does not remotely explain the differences between arbitration and judicial proceedings as did the arbitration provision in Curtis, supra.

IV. Conclusion

For the aforementioned reasons, the Court denies Defendants' motion for reconsideration of the Court's May 27, 2016 Order.

Dated: November 18, 2016

Honorable Arnold L. Natali Jr., J.S.C.

Problem Report Information Inquiry

Problem Report ID: 33091 **Problem Report Type:** Complaint **Responsible Section:** Consumer Services

Status: Open **Opened Date:** 07-16-2014

Closed Date: **Closure Reason:**

Problem Report Details

Type of Problem

Claim Denial/Delay

Description

Consumer Detail of Complaint

On June 26, 2014, my air-conditioning abruptly stopped working, I contacted Choice Home Warranty to file a claim. Choice Home Warranty dispatched Priority Plumbing & Air to my home. The technician advised me that the compressor in my air-conditioning unit was no longer working and it needed to be replaced. When Choice Home Warranty was notified of this professional assessment, it disputed the diagnosis and ultimately denied my claim leaving me with no choice but to pay $1,025.00 out of pocket for this necessary and covered repair. I spoke to a supervisor, Giselle, at Choice Home Warranty and requested a written explanation as to why Choice Home Warranty refused to accept my claim. Giselle stated that it is against their policy to provide a denial explanation in written form.

Consumer Desired Resolution

Reimbursement for the $1,025.00 that I had to pay "out of pocket" for the replacement of the compressor in my air-conditioning unit

Consumer is Complaining Against

My Insurance Company

Consumer is represented by an attorney?

No

How did the consumer know about us?

Other

Has the consumer previously reported this problem to our office or any other agency?

No

Purchased Insurance on the Health Care Exchange?

No

Respondent Name and Address **EIN/SSN** **Employment Type**

NAIC ID **Representative**

Complaint Confirmed

Source	Complaint Type	Incident Date	Received Date	Priority
Consumer	General	06-26-2014		

Location	Location Date	Finding Type	Incident Group

Subject	Subject Additional Details

Problem Report Information Inquiry

Problem Report ID: 33091 **Problem Report Type:** Complaint **Responsible Section:** Consumer Services

Status: Open **Opened Date:** 07-16-2014

Closed Date: **Closure Reason:**

State ID	System Source
	CNSMRPRTL

Insurer	Agent/Agency	Type of Insurance	Self-Funded Health Plan
Choice Home Warranty		Homeowners	No

Coverage Type	Coverage Level	Coverage Sublevels

Name of Insured	Policy Number	Policy Period Begin Date	Policy Period End Date	Policy Issued State
Levy, David Wolf	628975268			Nevada

Insurance Card ID	Claim Number	Type of Policy	Location of Loss
	51918606		2300 Steamers Ave, Unit 103, Las Vegas, NV 89183

Is the Insured Medicare	Medicare Supp. Plan	Other Party's Policy or Claim Number
No		

Complainant Name and Address

Levy, David Wolf
10624 S Eastern Ave Suite A-217
Henderson, NV 89052

SSN

Organization

Role

Insured

Representative

Age Group

Medical Info. Authorization

No

Involved Parties

Involved Party Comment	Involved Party Type	Organization
Choice Home Warranty	Portal - Company	
Levy, David Wolf	Portal - Insured	

Staff Members

Staff Member	Begin Date	End Date	Responsible
Brown Tanishia	07-16-2014		Yes

Problem Report Information Inquiry

Problem Report ID: 33091 **Problem Report Type:** Complaint **Responsible Section:** Consumer Services

Status: Open **Opened Date:** 07-16-2014

Closed Date: **Closure Reason:**

Independent Review Details

Request Type	**Life Threatening**	**Court Ordered**	**Experimental/ Investigational**	**Due Date**	**Received Date**
Decision	**Decision Date**	**Level of Review**	**Specialty of Reviewer**		

Service Denials

Primary Diagnosis	**Service Begin Date**	**Service End Date**

Problem Report Information Inquiry

Problem Report ID: 34153 **Problem Report Type:** Complaint **Responsible Section:** Consumer Services

Status: Closed **Opened Date:** 11-19-2014

Closed Date: 03-18-2015 **Closure Reason:**

Problem Report Details

Type of Problem

Claim Denial/Delay

Description

Warranty company is denying claim.

Consumer Detail of Complaint

On 4-30-14, I signed up for home owners insurance,based on an Internet ad. from ,Choice Home Warranty, the CHW Internet ad stated "Get coverage today with a Choice Home Warranty" (I have a copy of the ad) I signed up and paid my first month payment $36.50.,the same day..On 5-25-2014, a water pipe broke flooding my living room...I called CHW claim dept. and the customer service entered my claim request and gave me a claim # 51748571, I was told a plumber would call me in 2 hours...NO ONE CALLED..being a emergency I called a plumber and they repaired the leak and charged me $862.00..I submitted this bill to CHW AND WAS DENIED...CHW said that my policy was not in effect until 30 days after I signed up????? I said you advertised "GET COVERAGE TODAY WITH A CHW" you also gave me a claim # and promised a plumber would call me...now why wouldnt I think I had insurance coverage...CHW denied my claim and would not respond to my claim of false,misleading, Internet advertising. I have filed several complaints against CHW, with no action...I have noticed that CHW had not advertise "GET COVERAGE TODAY WITH CHW' since my complain....I assume the realized their Internet ad was misleading.

Consumer Desired Resolution

I would like to be reimbursed for the $826.00, cost to repair the broken water pipe...I have in the interium filed a complant with the LV and NJ...BBB...this is very frustrating and I feel CHW has been missleading and decitfull in their Internet advertising...when you adverise "GET COVERAGE TODAY" and take a payment, why wouldnt you assume you have insurance coverage TODAY!!!!

Consumer is Complaining Against

My Insurance Company

Consumer is represented by an attorney?

No

How did the consumer know about us?

Insurance Department Web Page

Has the consumer previously reported this problem to our office or any other agency?

Yes

Purchased Insurance on the Health Care Exchange?

Other Agency Name

confidential

Respondent Name and Address

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. DBA CHOICE HOME WARRANTY
90 WASHINGTON VALLEY RD
BEDMINSTER, NJ 07921-2118

EIN/SSN

90-0594950

NAIC ID

Employment Type

State Specific

Representative

Complaint Confirmed

Yes

Problem Report Information Inquiry

Problem Report ID: 34153 **Problem Report Type:** Complaint **Responsible Section:** Consumer Services

Status: Closed **Opened Date:** 11-19-2014

Closed Date: 03-18-2015 **Closure Reason:**

Source	Complaint Type	Incident Date	Received Date	Priority
Consumer	General	05-25-2014	11-19-2014	

Location	Location Date	Finding Type	Incident Group
Carson City	11-21-2014		

Subject	Subject Additional Details

State ID	System Source
KK	CNSMRPRTL

Insurer	Agent/Agency	Type of Insurance	Self-Funded Health Plan
choice home warranty		Homeowners	No

Coverage Type	Coverage Level	Coverage Sublevels
Miscellaneous	Extd Warranty & Serv Contracts	

Name of Insured	Policy Number	Policy Period Begin Date	Policy Period End Date	Policy Issued State
naughten, larry s	465308123			New Jersey

Insurance Card ID	Claim Number	Type of Policy	Location of Loss
	51748571		9541 eagle valley dr

Is the Insured Medicare	Medicare Supp. Plan	Other Party's Policy or Claim Number
No		

Complainant Name and Address
NAUGHTEN, LARRY S
9541 eagle valley dr
las vegas, NV 89134

SSN

Organization

Role
Insured

Representative

Age Group

Medical Info. Authorization
No

Reasons

Category	Reason Types	Respondent
CH	Denial of Claim	HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. DBA CHOICE HOME WARRANTY

Actions

Problem Report Information Inquiry

Problem Report ID: 34153 **Problem Report Type:** Complaint **Responsible Section:** Consumer Services

Status: Closed **Opened Date:** 11-19-2014

Closed Date: 03-18-2015 **Closure Reason:**

Action	Action	Letter Description	Due Date	Received Date
03-18-2015	Phone			

Involved Party Name	Staff Member	Time	Batch Qty
	Kim Kuhlman	0.13	

Comment

Rcvd. a call from Victor at CHW inquiring if I had a document. He also advised that they will be paying the claim. I advised him to reach out to the Naughtens to see if they have additional information. I advised complainant that company may be contacting him.

Action	Action	Letter Description	Due Date	Received Date
03-17-2015	Other			

Involved Party Name	Staff Member	Time	Batch Qty
	Kim Kuhlman	0	

Comment

Reviewed file with Derick. I asked the company to reconsider and cover this claim as the complainant was not aware that he could provide evidence of previous coverage with no lapse to avoid the waiting period. kmk

Action	Action	Letter Description	Due Date	Received Date
11-21-2014	Letter	CO		

Involved Party Name	Staff Member	Time	Batch Qty
	Kim Kuhlman	0	

Comment

Action	Action	Letter Description	Due Date	Received Date
11-21-2014	Letter	ACK		

Involved Party Name	Staff Member	Time	Batch Qty
	Kim Kuhlman	0	

Comment

Involved Parties

Involved Party / Comment	Involved Party Type	Organization
choice home warranty	Portal - Company	

Problem Report Information Inquiry

Problem Report ID: 34153 **Problem Report Type:** Complaint **Responsible Section:** Consumer Services

Status: Closed **Opened Date:** 11-19-2014

Closed Date: 03-18-2015 **Closure Reason:**

Naughten, Larry S Portal - Insured

Dispositions

Date	Type	Requested Amount	Disposition Amount	Paid Amount
03-18-2015	Compromised Settlement/Resol.	$0.00	$500.00	$500.00

Staff Members

Staff Member	Begin Date	End Date	Responsible
Kuhlman Kim	11-20-2014	03-18-2015	Yes

Independent Review Details

Request Type	Life Threatening	Court Ordered	Experimental/ Investigational	Due Date	Received Date

Decision	Decision Date	Level of Review	Specialty of Reviewer

Service Denials

Primary Diagnosis	Service Begin Date	Service End Date

EX 13

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THE STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

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For Immediate Release:
July 28, 2014

Office of The Attorney General
- John J. Hoffman, *Acting Attorney General*
Division of Consumer Affairs
- Steve C. Lee, *Acting Director*
Division of Law
- Jeffrey S. Jacobson, *Director*

For Further Information:
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973-504-6327

Citizen Inquiries-
609-984-5828

New Jersey Division of Consumer Affairs Files Complaint Against "Home Warranty" Company That Allegedly Used Deceptive Tactics to Refuse Consumers' Claims for Repair of Crucial Home Systems and Appliances

View Complaint

NEWARK – The New Jersey Division of Consumer Affairs has filed a Complaint against CHW Group, Inc., d/b/a "Choice Home Warranty," an Edison-based company that allegedly induced consumers to buy "comprehensive" coverage for crucial home systems and appliances, and then denied consumers' claims for repair or replacement through the use of various deceptive tactics. As a result, consumers who paid hundreds of dollars for CHW's so-called "home warranties" – which are actually residential service contracts – were forced to pay out-of-pocket for air conditioning, refrigerator, or other repairs that allegedly should have been covered under their "warranties" with CHW.

"This company's alleged false advertising and flagrant violations of the terms of its residential service contracts affected consumers not just in New Jersey, but in at least 25 other states from here to Nevada, according to the Division's consumer complaints," Acting Attorney General John J. Hoffman said. "It is time to bring these alleged violations to a close and prevent further harm to consumers."

Division of Consumer Affairs Acting Director Steve Lee said, "The Division alleges that Choice Home Warranty refused to provide the basic services that consumers were paying for, and pocketed the money paid by consumers. Such deceptive practices will not be tolerated in New Jersey."

As set forth in the State's complaint, filed by the Division of Law on behalf of the Division of Consumer Affairs:

CHW advertises that its so-called "home warranties" provide "comprehensive" coverage and "peace of mind" by protecting consumers against the high costs of unexpected repairs or replacements of home systems and appliances. The company's advertisements promise that, should consumers need service for their covered systems or appliances, CHW will "quickly" respond by dispatching a local technician who is duly licensed and insured. The company's advertisements further promised that consumers will "Never Pay For Covered Home Repairs Again!"

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Juvenile Justice Commission
State Police (Division of NJ)
Law (Division of)

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AA002937

In reality, however, CHW and its current and former principals, Victor Mandalawi, Victor Hakim, and David Seruya, all believed to be of Brooklyn (collectively, the defendants), repeatedly made it difficult if not impossible for consumers to realize the benefits of their so-called "warranties."

CHW and its principals often denied claims based on consumers' supposed failure to properly maintain their covered home systems or appliances. The defendants also often denied claims based on supposed pre-existing defects. The company denied claims even when technicians declared that the covered home systems or appliances had been properly maintained, and/or had failed for reasons not related to poor maintenance or pre-existing problems.

As a way of denying claims, the defendants on many occasions demanded that the consumers provide years' worth of records to prove they performed regular maintenance on the covered items. One consumer was told her claim could not be approved unless she could provide 12 years of maintenance records for her air conditioning unit. This denial, in addition to many others made on similar grounds, were issued despite the fact that CHW's residential service contract does not state that the company can demand maintenance records from consumers.

Additionally, when consumers requested specific explanations for their denial of claims in writing, CHW on many occasions failed or refused to provide written explanations.

CHW also promised consumers that if covered items could not be repaired, the company would replace them. However, when consumers needed to replace covered items, the company often required consumers to accept cash "buy-outs." These "buy-outs" were hundreds of dollars less than the consumers' cost to replace the items. For example, CHW offered one customer a $180 "buy-out" for a dryer that allegedly would have cost $600 to repair. When the consumer disputed this, the company offered a $285 "buy-out."

CHW also repeatedly failed to deliver on its promises for prompt service. In several cases this was because the company failed to pay its contracted technicians. On at least one occasion, CHW assigned three different technicians to a consumer's claim, and all three technicians told the consumer they would not do so because CHW had failed to pay them for prior services. To date, the Division of Consumer Affairs has received 16 complaints from technicians who stated CHW had not paid outstanding invoices totaling at least $21,690.92.

CHW's residential service contract states that, upon receiving a request for service, the company will contact a local technician within two days during normal business hours and four days on weekends and holidays. However, CHW did not have contracted technicians in some areas. Consumers in those areas had to find their own technicians, then pay the technicians directly and seek reimbursement from CHW. On other occasions, contractors sent to consumers' homes by CHW turned out to be unlicensed and/or uninsured.

Despite these alleged failures to honor the terms of consumers' residential service contracts, CHW paid Mandalawi at least $2.6 million from January 2011 to September 2013, paid Hakim at least $3.7 million between December 2010 and September 2013, and paid Seruya at least $2.1 million between January 2011 and April 2013.

The Division of Consumer Affairs has received complaints from a total of 116 consumers, including 18 from New Jersey, seven from New York, and five from Pennsylvania. The balance of the complaints were filed by consumers from outside the tri-state area, in states such as Maryland, Texas and Nevada. The Division also has been provided with 902 complaints that were filed by individuals from various states with the Better Business Bureau.

The State's Complaint, filed in Superior Court in Middlesex County, ultimately requests that the Court, among other things, find that the defendants violated the Consumer Fraud Act and Advertising Regulations; order defendants to pay consumer restitution; declare

CHW's residential service contracts with consumers to be null and void; and impose civil penalties.

Investigator Brian Morgenstern, of the Division of Consumer Affairs Office of Consumer Protection, conducted this investigation.

Deputy Attorney General David Reap, of the Consumer Fraud Prosecution Section within the Division of Law, is representing the State in this action.

Consumers who believe they have been cheated or scammed by a business, or suspect any other form of consumer abuse, can file a complaint online with the State Division of Consumer Affairs or by calling **1-800-242-5846** (toll free within New Jersey) or **973-504-6200**.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C-135-14

JOHN J. HOFFMAN, Acting Attorney General of the State of New Jersey, and STEVE C. LEE, Acting Director of the New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

CHW GROUP INC. d/b/a CHOICE HOME WARRANTY; VICTOR MANDALAWI; VICTOR HAKIM; DAVID SERUYA; 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 CHW GROUP, INC. d/b/a CHOICE HOME WARRANTY; and XYZ CORPORATIONS 1-20,

Defendants.

Civil Action

COMPLAINT

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Newark, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. Since at least December 2008, CHW Group Inc. d/b/a Choice Home Warranty ("CHW") has advertised, offered for sale and sold merchandise to consumers in the State of New Jersey ("State" or "New Jersey") and elsewhere.

2. CHW advertises on the internet and elsewhere that it provides consumers with "peace of mind" and that its "home warranties" protect consumers against the "high cost" of "unexpected" repair or replacement of home systems and appliances. CHW further advertises that it provides "comprehensive" coverage of crucial home systems and appliances such as air conditioning systems, heating systems, water heaters, and refrigerators. Contrary to such advertisements, CHW does not actually sell to consumers "home warranties" providing "comprehensive" coverage, but residential services contracts ("RSCs") with coverage that is reduced by numerous and substantial exclusions and limitations of liability.

3. Additionally, CHW advertises on the internet and elsewhere that it "quickly" arranges for repair or replacement of home systems and appliances by "local" technicians. To the contrary, CHW has repeatedly failed to arrange for technicians to service customers' claims because it has no "CHW contractor network" technicians in certain geographic areas. Moreover, technicians have refused to service CHW customers because it has not paid them for past services rendered. Despite CHW's representations that customers will "enjoy a hassle-free relationship" with the "CHW contractor network," consumers often were left to find technicians on their own.

4. Further, CHW serves as the administrator of claims under the RSC, and in that capacity has engaged in a variety of deceptive tactics to deny claims for repair or replacement of home systems and appliances. Among other things, CHW has denied claims when customers are

unable to submit multiple years of "maintenance records," even though CHW does not inform consumers at the time they purchase RSCs that they are required to retain any "maintenance records." Additionally, CHW has denied claims due to "lack of maintenance" or "pre-existing conditions" although the technicians that inspected the home systems or appliances reported to CHW that they failed for other reasons, such as normal wear and tear. At times, CHW has denied claims verbally and refused to provide written, specific explanations.

5. Ultimately, consumers, many of whom are elderly and/or disabled, paid for repairs or replacement of crucial home systems and appliances out-of-pocket – the very circumstance they sought to guard against by purchasing a CHW "home warranty."

6. At varying times, Victor Mandalawi ("Mandalawi"), Victor Hakim ("Hakim") and David Seruya ("Seruya") have been owners and principals of CHW and have controlled, managed, directed and/or participated in its business operations.

7. To date, the New Jersey Division of Consumer Affairs ("Division") has received 116 complaints from consumers concerning, among other things, the CHW business practices outlined above.

8. The Division has also received 877 complaints from the Better Business Bureau ("BBB") as to CHW. Additionally, at varying times, the BBB has given CHW an F, D- or C- rating.

9. The conduct of CHW, Mandalawi, Hakim and Seruya (collectively, "Defendants") constitutes multiple violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations"). The Attorney General and the Director submit this

Complaint to end Defendants' deceptive and unconscionable business practices and to prevent consumers from suffering further harm.

PARTIES AND JURISDICTION

10. The Attorney General is charged with the responsibility of enforcing the CFA and the Advertising Regulations. The Director is charged with the responsibility of administering the CFA and the Advertising Regulations on behalf of the Attorney General.

11. By this action, the Attorney General and Director (collectively, "Plaintiffs") seek injunctive relief and other relief for violations of the CFA and the Advertising Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19.

12. Venue is proper in Middlesex County, pursuant to R. 4:3-2, because it is the county in which CHW has maintained a business address and otherwise conducted business.

13. On June 2, 2008, CHW Group Inc. was registered as a Domestic Business Corporation with the New York State Department of State, Division of Corporations ("NYS Division of Corporations").

14. CHW Group Inc.'s address for receipt of process was identified as 244 Madison Avenue, New York, New York 10016.

15. According to the NYS Division of Corporations, as of October 26, 2011, CHW Group Inc.'s "Current Entity Status" in New York is "INACTIVE – Dissolution by Proclamation / Annulment of Authority."

16. On May 28, 2009, CHW Group Inc. ("CHW") was registered as a Domestic Business Corporation with the New Jersey Division of Commercial Recording.

17. At times, CHW has maintained a principal and business address of 1090 King George Post Road, Building 10, Edison, New Jersey 08837.

18. At varying times, CHW has also maintained a business address of 510 Thornall Street, Edison, New Jersey 08837.

19. CHW's registered agent in the State is identified as Mandalawi, with the following address: 1090 King George Post Road, Building 10, Edison, New Jersey 08837.

20. At all relevant times, Mandalawi has been the President and owner of CHW.

21. Upon information and belief, Mandalawi has a mailing address of [redacted]

22. At all relevant times, Hakim has been a principal and/or owner of CHW.

23. Upon information and belief, Hakim has a mailing address of [redacted]

24. At least until April 2013, Seruya has been a principal and/or owner of CHW.

25. Upon information and belief, Seruya has a mailing address of [redacted]

<u>GENERAL ALLEGATIONS COMMON TO ALL COUNTS:</u>

A. Prior Advertisement, Offering for Sale and Sale of RSCs by Hakim and Seruya:

26. On August 10, 2006, United Home Warranty, Inc. ("UHW") was registered as a Domestic Business Corporation with the NYS Division of Corporations.

27. UHW maintained a business address of P.O. Box 1157, Oakhurst, New Jersey 07755.

28. At least as of November 2006, UHW advertised, offered for sale, and sold RSCs.

29. Upon information and belief, Seruya was a principal and/or owner of UHW.

30. Upon information and belief, Hakim was a principal and/or owner of UHW.

31. According to the NYS Division of Corporations, as of October 26, 2011, UHW's "Current Entity Status" in New York is "INACTIVE – Dissolution by Proclamation / Annulment of Authority."

32. Upon information and belief, UHW is no longer doing business.

33. On November 28, 2005, National Home Protection, Inc. ("NHP") was registered as a Domestic Business Corporation with the NYS Division of Corporations.

34. NHP maintained a business address at 33 Wood Avenue South, Iselin, New Jersey 08830.

35. At least as of December 2005, NHP advertised, offered for sale, and sold RSCs.

36. Upon information and belief, Seruya was a principal and/or owner of NHP.

37. Upon information and belief, Hakim was a principal and/or owner of NHP.

38. The Division received at least 33 consumer complaints concerning NHP's business practices, and forwarded such complaints to the Office of the New York Attorney General ("NY AG").

39. On December 14, 2009, NHP, Seruya, and Hakim entered into a Consent Order and Judgment with the NY AG in The People of the State of New York v. National Home Protection, Inc., et al., Index No. 400431/09, pursuant to which NHP, Seruya, and Hakim were, among other things, enjoined from "engaging in any deceptive, fraudulent, or illegal practices" in connection with the advertisement, offering for sale or sale of RSCs and ordered to pay restitution and civil penalties.

40. According to the NYS Division of Corporations, as of October 26, 2011, NHP's "Current Entity Status" in New York is "INACTIVE – Dissolution by Proclamation / Annulment of Authority."

41. Upon information and belief, NHP is no longer in business.

B. <u>CHW's Business Operations, Generally</u>:

42. At least as of December 2008, CHW has maintained a website at www.choicehomewarranty.com ("CHW Main Website").

43. Upon information and belief, at least as of December 2008, CHW has advertised, offered for sale, and sold RSCs. (CHW's current RSC is attached as Exhibit A.)

44. Upon information and belief, Mandalawi's responsibilities as CHW's President and owner include, but are not limited to:

(a) arranging for technicians to service claims;
(b) communicating with technicians regarding diagnoses of failures of home systems and appliances;
(c) reviewing claims;
(d) reviewing "maintenance records";
(e) determining whether claims should be approved or denied;
(f) communicating with consumers regarding cancellation of RSCs; and
(g) offering release agreements to consumers to settle disputes.

45. Upon information and belief, from January 2011 to September 2013, Mandalawi was compensated by CHW and/or received other payments from CHW totaling at least $2,662,450.00.

46. Upon information and belief, Hakim's responsibilities as CHW's principal and/or owner include, but are not limited to:

(a) ensuring arrangements are made for technicians to service claims;
(b) reviewing claims;
(c) reviewing "maintenance records"; and
(d) determining whether claims should be approved or denied.

47. Upon information and belief, from December 2010 to September 2013, Hakim was compensated by CHW and/or received other payments from CHW totaling at least $3,758,526.19.

48. Upon information and belief, Seruya's responsibilities as CHW's principal and/or owner include, but are not limited to:

(a) arranging for technicians to service claims;
(b) ensuring arrangements are made for technicians to service claims;
(c) communicating with consumers regarding denials of claims;
(d) communicating with consumers regarding cancellation of RSCs;
(e) cancelling consumers' RSCs;
(f) communicating with consumers regarding refunds;
(g) providing consumers with refunds;
(h) communicating with consumers regarding BBB complaints; and
(i) communicating with state and local agencies regarding denial of claims.

49. Upon information and belief, from January 2011 to April 2013, Seruya was compensated by CHW and/or received other payments from CHW totaling at least $2,133,350.00.

C. CHW's Advertisement of <u>"Home Warranties"</u>:

50. At varying times, CHW has sent emails to consumers. (See, for example, a copy of such an email ("CHW Email Advertisement") attached as Exhibit B.)

51. The CHW Email Advertisement states "NEVER PAY FOR COVERED HOME REPAIRS AGAIN!"

52. The CHW Email Advertisement states "A home warranty is a renewable service contract that covers the repair or replacement of many of the most frequently occurring breakdowns of system components and appliances."

53. On or around November 21, 2013, CHW posted two (2) commercials on YouTube, titled "Choice Home Warranty Commercial" and "Choice Home Warranty Benefits"

(collectively referred to as "CHW Commercial Advertisements"). (The CHW Commercial Advertisements are available for viewing at http://www.youtube.com/user/ChoiceHomeWarranty and are provided in CD format as Exhibit C.)

54. During the Choice Home Warranty Commercial, an actor states as follows: "Wouldn't it be nice to have a coverage plan, sort of like insurance, to cover your Heating, Air Conditioning, Plumbing and Appliances for one low monthly fee? With Choice Home Warranty you get peace of mind when things breakdown." *Choice Home Warranty Commercial*, at 0:00 – 0:14.

55. During the Choice Home Warranty Commercial, an actor states as follows: "With a Choice Home Warranty, you can call twenty-four-seven, and we'll arrange for a licensed, pre-screened, local contractor to repair or replace your equipment quickly and professionally." *Choice Home Warranty Commercial*, at 0:22 – 0:32.

56. During the Choice Home Warranty Commercial, while an actor is making the above-referenced statement, the graphic below appears on the screen:

57. During Choice Home Warranty Benefits, an actor states as follows: "Wouldn't it be nice to have a coverage plan, sort of like insurance, to cover your Heating, Air Conditioning, Plumbing and Appliances for about a dollar a day? Choice Home Warranty offers comprehensive coverage, one-stop service and peace of mind." *Choice Home Warranty Benefits*, at 0:00 – 0:14.

58. During Choice Home Warranty Benefits, an actor states as follows: "You'll get twenty-four-seven access to our call center, quick appointments with licensed, pre-screened, local contractors all for a low monthly fee." *Choice Home Warranty Benefits*, at 0:16 – 0:24.

59. During Choice Home Warranty Benefits, an actor states as follows: "Get the coverage you need in minutes and never pay for covered home repairs again." *Choice Home Warranty Benefits*, at 0:42 – 0:46.

60. At varying times, CHW has maintained various websites that directed consumers to the CHW Main Website.

61. The Additional Websites include, but are not limited to, the following:

- www.choicehomeaz.com;
- www.choicehomenv.com;
- www.choichomeus.com;
- wwww.choicehomewarranty.biz;
- www.choicehomewarranty.info;
- www.choicehomewarranty.me;
- www.choicehomewarranty.mobi;
- www.choicehomewarranty.net;
- www.choicehomewarranty.org;
- www.chwplan.com;
- www.chwplans.com; and
- www.warrantymyhome.com.

62. The website located at www.chwplan.com ("CHW Plan Additional Website") provides limited information to consumers and directs them to the CHW Main Website. (The CHW Plan Additional Website is attached as Exhibit D.)

63. The CHW Plan Additional Website states "Never Pay for Covered Home Repairs Again!"

64. The CHW Plan Additional Website states "If We Cant [sic] Fix it. We'll Replace it."

65. The CHW Plan Additional Website states "Local Pre-Screened Technicians."

66. The CHW Plan Additional Website states "A home warranty is a renewable service contract that covers the repair or replacement of many of the most frequently occurring breakdowns of system components and appliances."

67. The CHW Plan Additional Website states "Plus finding a qualified professional to solve your problems can be stressful and inconvenient."

68. The CHW Plan Additional Website provides the following disclosure at the bottom of the webpage:

* Click Here to view complete limits of liability and any exclusions. See policy for specifics on response times. CHW reserves the right to offer cash back in lieu of repair or replacement in the amount of CHW's actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance. View our Privacy Policy

69. The website located at www.choicehomeaz.com ("CHW-AZ Additional Website") provides limited information to consumers and directs them to the CHW Main Website. (The CHW-AZ Additional Website is attached as Exhibit E.)

70. The CHW-AZ Additional Website states "Never Pay for Covered Home Repairs Again!!!"

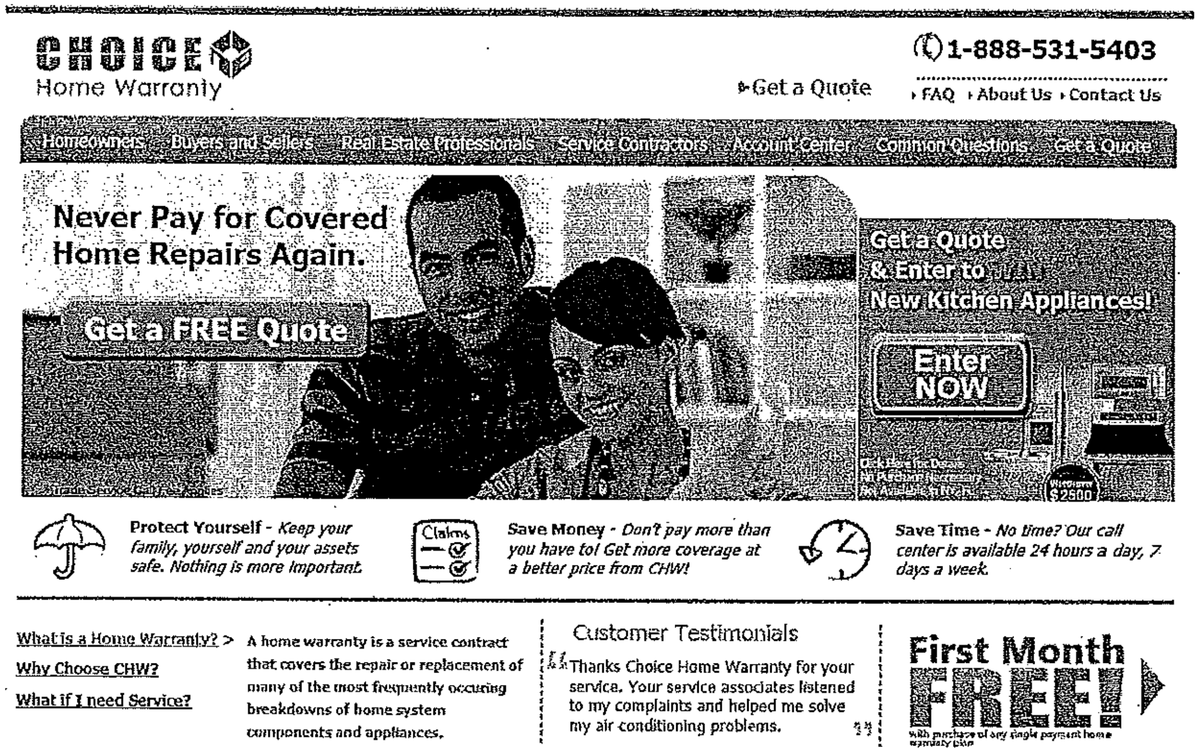
71. The CHW-AZ Additional Website states: "If a covered system in your home breaks down just call the 24/7 claims hotline and CHW will dispatch a local, licensed and insured technician to service your claim. If the covered item is beyond repair, CHW will replace it!*"

72. The CHW-AZ Additional Website provides the following disclosure at the bottom of the webpage:

* Click Here to view complete limits of liability and any exclusions. See policy for specifics on response times. CHW reserves the right to offer cash back in lieu of repair or replacement in the amount of CHW's actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance.
View our Privacy Policy

73. The CHW Main Website has been active since December 2008.

74. The CHW Main Website homepage appears as follows:



75. When consumers selected the "Homeowners" tab on the CHW Main Website homepage, they are able to access other webpages titled, among others, "Home Protection," "Why a Warranty," "What's Covered," and "Common Questions."

76. The "Home Protection" section of the CHW Main Website states:

Fast & Dependable Home Warranty Service From Local Technicians

A home warranty can be very beneficial and save you money when it is understood and used for its intended purpose, which is to cover systems and

> appliances for normal wear and tear, that were in working condition before the contract took effect.* You never know for certain when a covered major system or appliance in your home will break down. But sooner or later, everything wears out. Whether it's your heating system or even a dishwasher - nothing lasts forever.
>
> It's simple! If a covered system in your home breaks down due to normal wear and tear, just call the 24/7 claims hotline and CHW will dispatch a local, licensed, and insured technician to service your home warranty claim.** If the covered item is beyond repair, CHW will replace your unit with a similar or like feature model, or even send you a check to buy a new item!***
>
> . . .
>
> [Y]ou'll enjoy a hassle-free relationship with the home warranties contractor network saving you both time and money.

77. The "Home Protection" section also includes the following disclosures at the bottom of the webpage:

> * Click Here to view complete limits of liability and any exclusions.
>
> ** See policy for specifics on response times.
>
> ***CHW reserves the right to offer cash back in lieu of repair or replacement in the amount of CHW's actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance.

78. The "Why a Home Warranty?" section of the CHW Main Website states: "Why flip through the yellow pages searching for a reputable service technician? At CHW, we strive to find the most honest, established vendors to service your claim."

D. CHW Representatives' <u>Representations to Consumers</u>:

79. At all relevant times, CHW has maintained a toll free telephone number, specifically (888) 531-5403, to address consumer questions regarding, among other things, the coverage provided by CHW "home warranties."

80. During telephone conversations with consumers, CHW representatives stated that, when home systems or appliances cannot be fixed, CHW will replace home systems or appliances.

81. During telephone conversations with consumers, CHW sales representatives stated that CHW does not require consumers to retain and/or submit documents such as "maintenance records."

82. At varying times, CHW sales representatives also sent emails to consumers.

83. Upon information and belief, in emails to consumers, CHW sales representative stated that, when home systems or appliances cannot be fixed, CHW will replace the home systems or appliances.

E. <u>CHW's Sale of "Home Warranties":</u>

84. During telephone conversations with consumers and/or in emails to consumers, CHW sales representatives provided consumers with price quotes on "home warranties."

85. CHW offered "home warranties" that provided a year of coverage at a price (sometimes referred to as a "rate") of roughly \$350 to \$500.

86. Additionally, CHW offered "home warranties" that would provide more than a year of coverage for an increased price.

87. After consumers provided their payment information to CHW sales representatives, consumers received confirmation emails from CHW titled "Choice Home Warranty Purchase Confirmation" ("CHW Confirmation Email").

88. The CHW Confirmation Email requested that consumers review their "policy information," which included coverage plan purchased (<u>i.e.</u> Total Plan or Basic Plan); service call fee (<u>i.e.</u> deductible); Optional Coverage purchased, if any; and method of payment.

89. Additionally, the CHW Confirmation Email stated: "A hard copy policy as well as the terms of service will arrive in the mail shortly."

90. Upon information and belief, since at least September 2013, CHW has mailed an 18-page booklet ("CHW Booklet") to consumers, which includes, among other things, the RSC. (A copy of the Booklet is attached as Exhibit F.)

91. The CHW Booklet, on the cover page, states "Home Warranty Contract Enclosed."

92. The CHW Booklet, on the second page, states "**REQUESTING CHW SERVICE IS EASY!**" The second page further states:

> **1. Make a Service Request**
> When a covered system or appliance breaks down, simply contact our Claims Department at (888) 531-5403 or file a claim online at www.ChoiceHomeWarranty.com.
>
> **2. Schedule a Service Appointment**
> Once you submit your claim, you will be assigned a pre-screened, licensed, and insured technician to handle your request. We will provide you with their contact information so you can schedule a mutually convenient appointment.
>
> **3. Pay Your Service Fee**
> The service technician will collect the deductible from you upon arrival. If your service request covers more than one item, or if more than one trade is needed to complete your repair (e.g. electrician and plumber), multiple deductibles may apply.
>
> **4. Have Your Covered Item Repaired or Replaced**
> Our service technician will diagnose the claim and contact us with the details so we can determine coverage eligibility and the best course of action – repair, replacement, or possibly a claim buyout. Please review your contract carefully for limitations and exclusions.

. . .

93. The CHW Booklet, on the third page, sets forth the "Coverage Details" which include the rate; the service call fee; the Coverage Plan (i.e. Total Plan or Basic Plan), the covered home systems and components; and Optional Coverage, if any.

94. The CHW Booklet, on the fifth page, sets forth "Common Questions" and answers, which include:

Q. Does a home warranty cover older systems and appliances?

A. A home warranty provides repair or replacement of all covered systems and appliances that were in the home and in proper operating condition on the agreement effective date, and that have been properly installed and maintained, no matter their age, make or model.

Q. How do I know my service technician is qualified?

A. All CHW Service are pre-screened, licensed, and independently insured. Performance is constantly monitored to ensure quality work and professionalism. Your satisfaction is our biggest priority.

95. The CHW Booklet, from the sixth to fourteenth pages, sets forth "Your Service Agreement," which is the RSC.

96. The CHW RSC is organized as follows:

A. COVERAGE

B. COVERAGE PERIOD

C. SERVICE CALLS – TO REQUEST SERVICE: 1-888-531-5403

D. COVERAGE (COVERAGE DEPENDENT ON PLAN)

E. OPTIONAL COVERAGE (Requires Additional Payment)

F. LIMITATIONS OF LIABILITY;

G. Mediation

H. Severability

I. BUILDING AND ZONING CODE REQUIREMENTS OR VIOLATIONS

J. MULTIPLE UNTIS AND INVESTMENT PROPERTIES

K. TRANSFER OF CONTRACT & RENEWALS

L. CANCELLATION

97. The section titled "**A. COVERAGE**" of the CHW RSC, in relevant part, states:

> During the coverage period, Our sole responsibility will be to arrange for a qualified service contractor ("Service Provider") to repair or replace, at Our expense (up to the limits set forth below), the systems and components mentioned as "Included" in accordance with the terms and conditions of this contract so long as such systems and components:
>
> . . .
>
> 2. Become inoperative due to normal wear and tear; and
>
> 3. Are in place and in proper working order on the effective date of this home warranty contract. This contract does not cover any known or unknown pre-existing conditions. . . . Coverage is subject to limitations and conditions specified in this contract. . . . NOTE: This is not a contract of insurance, residential service, warranty, extended warranty, or implied warranty.

98. The section titled "**C. SERVICE CALLS – TO REQUEST SERVICE: 1-888-531-5403**" of the CHW RSC, in relevant part, states:

> 1. You or your agent (including tenant) must notify Us for work to be performed under this contract as soon as the problem is discovered. We will accept service calls 24 hours a day, 7 days a week, 365 days a year at 1-888-531-5403. Notice of any malfunction must by [sic] given to Us prior to expiration of this contract.
>
> 2. Upon request for service, We will contact an authorized Service Provider within two (2) days during normal business hours and four (4) days on weekends and holidays. The authorized Service Provider will contact You to schedule a mutually convenient appointment during normal business hours. We will determine what repairs constitute an emergency and will make reasonable efforts to expedite emergency service. If You should request Us to perform non-emergency service outside of normal business hours, You will be responsible for payment of additional fees and/or overtime charges.
>
> 3. We have the sole and absolute right to select the Service Provider to perform the service; and We will not reimburse for services performed without prior approval.
>
> 4. You will pay a $60 trade service call fee ("Service Fee") per claim or the actual cost, whichever is less. The Service Fee is for each visit by Our approved Service Provider, except as noted in Section C (5), and is payable to Our approved Service Provider at the time of each visit. The service fee applies to each call dispatched and scheduled, including but not limited to those calls wherein coverage is included, excluded, or denied.

99. The section titled "**D. COVERAGE (COVERAGE DEPENDENT ON PLAN)**" of the RSC, in relevant part, states:

> The Coverage is for no more than one unit, system, or appliance, unless additional fees are paid. If no additional fees are paid, covered unit, system, or appliance is at Our sole discretion; certain limitations of liability apply to Covered systems and appliances.
>
> . . .
>
> 3. KITCHEN REFRIGERATOR
>
> NOTE: Must be located in the kitchen.
>
> *INCLUDED*: All components and parts, including integral freezer unit, except:
>
> *EXCLUDED*: Racks - Shelves - Lighting and handles - Freon - Ice makers, ice crushers, beverage dispensers and their respective equipment - Water lines and valve to ice maker - Line restrictions – Leaks of any kind - Interior thermal shells - Freezers which are not an integral part of the refrigerator - Wine coolers or mini refrigerators – Food spoilage – Doors - Door seals and gaskets – Hinges – Glass - Audio/Visual equipment and internet connection components.
>
> 4. AIR CONDITIONING/COOLER
>
> NOTE: Not exceeding 5 (five) ton capacity and designed for residential use.
>
> *INCLUDED*: Ducted electric central air conditioning, ducted electric wall air conditioning. All components and parts, for units below 13 SEER and when We are unable to facilitate repair/replacement of failed covered equipment at the current SEER rating, repair/replacement will be performed with 13 SEER equipment and/or 7.7 HSPF or higher compliant, except:
>
> *EXCLUDED*: Gas air conditioning systems - Condenser casings - Registers and Grills - Filters - Electronic air cleaners - Window units - Non-ducted wall units - Water towers - Humidifiers - Improperly sized units - Chillers - All exterior condensing, cooling and pump pads – Roof mounts, jacks, stands or supports - Condensate pumps – Commercial grade equipment - Cost for crane rentals - Air conditioning with mismatched condensing unit and evaporative coil per manufacturer specifications – Improper use of metering devices - Thermal expansion valves - Refrigerant conversion - Leak detections – Water leaks - Drain line stoppages – Maintenance - Noise. No more than two systems covered unless purchased separately at time of enrollment. We are not responsible for the costs associated with matching dimensions, brand or color made. We will not pay for

any modifications necessitated by the repair of existing equipment or the installation of new equipment.

. . .

6. WATER HEATER (Gas and/or Electric)

INCLUDED: All components and parts, including circulating pumps, except:

EXCLUDED: Access – Insulation blankets – Pressure reducing valve – Sediment build-up – Rust and corrosion - Main, Holding or storage tanks - Vents and flues - Thermal expansion tanks - Low boy and/or Squat water heaters - Solar water heaters - Solar components - Fuel, holding or storage tanks - Noise - Energy management systems - Commercial grade equipment and units exceeding 75 gallons - Drain pans and drain lines - Tankless water heaters.

100. The section titled "**F. LIMITATIONS OF LIABILITY**" on the sixth page of the CHW RSC identifies 19 limitations of liability.

101. Among the limitations of liability in the CHW RSC is "routine maintenance."

102. Regarding the limitation of liability for "routine maintenance," the CHW RSC states:

12. We are not liable for normal or routine maintenance. We will not pay for repairs or failures that result from the Contract holder's failure to perform normal or routine maintenance. For example, You are responsible for providing maintenance and cleaning pursuant to manufacturers' specifications, such as periodic cleaning of heating and air conditioning systems, evaporator coils and condenser coils, as well as periodic filter replacement.

103. The CHW RSC does not state that CHW has the right to request "maintenance records" from consumers.

104. The UHW RSC also included a limitation of liability for "routine maintenance." But, the UHW RSC stated that UHW had the right to request "maintenance records" from consumers.

105. Specifically, the UHW RSC stated:

> UHW does not perform routine maintenance. You are responsible for providing maintenance and cleaning on covered items as specified by the manufacturer to ensure continued coverage on such items. UHW reserves the right to request copies of maintenance records on such items. For example: heating and air conditioning systems require periodic cleaning and/or replacement of filters and cleaning of evaporator and condenser coils. Water heaters require periodic flushing.
>
> [(Emphasis added.)]

106. The NHP RSC also included a limitation of liability for "routine maintenance." But, the NHP RSC stated that NHP had the right to request "maintenance records" from consumers.

107. Specifically, the NHP RSC stated:

> NHP does not perform routine maintenance. You are responsible for providing maintenance and cleaning on covered items as specified by the manufacturer to ensure continued coverage on such items. NHP reserves the right to request annual maintenance records. For example: heating and air conditioning systems require periodic cleaning and/or replacement of filters and cleaning of evaporator and condenser coils. Water heaters require periodic flushing.
>
> [(Emphasis added.)]

108. Among the limitations of liability in the CHW RSC are "pre-existing conditions."

109. Regarding the limitation for "pre-existing," the CHW RSC states

> 18. We will not pay for the repairs or replacement of any covered systems or appliances if they are inoperable as a result of known or unknown pre-existing conditions, deficiencies and/or defects.
>
> [(Emphasis added.)]

110. Also among the limitations of liability in the CHW RSC is the following: "We reserve the right to offer cash back in lieu of repair or replacement in the amount of Our actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance."

F. CHW's Responses to Claims for **<u>Repair or Replacement of Home Systems and Appliances</u>:**

111. Upon information and belief, consumers submitted claims in various ways, including, but not limited to, via telephone and the CHW Main Website by accessing the "Home Warranty Account Management Center."

112. In some instances, after consumers submitted claims, CHW sent emails stating "CHW HAS RECEIVED YOUR NEW CLAIM." The emails provided a claim number and further stated that "Your claim is being processed and a service technician will be assigned shortly."

113. However, in some geographic areas, CHW had no "CHW contractor network" technicians.

114. The CHW RSC states "Upon request for service, We will contact an authorized Service Provider [(technician)] within two (2) days during normal business hours and four (4) days on weekends and holidays."

115. However, in some instances, because CHW had no "CHW contractor network" technicians in some geographic areas, CHW was unable to arrange for a technician to service consumers' claims for more than four (4) days.

116. Upon information and belief, in one instance, because CHW had no "CHW contractor network" technicians in a geographic area, CHW was unable to arrange for a technician to service a consumer's claim for over three (3) weeks.

117. In other instances, because CHW had no "CHW contractor network" technicians in some geographic areas, CHW was unable to arrange for technicians to service consumers' claims at all, thus requiring them to locate technicians on their own.

118. Consumers who became responsible for locating technicians to service their claims paid the technicians directly for repair or replacement of home systems and appliances.

119. Consumers who paid technicians directly were required to seek reimbursement from CHW by submission of a "Claim Reimbursement Form."

120. At times, CHW was able to assign technicians to service claims, but it failed to confirm the assigned technicians were willing to service CHW customers.

121. In general, CHW sent emails to consumers with the following subject heading: "A technician has been assigned to service your CHW service request." The email further stated that "Your claim has been assigned to [(name of technician)], an authorized CHW service technician. Please contact the technician at [(technician's telephone number)] to schedule a service appointment."

122. As a result, when some consumers contacted technicians CHW assigned to service their claims, those technicians refused to service the consumers' claims because CHW had failed to pay them for prior services rendered to CHW customers.

123. Upon information and belief, in one instance, CHW assigned three (3) different technicians to service a consumer's claim, and all three (3) stated to the consumer that they would not service his claim because CHW had failed to pay them for prior services rendered to CHW customers.

124. When "CHW contractor network" technicians refused to service consumers' claims, consumers were responsible for locating technicians to service their claims and for paying the technicians directly.

125. At times, CHW assigned "CHW contractor technicians" to service consumers' claims that, unbeknownst to consumers, were unlicensed and/or uninsured.

126. Mandalawi was among the CHW representatives who spoke with consumers regarding the assignment of "CHW contractor technicians" that were unlicensed and/or uninsured.

G. CHW's Authorization Process for <u>Repair or Replacement of Home Systems and Appliances</u>:

127. Upon information and belief, CHW provides a "pre-set authorization limit" of $100.00 in connection with claims for repairs or replacement of home systems and appliances.

128. Upon information and belief, when repair or replacement of home systems or appliances is estimated to exceed $100.00, technicians and/or consumers must obtain further authorization from CHW's Authorizations Department for the repair or replacement.

129. To that end, the CHW Service Work Order ("CHW SWO") sent to "CHW contractor network" technicians states:

> All CHW service contractors are given pre-set $100 authorization limits for covered repairs. If the gross estimate exceeds the authorization limit, the technician must call the Choice Home Warranty Authorizations Department for authorization before performing the work. Repairs can be made up to the amount of those limits without calling Choice Home Warranty for authorization all other work orders completed without authorization will not be paid.

130. Additionally, the CHW Claim Reimbursement Form states:

> In the event that you will be selecting your own Service Provider to service your claim, please follow the Rules & Regulations below to ensure proper claim reimbursement.
>
> - All consumers are given a pre-set $100 Authorization Limit.
> - If the gross repair estimate exceeds the pre-set $100 Authorization Limit, please call the Authorizations Department for further authorization before performing any repairs.

131. At all relevant times, CHW required its technicians to complete and submit a "Choice Home Warranty Vendor Application" ("CHW Vendor Application").

132. The CHW Vendor Application states that technicians shall "provide CHW and its Customers with a prompt, accurate and thorough diagnosis of each service call upon which CHW will rely." (Emphasis added.)

133. Additionally, the CHW SWO states that:

> If a technician should find a . . . malfunction resulting from other than normal wear and tear, or poor maintenance, a call should be placed to the Authorizations department . . . Choice Home Warranty does not cover these exceptions, and needs to be made aware of them while [the] technician is at the customer's home so that we can explain the contract coverage to the customer. When the technician calls CHW from the customer's home it prevents delay in service for the customer [and] prevents possible miscommunication[.]
>
> [(Emphasis added.)]

134. Upon information and belief, technicians generally provided their diagnoses to CHW via telephone.

135. CHW enters technicians' diagnoses into electronic forms ("Diagnosis Form") which contain, among others, the following input fields: "Cause"; "Happening Since"; and "Prop Maint."

136. Upon information and belief, the Diagnosis Form utilized for a particular claim depends on the type of home system or appliance that is the subject of that claim.

137. For example, the Diagnosis Form for air conditioning units is as follows:

Walter Jarvis **01/05/12 03:14:07 PM** **Edit Diagnosis**

Higher Standard A/C & Heating (Leo) **Total $750.00**

Called In:	Tech	Type:	Split System SC
At Home:	Yes	# Units:	2
There:	01/05/12	Condenser Location:	Ground
Make:	General Electric	Evaporator Location:	Attic
Model:	BTD736A11A0	Area Cooled:	Downstairs (Main)
Serial:	W14297609	Efficiency:	10 SEER
Age:	24	Refrigerant:	R-22
Size:	3 Ton	Condenser Condition:	Average
Rust Corrosion:	None	Evaporator Condition::	Average
Mold or Mildew:	None	Leaks:	No
Condition:	Poor	Leak Size:	
Properly Matched:	Yes	Properly Sized:	Yes
Filter Cond:	Clean		
Cause:	Normal WT	Prop Installed:	Yes
Happening Since:	01/02/12	Prop Maint:	Yes
Part:	Coil	Price:	$525.00
Part:		Price:	$0.00
Part:		Price:	$0.00
Part:		Price:	$0.00
lbs of Freon:	$0.00 p lbs	Freon Total:	$0.00
3.00 Hrs of Labor:	$75.00 p hr	Labor Total:	$225.00
SCF	-$45.00	Diagnosis Fee:	$45.00
SCF Paid By		Tax:	$0.00
Completion by:	Not Taken	Total:	$750.00

The unit has no freon and a hole in the evaporator coil, this suddenly happened this is in the coil and can not be repair

They will call back with pricing

Permit fee of $125.00
Disposal $95.00
Reclaim $175.00
Duct mods $350.00

Submit Diagnosis

138. After CHW representatives review the Diagnosis Form, they request "maintenance records" from consumers.

139. In one instance, a CHW representative made the following electronic notation regarding a request for "maintenance records" from a consumer: "WAIT TILL TECH LEAVES HOME CALL CUST REQUEST RECORDS[.]"

140. Mandalawi was among the CHW representatives who requested "maintenance records" from consumers.

141. Mandalawi memorialized his communications with a consumer regarding his request for "maintenance records" in the following manner: "Spoke to customer i [sic] showed him where it says he must provide us with maintenance records, he finally agreed and said hell [sic] send in the records."

142. At times, CHW representatives requested "maintenance records" from consumers even when the Diagnosis Form stated "Prop Maint: Yes."

143. At times, CHW representatives requested "maintenance records" from consumers even when technicians otherwise informed CHW (e.g. via telephone, letter or email) that the consumer's home system or appliance was properly maintained.

144. At times, CHW representatives requested "maintenance records" from consumers even when the Diagnosis Form provided that "Cause:" was something other than "Lack of Maintenance" (e.g. "Normal WT").

145. At times, CHW representatives requested "maintenance records" from consumers even when technicians otherwise informed CHW (e.g. via telephone, letter or email) that the failure of the home system or appliance was the result of something other than lack of maintenance.

146. Upon information and belief, CHW representatives informed consumers that claims would not be approved, would remain pending, and/or would remain denied until they submitted "maintenance records."

147. At times, CHW representatives memorialized their requests for "maintenance records" as follows:

- "spoke how CHW needs to see the units [sic] service history to move fwd on any failure / any claim"

- "CALLED CUSTOMER INFORMED WE NEED TO SEE MAINTENANCE RECORDS TO MOVE FORWARD[.]"
- "NO SERVICE HISTORY – NO COVERAGE"
- "CUSTOMER CALLED IN TOLD HIM WE NEED RECORDS . . . [the consumer] FINALLY GOT IT THROGUH HIS HEAD THAT WE WONT [sic] DO ANYTHING WITHPOUT [sic] RECORDS[]."

[(Emphasis added.)]

148. At times, consumers who submitted some documents to CHW were told that the documents were insufficient for varying reasons (e.g. additional years of "maintenance records" were required to be submitted).

149. Specifically, upon information and belief, a CHW representative told a consumer that her claim would remain denied unless she could produce 12 years of "maintenance records."

150. Additionally, CHW would not accept documents, such as home inspection reports, in lieu of "maintenance records."

151. Mandalawi was among the CHW representatives who reviewed documents submitted by consumers, and determined they were insufficient (e.g. "maintenance records" did not include model or serial number of the home system or appliance).

152. Hakim was among the CHW representatives who reviewed documents submitted by consumers, and determined they were insufficient (e.g. "maintenance records" for 2005, 2006, 2007, 2008, 2009, and 2011 provided, but missing 2010).

153. When CHW determined that consumers had submitted insufficient documents, CHW closed the consumer's claim as denied.

154. Once it denied a consumer's claim, CHW sent an email and/or message through the CHW Main Website which informed the consumer as follows: "Please contact Choice Home Warranty regarding your claim."

155. In general, when consumers contacted CHW, CHW representatives verbally denied claims.

156. At times, CHW denied claims on the basis of "lack of maintenance," even when the Diagnosis Form indicated that the home system or appliance was properly maintained ("Prop Maint.: Yes").

157. At times, CHW denied claims on the basis of "lack of maintenance," even when the technician otherwise informed CHW (e.g. via telephone, letter or email) that the home system or appliance was properly maintained.

158. At times, CHW denied claims on the basis of "lack of maintenance," even when the Diagnosis Form indicated that the failure of the home system or appliance was the result of something other than lack of maintenance (e.g. "Cause: Normal WT").

159. At times, CHW denied claims on the basis of "lack of maintenance," even when the technician otherwise informed CHW (e.g. via telephone, letter or email) that the failure of the home system or appliance was the result of something other than lack of maintenance, such as normal wear and tear.

160. At times, CHW denied claims on the basis of "pre-existing condition," even when the Diagnosis Form indicated that the failure of the home system or appliance was the result of normal wear and tear ("Cause: Normal WT").

161. At times, CHW denied claims on the basis of "pre-existing condition," even when the technician otherwise informed CHW (e.g. via telephone, letter or email) that the failure of the home system or appliance was the result of normal wear and tear, rather than any previous failures.

162. CHW denied claims on the basis of "pre-existing condition," even when CHW representatives memorialized communications with technicians regarding claims in the following manner:

- "TECH DOESN'T KNOW ABOUT PE."
- "tech no [sic] sure how long its [sic] been going on for or if there was any problems prior to this one"

163. Upon information and belief, when consumers owned more than two (2) air conditioning units, CHW denied claims for the repair and/or replacement of a particular air conditioning unit by stating that it has "sole discretion" as to which two (2) air conditioning units are covered by the RSC.

164. At times, CHW representatives memorialized their communications with consumers who had more than two (2) air conditioning units as follows:

- "spoke how we only cover two units – and this 3rd unit there is no coverage . . . we apply coverage to the two working units"
- "FOR THE 3 SYSTEMS . . . IT IS THE SOLE DISCRETION OF HOW TO APPLY COVERAGE TO A CLAIM OR NOT[.]"
- "customer wants to know which 2 of the 4 [air condition units] are covered – informed her we cannot do that[.]"

([Emphasis added.)]

165. Upon information and belief, when consumers requested specific explanations for denials in writing, CHW representatives failed to provide specific written explanations.

166. Upon information and belief, CHW did not replace home systems or appliances that required replacement, but instead required that consumers accept "buy-outs" or other payments that were hundreds of dollars less than the replacement cost.

167. At times, CHW representatives memorialized conversations with consumers regarding "buy-outs" in the following manner:

- "called customer, advised him the unit isnt [sic] worth replacing so we are offering a bo of $180. he said inst [sic] the warranty for replacement? advised him we offer a bo when going the route of replacement. he said we're offering $180 and his unit is going to be $600 to replace."
- "cust wants more money…full replacement…$600. advised him LIMITS OF LIABILITY 16. We reserve the right to offer cash back in lieu of repair or replacement in the amount of Our actual cost (which at time may be less than retail) to repair or replace any covered, system, component or appliance. . . . SPOKE WITH CUST INFORMED HIM MAX B/O 285 HE ACCEPTED BUT WASNT [sic] HAPPY THAT WERE [sic] NOT GIVING HIM $600 FOR A NEW UNIT"

([Emphasis added.])

H. CHW's Responses to Consumers' Disputes of Claim Denials:

168. At times, consumers sent letters and/or emails to CHW to dispute claim denials and request review of the denials.

169. Some consumers' letters and emails indicated that the CHW denial was based upon the consumers' failure to submit "maintenance records."

170. Upon information and belief, one consumer sent the following email to CHW:

> This email is to confirm that I received a call from Mike in the claims department denying my claim due to lack of documentation of an HVAC technician servicing my unit twice a year, one time for each season. Despite reiterating the fact that nowhere in the user agreement does it state that any documentation is required, I am told this is the sole reason for the denial.

([Emphasis added.])

171. At times, other consumers' letters and emails indicated that CHW's denial of a claim was not consistent with the technician's diagnosis of their home systems or appliances.

172. At times, consumers attached to their letters and emails statements from technicians who serviced their claims.

173. One consumer who disputed CHW's denial of a claim for "lack of maintenance," provided a statement from a technician that read, in pertinent part: "The unit was in good to excellent condition . . . there were no poor maintenance issues . . . there was no indication that this malfunction was due to anything other than normal wear and tear."

174. One consumer who disputed CHW's denial of a claim for "pre-existing condition," provided a statement from a technician that read, in pertinent part: "This problem in my opinion had nothing to do with the" previous failure of the home system or appliance.

175. In some instances, CHW responded with letters and/or emails. to consumers who disputed claim denials.

176. In one instance, CHW responded with a letter that included a printout of a Diagnosis Form that, upon information and belief, CHW had altered.

177. The original Diagnosis Form in CHW's electronic system appeared as follows:

Walter Jarvis **08/25/11 06:46:58 PM** **Edit Diagnosis**

A Better Place LLC () **Total $1700.00**

Called In:		Type:	SC
At Home:		# Units:	
There:	Not Taken	Condenser Location:	
Make:	WEATHER KING	Evaporator Location:	
Model:	MBH42DQA	Area Cooled:	
Serial:		Efficiency:	
Age:	1985	Refrigerant:	R-22
Size:	3.5 Ton	Condenser Condition:	
Rust Corrosion:	Severe	Evaporator Condition::	
Mold or Mildew:		Leaks:	
Condition:	Poor	Leak Size:	
Properly Matched:		Properly Sized:	
Filter Cond:			
Cause:		Prop Installed:	
Happening Since:	Not Taken	Prop Maint:	No
Part:	NEW UNIT W/ INSTALL	Price:	$1700.00
Part:		Price:	$0.00
Part:		Price:	$0.00
Part:		Price:	$0.00
lbs of Freon:	$0.00 p lbs	Freon Total:	$0.00
Hrs of Labor:	$0.00 p hr	Labor Total:	$0.00
SCF	-$45.00	Diagnosis Fee:	$45.00
SCF Paid By		Tax:	$0.00
Completion by:	Not Taken	Total:	$1700.00

The tech is calling and saying that the power supply seems to be severed there is no power supply to unit from the breaker

THE COMPRESSOR IS SHORTED TO GROUND

TECH SAID FILTER 100% CLOGGED
COIL CAN USE A CLEANING
HE SAID THIS CONTRIBUTED TO THE FAILURE

UNIT HAS TONS OF RUST BUT TECH DOESNT THINK IT HAD TO DO WITH IT

UNIT NOT WORTH REPAIR

Submit Diagnosis

178. The altered Diagnosis Form that CHW forwarded to the consumer appeared as follows:

Rich White 08/25/11 06:46:58 PM

A Better Place HVAC LLC

Called in:	08/25/11	Type:	SC
At Home:		# Units:	
There:	08/25/11	Condenser Location:	
Make:	WEATHER KING	Evaporator Location:	
Model:	MBH42DQA	Area Cooled:	
Serial:		Efficiency:	
Age:	1985	Refrigerant:	R-22
Size:	3.5 Ton	Condenser Condition:	Poor
Rust Corrosion:	Severe	Evaporator Condition::	Poor
Mold or Mildew:		Leaks:	Yes
Condition:	Poor	Leak Size:	Large
Properly Matched:		Properly Sized:	
Filter	Filthy		
Cause:	Lack of maintenance	Prop Installed:	
Happening Since:		Prop Maint:	No
Part:	NEW UNIT W/ INSTALL	Price:	$1700.00
Part:		Price:	$0.00
Part:		Price:	$0.00
Part:		Price:	$0.00
lbs of Freon:	$0.00 p lbs	Freon Total:	$0.00
Hrs of Labor:	$0.00 p hr	Labor Total:	$0.00
SCF	-$45.00	Diagnosis Fee:	$45.00
SCF Paid By		Tax:	$0.00
Completion by:	Not Taken	Total:	$1700.00

The t power supply seems to be severed there is no power supply to unit from the breaker. The conduit to service disconnect is melted.

THE COMPRESSOR IS SHORTED TO GROUND
ELECTRICAL CONTACTOR & CAPACITOR BURNT
COMP SAFETY PRESSURE SWITCH BYPASSED –TAMPERED
ACID TEST FREON. REFRIGERANT GRITTY

FILTER 100% CLOGGED
EVAP COIL CORRODED AND CLOGGED, RESIDUE IN HOUSING
LACK OF MAINT AND CLOGGED COILD CONTRIBUTED TO THE FAILURE
TXV RUSTED

UNIT HAS TONS OF RUST ,COND COIL HAS METAL FATIGUE
NO SERVICE FOLDER, NO SERVICE DECALS

UNIT NOT WORTH REPAIR ..UNIT NOT MAINTAINED PROPERLY

AA002972

179. The original Diagnosis Form in CHW's electronic system provided no information in the "Filter Cond.:" or "Cause:" input fields. The altered Diagnosis Form, however, provided the following: "Filter Filthy" and "Cause: Lack of maintenance."

180. Additionally, the altered Diagnosis Form contained the following notes that did not appear in the original Diagnosis Form:

> **LACK OF MAINTENANCE . . . CONTRIBUTED TO THE FAILURE**
>
> . . .
>
> **UNIT NOT MAINTAINED PROPERLY**

181. In some instances, once consumers submitted letters, emails or otherwise disputed denials, CHW agreed to cover the claims only when state and/or local agencies questioned CHW about the denials

182. Seruya was among the CHW representatives who spoke with members of state and/or local agencies regarding claim denials.

183. When some consumers filed complaints against CHW with the BBB, CHW provided the following response to the BBB:

> Please note that the consumer's claim was properly handled in accordance with the CHW terms & conditions. The contract specifically excludes coverage on units that are not maintained properly. <u>Furthermore, proof of proper maintenance records is required by CHW policy</u>.
>
> [(Emphasis added.)]

184. Seruya was among the CHW representatives who spoke with consumers regarding complaints filed with the BBB.

185. Upon information and belief, on occasion, CHW required that consumers enter into Release Agreements to resolve the complaints the consumers filed with the BBB.

186. The CHW Release Agreements included the following provision:

AA002973

Releasor agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct Choice Home Warranty [sic]. Releasor acknowledges that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, investors, strategic partners, vendors, employees(past and present), and clients."

187. Upon information and belief, when disputes could not be resolved, CHW representatives informed consumers about participating in mediation and/or arbitration, as provided in the RSC.

188. The section titled "**G. Mediation**" of the RSC provides, in relevant part:

In the event of a dispute over claims or coverage You agree to file a written claim with Us and allow Us thirty (30) calendar days to respond to the claim. The parties agree to mediate in good faith before resorting to mandatory arbitration in the State of New Jersey.

Except where prohibited, if a dispute arises from or relates to this Agreement or its breach, and if the dispute cannot be settled through direct discussions you agree that:

1. Any and all disputes, claims and causes of action arising out of or connected with this Agreement shall be resolved individually, without resort to any form of class action.

2. Any and all disputes, claims and causes of action arising out of or connected with this Agreement (including but not limited to whether a particular dispute is arbitrable hereunder) shall be resolved exclusively by the American Arbitration Association in the state of New Jersey under its Commercial Mediation Rules. Controversies or claims shall be submitted to arbitration regardless of the theory under which they arise, including without limitation contract, tort, common law, statutory, or regulatory duties or liability.

3. Any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred to a maximum of $1500 per claim, but in no event attorneys' fees.

([Emphasis added.])

189. However, upon information and belief, the American Arbitration Association ("AAA"), at least as of March 2012, no longer administers disputes between CHW and consumers because of CHW's failure and/or refusal to participate in arbitration.

190. Upon information and belief, at least as of March 2012, the AAA requested that CHW remove its name from the RSC.

191. To date, the AAA's name remains in the RSC.

I. CHW's Failure to <u>Pay Technicians</u>:

192. CHW's "Vendor Application" states that authorized payments to technicians "shall be due and payable net 30 days after CHW's approval and verification of [technicians'] Invoices."

193. Upon information and belief, at times, CHW failed to and/or refused to pay technicians in a timely fashion or at all.

194. To date, the Division has received 16 complaints from technicians, in which they state that CHW failed to pay them for services rendered to CHW customers, even in those cases where the CHW Authorizations Department provided further authorization to repair or replace home systems and appliances.

195. Based upon the technician complaints to date, it appears that CHW has not paid outstanding invoices in an amount totaling at least $21,690.92.

196. Upon information and belief, in some instances, when CHW failed to and/or refused to pay technicians in a timely fashion or at all, technicians demanded payment from consumers.

COUNT I

VIOLATION OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES AND DECEPTION)

197. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 196 above as if more fully set forth herein.

198. 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. . .

199. 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).

200. The RSCs advertised, offered for sale and sold by CHW comprise merchandise within the meaning of the CFA.

201. Since at least December 2008, CHW, through its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors, including, but not limited to, Mandalawi, Hakim and Seruya, has advertised, offered for sale and sold RSCs to consumers in this State and elsewhere.

202. In so doing, CHW, through its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors, including, but not limited to, Mandalawi, Hakim and Seruya, has engaged in the use of unconscionable commercial practices and deception.

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

a. Failing to arrange for technicians to service consumers' claims for repair of home systems or appliances, thus requiring consumers to locate technicians, make direct payment to technicians and then seek reimbursement from CHW;

b. Assigning technicians to service consumers' claims who refused to provide service due to CHW's failure to pay the technicians for prior services rendered;

c. Assigning "CHW contractor technicians" to service consumer claims who were unlicensed and/or uninsured;

d. Requesting "maintenance records" from consumers, even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the home system or appliance has been properly maintained;

e. Requesting "maintenance records" from consumers, even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the failure of the home system or appliance resulted from something other than lack of maintenance;

f. Denying claims on the basis that consumers submitted insufficient "maintenance records," when the RSC does not state this as a reason CHW may deny coverage;

g. Denying claims on the basis of "lack of maintenance," even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the home system or appliance has been properly maintained;

h. Denying claims on the basis of "lack of maintenance," even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the failure of the home system or appliance resulted from something other than lack of maintenance;

i. Denying claims on the basis of "pre-existing condition," even when the Diagnosis Form indicated, or the technician otherwise informed CHW, that the failure of the home system or appliance resulted from normal wear and tear and not from previous failures, if any previous failures had occurred;

j. Denying claims for repair or replacement of air conditioning units, when consumers owned more than two (2) units, on the basis that CHW was exercising its discretion to exclude from coverage the unit that had failed and required repair or replacement;

k. Verbally denying consumer claims and then failing and/or refusing to provide specific, written explanations of denials;

l. Requiring consumers, instead of replacing their home systems or appliances, to accept "buy-outs" for hundreds of dollars less than the cost of replacement home systems or appliances;

m. Responding to a consumer's dispute of a claim denial by providing an altered Diagnostic Form which, among other things, was changed from "Filter Cond.: _______" and "Cause: _______" to "Filter Filthy" and "Cause: Lack of maintenance";

n. Including in the "Mediation" Section of the RSC a referral to mandatory arbitration and a limitation on CHW's liability to "actual out-of-pocket costs incurred to a maximum of $1,500 per claim, but in no event attorneys' fees";

o. Using the AAA's name in the RSC, when the AAA no longer administers disputes between it and consumers; and

p. Failing to and/or refusing to pay technicians, thus resulting in technicians seeking direct payment from consumers.

204. Defendants' conduct in violation of the CFA includes, but is not limited to, the following acts of deception:

a. In CHW Email Advertisements, representing that "[a] home warranty . . . covers the repair or replacement" of home systems and appliances, when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";

b. In the Choice Home Warranty Commercial, using a graphic that states "Repair & Replacement Coverage," when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";

c. In the Choice Home Warranty Commercial, representing that CHW will "arrange" for technicians to "repair or replace your equipment," when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";

d. On the CHW Main Website, representing that "If the covered item is beyond repair, CHW will replace your unit with a similar or like feature model, or even send you a check to buy a new item," when CHW requires consumers to accept cash "buy-outs" that are hundreds of dollars less than the cost to replace home systems or appliances;

e. During telephone conversations with consumers, stating that CHW will replace home systems or appliances that cannot be repaired, when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";

f. In emails to consumers, stating that CHW will replace home systems or appliances that cannot be repaired, when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs";

g. In the CHW Booklet, under the title "Have Your Covered Item Repaired or Replaced," stating that CHW will determine whether a claim warrants "replacement or possibly a claim buyout," when CHW requires consumers to accept such cash "buy-outs" that are hundreds of dollars less than the costs to replace home systems or appliances; and

h. In the CHW Booklet, stating that "[a] home warranty provides repair or replacement" of home systems or appliances, when CHW, instead of replacing home systems or appliances, requires consumers to accept cash "buy-outs."

205. Each unconscionable commercial practice and/or act of deception by Defendants constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT II

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

206. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 205 above as if more fully set forth herein.

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

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a. In the CHW Commercial Advertisements, CHW Additional Websites, and the CHW Main Website, representing that CHW arranges for "local" technicians to service claims, when such was not the case;

b. In the Choice Home Warranty Commercial, representing that CHW arranges for technicians to service claims "quickly," when such was not the case;

c. In the Choice Home Warranty Commercial, representing that CHW will "arrange" for technicians to service claims, when such was not the case;

d. In the CHW-AZ Additional Website and the CHW Main Website, representing that CHW will "dispatch" technicians to service claims, when such was not the case;

e. In the CHW Main Website, representing that consumers will have a "hassle-free relationship with the home warranties contractor network saving you both time and money," when such was not the case;

f. In the CHW Email Advertisements, CHW Commercial Advertisements, the CHW Additional Websites, and CHW Main Website, representing that consumers will "never pay for covered home repairs again," when such was not the case;

g. In the CHW-AZ Additional Website and the CHW Main Website, representing that CHW will "dispatch" a "licensed" and "insured" technician to service claims, when such was not the case;

h. In the CHW Commercial Advertisements, representing that CHW arranges for, or that consumers will "get . . . appointments with," "licensed" technicians to service claims, when such was not the case;

i. In the CHW Booklet, representing that consumers "will be assigned a . . . licensed[] and insured service technician," when such was not the case; and

j. During telephone conversations with consumers, representing that consumers are not required to retain and/or submit "maintenance records" in connection with claims, when such was not the case.

208. CHW's conduct in violation of the CFA includes, but is not limited to, the following knowing omissions of fact:

a. Failing to disclose to consumers that CHW requires them to retain and/or submit "maintenance records" in connection with claims; and

b. Failing to provide in the RSC that CHW reserves the right to request that consumers submit "maintenance records."

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

COUNT III

VIOLATION OF THE ADVERTISING REGULATIONS BY DEFENDANTS

210. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 209 above as if more fully set forth herein.

211. The Advertising Regulations enumerate certain "practices" that are "unlawful with respect to all advertisements[.]" N.J.S.A. 13:45A-9.2(a)1-13.

212. Among the unlawful practices enumerated in the Advertising Regulations is "the obscuring of any material fact":

> The use of any type, size, location, lighting, illustration, graphic depiction, or color resulting in the obscuring of any material fact. Disclaimers permitted or required under this section, such as "terms and conditions apply" and "quantities limited," shall be set forth in a type size and style that is clear and conspicuous relative to the other type sizes and styles used in the advertisement.
>
> [N.J.A.C. 13:45A-9.2 (a)(5).]

213. Also among the unlawful practices enumerated in the Advertising Regulations is "[t]he making of false or misleading representations of fact concerning . . . the nature of an offering . . . ." N.J.A.C. 13:45A-9.2 (a)(9).

214. Through their advertisement and offering for sale of RSC, Defendants have engaged in the following conduct in violation of the Advertising Regulations, N.J.A.C. 13:45A-9.2(a)(5):

a. In the CHW Plan Additional Website, stating "If We Cant [sic] Fix it. We'll Replace it." while setting forth, in small text at the bottom of the webpage, that "CHW reserves the right to offer cash back in lieu of . . . replacement in the amount of CHW's actual cost (which at times may be less than retail) to . . . replace any covered system, component or appliance";

b. In the CHW-AZ Additional Website, stating "If the covered item is beyond repair, CHW will replace it!" while setting forth, in small text at the bottom of the webpage, that "CHW reserves the right to offer cash back in lieu of . . . replacement in the amount of CHW's actual cost (which at times may be less than retail) to . . . replace any covered system, component or appliance"; and

c. On the CHW Main Website, stating "If the covered item is beyond repair, CHW will replace your unit with a similar or like feature model, or even send you a check to buy a new item" while setting forth, in small text at the bottom of the webpage, that "CHW reserves the right to offer cash back in lieu of . . . replacement in the amount of CHW's actual cost (which at times may be less than retail) to . . . replace any covered system, component or appliance";

215. Through their advertisement and offering for sale of RSCs, Defendants' have engaged in conduct in violation of the Advertising Regulations, N.J.A.C. 13:45A-9.2(a)(9):

a. In the CHW Commercial Advertisements, the CHW Additional Websites, and the CHW Main Website, representing that CHW arranges for "local" technicians to service consumers' claims, but having no "CHW contractor network" technicians in some geographic areas;

b. In the Choice Home Warranty Commercial, representing that it arranges for technicians to service consumers' claims "quickly," then failing to arrange for technicians to service consumers' claims in a timely fashion (i.e. within four (4) days);

c. In the Choice Home Warranty Commercial, representing that CHW will "arrange" for technicians to service consumers' claims, then failing to arrange for technicians to service consumers' claims;

d. In the CHW-AZ Additional Website and the CHW Main Website, representing that CHW will "dispatch" technicians to service consumers' claims, then failing to dispatch technicians to service consumers' claims;

e. In the CHW Main Website, representing that consumers will have a "hassle-free relationship with the home warranties contractor network

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saving you both time and money," when consumers had difficulty in obtaining service from technicians (e.g. three (3) assigned technicians stating to a consumer they would not service the consumer's claim because CHW failed to pay them for prior services rendered to CHW customers);

f. In the CHW Email Advertisement, CHW Commercial Advertisements, CHW Additional Websites, and the CHW Main Website, representing that consumers will "never pay for covered home repairs again," then requiring consumers to pay technicians directly and seek reimbursement from CHW;

g. In the CHW-AZ Additional Website and the CHW Main Website, representing that it will "dispatch" a "licensed" and "insured" technician to service consumers' claims, then assigning unlicensed and/or uninsured technicians to service consumers' claims;

h. In the CHW Commercial Advertisements, representing that CHW arranges for, or that consumers will "get . . . appointments with," "licensed" technicians to service consumers' claims, then assigning unlicensed and/or uninsured technicians to service consumers' claims;

i. In the CHW Booklet, representing that consumers "will be assigned a . . . licensed[] and insured service technician," then assigning unlicensed and/or uninsured technicians to service consumers' claims;

j. In the CHW Email Advertisement, representing that "[a] home warranty . . . covers the repair or replacement" of home systems and appliances, then instead of replacing home systems or appliances, requiring consumers to accept cash "buy-outs";

k. In the Choice Home Warranty Commercial, using a graphic that states "Repair & Replacement Coverage," then, instead of replacing home systems or appliances, requiring consumers to accept cash "buy-outs";

l. In the Choice Home Warranty Commercial, representing that CHW will "arrange" for technicians to "repair or replace your equipment," then, instead of replacing home systems or appliances, requiring consumers to accept cash "buy-outs";

m. On the CHW Main Website, representing that "If the covered item is beyond repair, CHW will replace your unit with a similar or like feature model, or even send you a check to buy a new item," then requiring consumers to accept cash "buy-outs" that are hundreds of dollars less than the cost to replace home systems or appliances;

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n. In the CHW Booklet, under the title "Have Your Covered Item Repaired or Replaced," stating that CHW will determine whether a claim warrants "replacement or possibly a claim buyout," then requiring consumers to accept cash "buy-outs" that are hundreds of dollars less than the costs to replace home systems or appliances; and

o. In the CHW Booklet, stating that "[a] home warranty provides repair or replacement" of home systems or appliances, then, instead of replacing home systems or appliances, requiring consumers to accept cash "buy-outs."

216. Each violation of the Advertising Regulations by Defendant constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

COUNT IV

VIOLATION OF THE CFA AND THE ADVERTISING REGULATIONS BY MANDALAWI

217. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 216 above as if more fully set forth at length here.

218. At all relevant times, Mandalawi has been the President and/or owner of CHW, and has controlled, managed, directed and/or participated in the management operation of CHW, including the conduct alleged in this Complaint.

219. Mandalawi's conduct makes him personally liable for the violations of the CFA and the Advertising Regulations committed by CHW.

COUNT V

VIOLATION OF THE CFA AND THE ADVERTISING REGULATIONS BY HAKIM

220. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 219 above as if more fully set forth at length here.

221. At all relevant times, Hakim has been an owner of CHW, and has controlled, managed, directed and/or participated in the management operation of CHW, including the conduct alleged in this Complaint.

222. Hakim's conduct makes him personally liable for the violations of the CFA and the Advertising Regulations committed by CHW.

COUNT VI

VIOLATION OF THE CFA AND THE ADVERTISING REGULATIONS BY SERUYA

223. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 222 above as if more fully set forth at length here.

224. At least until April 2013, Seruya has been an owner of CHW, and has controlled, managed, directed and/or participated in the management operation of CHW, including the conduct alleged in this Complaint.

225. Seruya's conduct makes him personally liable for the violations of the CFA and the Advertising Regulations committed by CHW.