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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]

GENERAL ALLEGATIONS COMMON TO ALL COUNTS:

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 "Home Warranties":

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' Representations to Consumers:

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. CHW's Sale of "Home Warranties":

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 (i.e. Total Plan or Basic Plan); service call fee (i.e. 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 Repair or Replacement of Home Systems and Appliances:

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 Repair or Replacement of Home Systems and Appliances:

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:

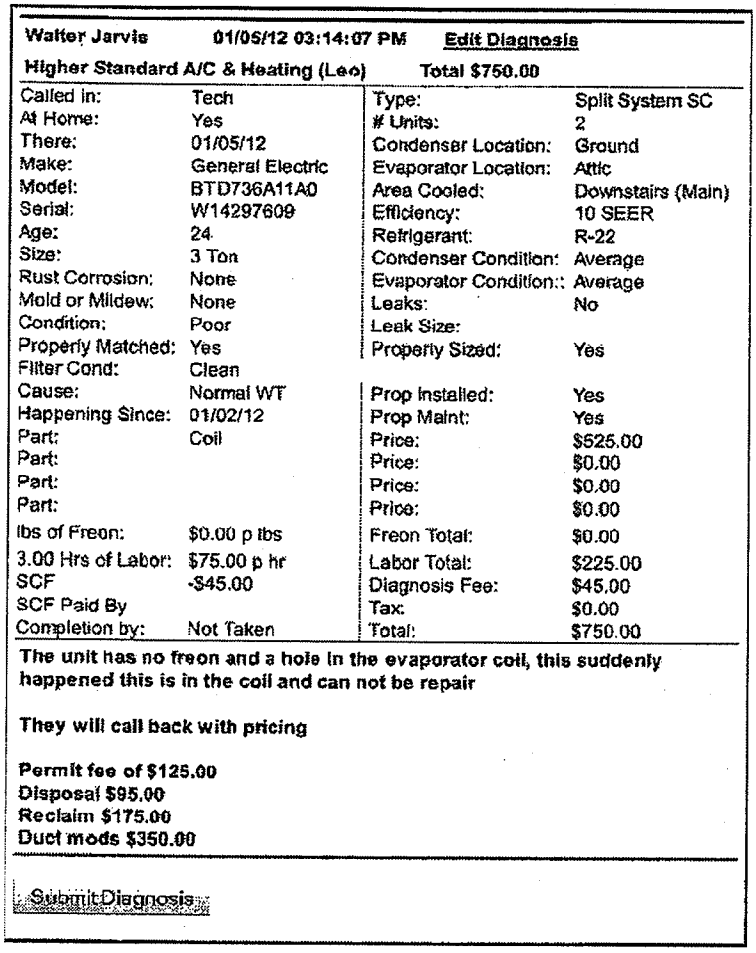
> If a technician should find a . . . malfunction resulting from other than normal wear and tear, or poor maintenance, a call should be placed to the Authorizations department . . . Choice Home Warranty does not cover these exceptions, and needs to be made aware of them while [the] technician is at the 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

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. Furthermore, proof of proper maintenance records is required by CHW policy.
>
> [(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:

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 Pay Technicians:

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:

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

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;

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.

PRAYER FOR RELIEF

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

(a) Finding that the acts and omissions of Defendants constitute multiple violations of the CFA, N.J.S.A. 56:8-1 et seq. and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq.;

(b) Permanently enjoining Defendants and their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under its control, from engaging in, continuing to engage in or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;

(c) Ordering Defendants to disgorge all funds and property (real and personal) acquired and/or retained as a result of any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;

(d) Declaring that any RSCs entered into between Defendants and consumers that are currently in effect are null and void, thus entitling consumers to recovery of any monies paid thereunder;

(e) Permanently enjoining Mandalawi, Hakim, and Seruya from managing or owning any business organization within this State and from serving as an officer, director, trustee, member of an executive board or similar governing body, principal, manager or stockholder owning 10% or more of the aggregate outstanding capital stock of all classes of any corporation doing business in this State, as authorized by the CFA, N.J.S.A. 56:8-8;

(f) Permanently vacating and/or annulling the corporate charter in the State of CHW, as authorized by the CFA, N.J.S.A. 56:8-8;

(g) Directing Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;

(h) Assessing the maximum statutory civil penalties against Defendants,

jointly and severally, for each and every violation of the CFA in accordance with N.J.S.A. 56:8-13;

(i) Directing the assessment of costs and fees, including attorneys' fees, against the Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and

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

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

By: _____
David M. Reap
Deputy Attorney General

Dated: July 21, 2014
Newark, New Jersey