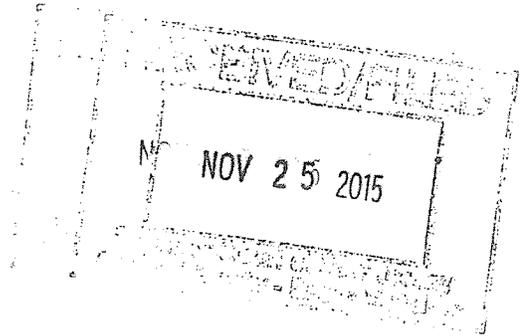


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Deputy Attorney General  
[REDACTED]

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
ESSEX COUNTY  
DOCKET NO.: ESX-C- 250-15

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.

LEROY N. BROWN, d/b/a B&K MASONRY  
& CHIMNEY; JANE AND JOHN DOES 1-20,  
individually and as owners, officers, directors,  
shareholders, founders, managers, agents,  
servants, employees, representatives and/or  
independent contractors of LEROY N.  
BROWN, d/b/a B&K MASONRY &  
CHIMNEY, INC. and XYZ CORPORATIONS  
1-20,

Defendant.

Civil Action

VERIFIED COMPLAINT

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney  
General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Steve C.

Lee, Acting Director of the New Jersey Division of Consumer Affairs (“Director”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Verified Complaint state:

### PRELIMINARY STATEMENT

1. Home improvements are among the most costly expenses incurred by consumers. For senior citizens living on fixed incomes, these expenses can be especially burdensome. Chimney repairs, in particular, are not only expensive but can present safety concerns. Failure to properly maintain a chimney can endanger lives by causing the back-up of carbon monoxide into a home. As most chimney problems are not easily identified, consumers are reliant upon home improvement contractors to identify the necessary repairs and to ensure such work is performed in a proper manner and with the proper materials. To assist in this process, permits are required prior to the completion of such work, and upon completion, an inspection must be conducted to ensure that the work was properly performed.

In order to protect consumers from unscrupulous practices, the State of New Jersey (“State” or “New Jersey”) has enacted a comprehensive statutory scheme to ensure that home improvement contractors conduct themselves in an honest manner. Among other things, the Contractor’s Registration Act, N.J.S.A. 56:8-136 et seq. and the accompanying Regulations Governing Home Improvement Contractor Registration (“Contractor Registration Regulations”), N.J.A.C. 13:45A-17.1 et seq., require that home improvement contractors be registered with the New Jersey Division of Consumer Affairs (“Division”).

2. At all relevant times, Leroy N. Brown (“Brown”), d/b/a B&K Masonry & Chimney (“Defendant” or “B&K Masonry”) has engaged in the advertisement, offering for sale and sale of

chimney repair and cleaning services in New Jersey via the internet and telephone solicitations, despite not being registered as a home improvement contractor with the Division and maintaining a fictitious New Jersey business address. In doing so, Defendant has engaged in high pressure sales tactics and proclamations of imminent health and safety risks to induce consumers, many of whom were elderly, into purchasing expensive repairs often costing over a thousand dollars. In many instances, Defendant failed to perform the contracted for work and/or performed the work in a substandard manner. In one instance, a consumer and her family had to be evacuated from her home due to high levels of carbon monoxide being emitted from her chimney, which had previously been serviced by Defendant. Consequently, Defendant has engaged in conduct that endangered the health, safety and well-being of many vulnerable consumers.

3. Defendant's conduct comprises multiple violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Contractors' Registration Act, the Contractor Registration Regulations, the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), as well as the Regulations Governing General Advertising, N.J.S.A. 13:45A-9.1 et seq. ("Advertising Regulations"). The Attorney General and Director submit this Verified Complaint in connection with an Order to Show Cause to halt Defendant's unregistered and deceptive business practices and to prevent additional consumers from being harmed, and to preserve Defendant's assets and records to, among other things, provide for consumer restitution.

#### **PARTIES AND JURISDICTION**

4. The Attorney General is charged with the responsibility of enforcing the CFA, the Contractors' Registration Act, and the regulations promulgated thereunder, specifically the

Contractor Registration Regulations, the Home Improvement Regulations and the Advertising Regulations. The Director is charged with the responsibility of administering the CFA, the Contractor Registration Regulations, the Home Improvement Regulations and the Advertising Regulations on behalf of the Attorney General.

5. By this action, the Attorney General and the Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA, the Contractor Registration Regulations, the Home Improvement Regulations and the Advertising Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19. Venue is proper in Essex County, pursuant to R. 4:3-2, because it is a county in which Defendant has conducted business.

6. At various times, Brown maintained business and/or mailing addresses of 7 Haab Avenue, Babylon, New York 11702 ("7 Haab Avenue, Babylon"), 5 Claire Court, West Babylon, New York 11704 ("5 Claire Court, West Babylon"), and/or 492 Cedar Lane, Suite 170, Teaneck, New Jersey 97666 ("492 Cedar Lane, Suite 170, Teaneck").

7. At least as of October 7, 2008, Brown has conducted business in New Jersey using the name "B&K Masonry & Chimney."

8. Brown has not registered the trade name "B&K Masonry & Chimney" with the State of New Jersey, Department of Treasury, Division of Revenue & Enterprise Services.

9. John and Jane Does 1 through 20 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants employees and/or representatives of B&K Masonry and who have been involved in the conduct that gives rise to this

Verified Complaint but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Verified Complaint to include them.

10. XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional business entities who have been involved in the conduct that gives rise to the Verified Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Verified Complaint to include them.

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

11. Since at least October 2008, Defendant has engaged in the advertisement, offering for sale and sale and performance home improvements in New Jersey, including but not limited to chimney repair and cleaning.

**A. Defendant's Advertising and Sales Misrepresentations:**

12. At various times, Defendant has advertised its chimney repair and cleaning services on the following internet address: [www.bkmasonryandchimney.com](http://www.bkmasonryandchimney.com) ("B&K Masonry Website"). The BK Masonry Website is not currently active.

13. At least on or about June 15, 2011, the B&K Masonry Website included the following representations: (a) "We are fully licensed and insured chimney sweeps; (b) "Serving the tri-state area, we are licensed and registered in New York City and the state of New Jersey"; (c) "Senior discounts are available"; and (d) "All work is guaranteed."

14. Based on consumer complaints, Defendant has repeatedly made unsolicited telephone calls to consumers, most of them elderly, offering chimney cleaning or sweeping services.

15. Upon information and belief, Defendant's telephone solicitation of consumers for chimney cleaning or sweeping services has continued at least up to September 1, 2015.

16. At various times, Defendant engaged in high pressure and/or deceptive sales practices once he is present in the homes of consumers in order to convince them to agree to expensive repairs beyond a simple chimney cleaning or sweeping.

17. Upon information and belief, Defendant's high pressure and/or deceptive sales practices included having a B&K Masonry representative misrepresent himself as a government inspector and inform a consumer that if she did not have a chimney liner replaced, she would no longer be able to use her furnace and, if she did use her furnace, she could be fined.

18. At no time has either Brown or B&K Masonry been registered with the Division as a home improvement contractor.

**B. Deficiencies and Misrepresentations in Defendant's Home Improvement Contracts:**

19. Defendant has provided consumers with home improvement contracts that did not include: (a) a legal name and business address of the contractor; (b) a legal name and/or address of the sales representative or agent who solicited or negotiated the contracts for Defendant; (c) an accurate description of the work to be done and the principal products and materials to be used or installed in the performance of the contracts; (d) any terms and conditions affecting the contract price, including the cost for materials and the hourly rate for labor; and (e) dates for the commencement and/or completion of the home improvement work.

20. At various times, Defendant has provided consumers with home improvement contracts that were not signed on behalf of Defendant and/or the consumers.

21. At all relevant times, Defendant has used a home improvement contract that fails to include the required "Notice to Consumer" cancellation language.

22. At all relevant times, Defendant has failed to provide consumers with a copy of Defendant's certificate of commercial liability insurance as well as the telephone number of the company issuing the certificate.

23. At all relevant times, Defendant has entered into home improvement contracts with consumers using the name "B&K Masonry and Chimney Corp."

24. At all relevant times, Defendant's home improvement contracts have included the address of 492 Cedar Lane, Suite 170, Teaneck. However, this address refers to a private mail box at a UPS Store location. Defendant does not maintain a post office box at that location.

25. At all relevant times, Defendant's home improvement contracts have included telephone numbers of "201-266-0947" and/or "201-266-0188."

26. Defendant has used a home improvement contract for chimney cleaning and repairs that promises consumers a "maintenance free system."

27. At various times, Defendant has provided business cards to consumers, which borne the name "B&K Masonry & Chimney," along with the address of 492 Cedar Lane, Suite 170, Teaneck, and telephone numbers of "201-266-0188" and/or "866-573-1577."

C. **Defendant's Performance of Home Improvements**

28. At various times, consumers have entered into contracts with Defendant for chimney cleaning and repair services (e.g, installation of a new lining sleeve in the chimney). These contracts typically exceeded \$1,000.

29. At various times, Defendant has failed to advise consumers that permits were required for certain home improvement work to be performed.

30. At various times, Defendant has commenced home improvement work without confirming that the requisite permits had been issued.

31. At various times, Defendant has obtained payment for home improvement work that was never commenced.

32. For example, one elderly consumer reported that in February 2015 she paid a \$500 deposit to Defendant for work that was never done. Further, Defendant did not provide the consumer with a refund of the deposit.

33. At various times, Defendant has obtained payment for home improvement work that was never completed.

34. At various times, Defendant has represented to consumers that chimney liners were of a certain size, when such was not the case.

35. For example, Defendant contracted with one consumer to install a 35 foot chimney liner but only installed an 15 foot liner.

36. At various times, Defendant has failed to provide consumers with timely written notice of delays in the commencement or completion of home improvement work.

37. At various times, Defendant has failed to commence or complete work specified in home improvement contracts.

38. At various times, Defendant has represented to consumers that the contracted-for chimney cleanings and/or repairs had been completed when, in fact, they had not.

39. At various times, Defendant has refused to issue refunds to consumers after failing to perform the contracted-for-home improvement work.

40. At various times, Defendant has failed to respond to consumers' inquiries in a timely manner or at all.

41. At various times, Defendant has performed home improvements in a substandard manner and failed to make the necessary corrective repairs.

42. At various times, consumers have experienced problems with their chimneys following Defendant's repairs. These problems included fumes building up in consumers' homes.

43. At varying times, consumers have asked other chimney cleaning and repair companies and/or other home improvement contractors to review Defendant's alleged repairs.

44. These subsequent reviews have revealed that Defendant had charged consumers for chimney cleanings and/or lining installations that were done in a substandard manner, or not done at all.

45. In one instance, a consumer had to be evacuated from her home due to high levels of carbon monoxide being emitted from her chimney, which had been previously serviced by Defendant.

46. At varying times, consumers were forced to incur additional expenses by paying other contractors to fix problems caused by Defendant's poor workmanship.

47. Defendant has failed to reimburse consumers for these additional expenses.

**E. Division's Investigation**

48. To date, the Division has received eleven (11) complaints from consumers concerning Defendant's business practices. The complaints concern home improvement contracts executed between August 2009 and March 2015. Five (5) of these complaints were forwarded by the Bergen

County Consumer Protection Office (“Bergen County CALA”) and two (2) complaints were filed with the Better Business Bureau.

49. Based on searches of public records, the Division has determined that nine (9) of the consumer complainants are 60 years of age or older.

50. On April 30, 2015, a Division investigator placed an undercover call to B&K Masonry at 201-266-0084. The call was answered by a woman who identified herself as “Linda” and as a representative of B&K Masonry. The investigator asked “Linda” whether B&K Masonry could inspect the chimney at his mother’s home in New Jersey and “Linda” said the company could do a cleaning for \$25.00. “Linda” also told the Division’s investigator that B&K Masonry had been in business for 15 years and represented that was the company was “registered and bonded.”

51. On May 6, 2015, the Division served an investigative Subpoena Duces Tecum (“Subpoena”) on JP Morgan Chase Bank N.A. (“Chase”), in order to obtain documents concerning all accounts held by or on behalf of B&K Masonry, and/or Brown, including account number xxxxx5075 (“B&K Masonry Account”) from May 2013 to the present.

52. On July 9, 2015, Chase produced over 1500 pages of documents in response to the Subpoena (“Chase Document Production”). The Division’s review of the Chase Document Production revealed that the B&K Masonry Account was opened on October 7, 2008 by Brown and that the main business address used for the account is Brown’s home address of 5 Claire Court, West Babylon.

53. The Division’s review of the Chase Document Production further revealed that Defendant has been using this account to transact a home improvement contracting business in New Jersey from at least May 2013 until at least June 30, 2015.

54. The Chase Document Production reflected check deposits totaling \$274,483 from three hundred eighteen (318) New Jersey consumers into the B&K Masonry Account from May 1, 2013 through June 7, 2015 (“New Jersey Consumer Checks”), with the following yearly breakdown:

2013: Ninety-Six (96) New Jersey consumers paid a total of \$91,782  
2014: One Hundred Fifty-Six (156) New Jersey consumers paid a total of \$115,958.  
2015: Sixty-Six (66) New Jersey consumers paid a total of \$66,743, as of June 30, 2015.

55. Almost half of the New Jersey Consumer Checks reference chimney cleaning and/or repairs.

56. As of June 30, 2015, the B&K Masonry Account had an ending balance of \$35,912.58.

### COUNT I

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

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

58. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

59. The CFA defines “merchandise” as including “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.”

60. At all relevant times, Defendant has been engaged in the advertisement and sale of merchandise within the meaning of N.J.S.A. 56:8-1(c), specifically chimney repair and cleaning services.

61. In the operation of his home improvement business, Defendant has engaged in unconscionable commercial practices and deception, including, but not limited to, the following:

- a. Performing home improvement work without being registered by the Division as a home improvement contractor;
- b. Engaging in high pressure sales tactics to frighten and persuade consumers, many of whom are elderly, into purchasing costly chimney repairs or services;
- c. Persuading a consumer to purchase a chimney liner after Defendant's representative told her he was a government inspector and that if she used her chimney, she would be subject to a fine;
- d. Obtaining payment for home improvement work never commenced;
- e. Obtaining payment for home improvement work never completed;
- f. Performing home improvement work in a substandard manner which resulted in dangerous and/or unsafe conditions for consumers and/or requiring them to hire a second contractor to correct Defendant's work (e.g. improper installation of a chimney liner resulted in poor ventilation);
- g. Failing to complete the work specified in home improvement contracts;
- h. Commencing home improvement work without confirming that the requisite permits had been issued;
- i. Failing to return to consumers' homes to complete contracted-for home improvement work;
- j. Failing to provide consumers with a copy of Defendant's certificate of commercial liability insurance as well as the telephone number of the company issuing the certificate;
- k. Using the address of 492 Cedar Lane, Suite 170, Teaneck, in home improvement contracts and business cards, even though Defendant does

not have a business location or a private mail box at that address, which is, in fact, a UPS Store location.

- l. Failing to provide consumers with refunds for home improvement work that Defendant never commenced and/or completed;
  - m. Failing to respond to consumers' inquires in a timely manner or at all.
62. Each unconscionable commercial practice by Defendant constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

## COUNT II

### **VIOLATION OF THE CFA BY DEFENDANT (FALSE PROMISES, MISREPRESENTATIONS AND KNOWING OMISSIONS OF MATERIAL FACTS)**

63. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 62 above as if more fully set forth herein.

64. In the operation of his home improvement business, Defendant has made false promises and misrepresentations including, but not limited to, the following:

- a. Representing through the B&K Website and its telephone solicitations that B&K Masonry was registered with the Division as a home improvement contractor, when such was not the case;
- b. Representing, through the B&K Masonry Website, that "[a]ll work is guaranteed," when such is not the case;
- c. Misrepresenting on home improvement contracts and business cards an address of 492 Cedar Lane, Suite 179, Teaneck;
- d. Misrepresenting to consumers that B&K Masonry had fully performed chimney cleanings and lining installations, when such services were not completed.
- e. Misrepresenting on home improvement contracts that no further maintenance to their chimneys would be necessary if B&K Masonry performed certain repairs, when such was not the case;

f. Misrepresented that chimney liners were of a certain size, when such was not the case (e.g. contracted to install a 35 foot liner but only installed an 15 foot liner).

65. In the operation of his home improvement business, Defendant has engaged in knowing omissions of material fact including, but not limited to, the following: failing to inform consumers that permits were required for certain home improvement work, prior to the commencement of such work.

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

### COUNT III

#### VIOLATION OF THE CFA BY DEFENDANT (SENIOR CITIZEN)

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

68. The CFA provides for additional penalties for pecuniary injury to a senior citizen or a person with a disability.

69. At least as of June 15, 2011, the B&K Masonry Website advertised that “Senior discounts are available.”

70. At all relevant times, Defendant has entered into home improvement contracts with “senior citizens” within the definition of the CFA, N.J.S.A. 56:8-14.2.

71. At all relevant times, Defendant has caused pecuniary injury to senior citizens within the definition of the CFA, N.J.S.A. 56:8-14.2

72. The CFA, 56:8-14.3 provides:

- a. In addition to any other penalty authorized by law, a person who violates the provisions of [the CFA] shall be subject to additional penalties as follows:
- (1) A penalty of not more than \$10,000 if the violation caused the victim of the violation pecuniary injury and the person knew or should have known that the victim is a senior citizen or a person with a disability . . .

[N.J.S.A. 56:8-14.3(a)(1).]

73. At all relevant times, because of the consumers' age and/or appearance, Defendant had actual or constructive knowledge that many of the consumers were senior citizens.

74. Each instance where Defendant engaged in deceptive practices in connection with his home improvement contracts with senior citizens entitles Plaintiffs to recovery of additional penalties as provided by N.J.S.A. 56:8-14.3.

#### COUNT IV

#### VIOLATION OF THE CFA BY DEFENDANT (USING AN UNREGISTERED ASSUMED NAME)

75. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 74 above as if more fully set forth at length herein

76. N.J.S.A. 56:1-2 prohibits a person conducting business under an assumed name that is not registered, and provides, in pertinent part:

No person shall conduct or transact business under any assumed name, or under any designation, name, or style, corporate or otherwise, other than the name or names of the individual or individuals conducting or transacting such business, unless such person shall file a certificate in the office of the clerk of the county or counties in which such person conducts or transacts, or intends to transact, such business, together with a duplicate thereof for filing in the office of the Secretary of State, as provided in section 56:1-3 of this Title.

77. Pursuant to N.J.S.A. 56:1-5, corporations are exempted from the requirements of N.J.S.A. 56:1-2.

78. Brown has conducted business under an assumed name that he has not registered in the State as a business entity or trade name, specifically B&K Masonry & Chimney.

79. Brown is not a corporation and is not exempt from the requirements of N.J.S.A. 56:1-2.

80. The use by Brown of an unregistered business name constitutes an unconscionable commercial practice in violation of the CFA, N.J.S.A. 56:8-2.

#### COUNT V

#### VIOLATION OF THE CONTRACTORS' REGISTRATION ACT BY DEFENDANTS

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

82. The Contractors' Registration Act, N.J.S.A. 56:8-136 et seq. governs, among other things, the registration of home improvement contractors with the Division.

83. At all relevant times, Defendant has been a "Contractor" within the definition of the Contractors' Registration Act, N.J.S.A. 56:8-137.

84. At all relevant times, Defendant has performed "Home Improvement[s]" within the definition of the Contractors' Registration Act, N.J.S.A. 56:8-137.

85. The Contractors' Registration Act provides in pertinent part:

- a. On or after December 31, 2005, no person shall offer to perform, or engage, or attempt to engage in the business of making or selling home improvements unless registered with the Division of Consumer Affairs in accordance with this act.

[N.J.S.A. 56:8-138(a).]

86. At all relevant times, Defendant was not exempt from the Contractors' Registration Act pursuant to N.J.S.A. 56:8-140.

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

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

- (1) The legal name, business address, and registration number of the contractor; and
- (2) A copy of the certificate of commercial general liability insurance required of contractor pursuant to section 7 of this act and the telephone number of the insurance company issuing the certificate; and

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

88. Moreover, the Contractors' Registration Act requires that home improvement contractors include cancellation language as follows:

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

“NOTICE TO CONSUMER

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

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

(Name of Contractor)

(Address of Contractor)

(Phone number of Contractor)

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

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

89. Defendant has engaged in conduct in violation of the Contractors' Registration

Act including, but not limited to:

- a. Advertising, offering for sale, selling and/or performing home improvement work without being registered with the Division as a home improvement contractor (N.J.S.A. 56:8-138(a));
- b. Failing to set forth the legal name on home improvement contracts (N.J.S.A. 56:8-151(a)(1));
- c. Failing to set forth the business address on home improvement contracts (N.J.S.A. 56:8-151(a)(1));
- d. Failing to set forth the signatures of both parties to the home improvement contract (N.J.S.A. 56:8-151(a));
- e. Failing to include with home improvement contracts a copy of Defendant's certificate of commercial liability insurance as well as the telephone number of the company issuing the certificate (N.J.S.A. 56:8-151(a)(2)); and
- f. Failing to include the required "Notice to Consumer" cancellation language in home improvement contracts (N.J.S.A. 56:8-151(b)).

90. Defendant's conduct constitutes multiple violations of the Contractors'

Registration Act, N.J.S.A. 56:8-136 et seq.

COUNT VI

VIOLATION OF THE CONTRACTOR  
REGISTRATION REGULATIONS BY DEFENDANTS

91. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 90 above as if more fully set forth herein.

92. The Regulations Governing Home Improvement Contractor Registration (“Contractor Registration Regulations”), N.J.A.C. 13:45A-17.1 et seq., among other things, provide for procedures for the registration of home improvement contractors with the Division.

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

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

95. At varying times, Defendant has “advertise[d]” home improvements within the meaning of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.2.

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

97. The Contractor Registration Regulations provide, in pertinent part:

(a) On or after December 31, 2005, unless exempt under N.J.A.C. 13:45A-17.4:

1. No person shall engage in the business of making or selling home improvements in this State unless registered with the Division in accordance with this subchapter; and  
[N.J.A.C. 13:45A-17.3(a).]

98. At all relevant times, Defendant was not exempt from the Division’s registration regulations.

99. The Contractor Registration Regulations further provide that:

In addition to the requirements of a home improvement contract pursuant to N.J.A.C. 13:45A-16.2, every home improvement contract in which a person required to be registered as a home improvement contractor is a party shall comply with the provision of N.J.S.A. 56:8-51.

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

100. Defendant has engaged in conduct in violation of the Contractor Registration Regulations including, but not limited to the following:

- a. Advertising, offering for sale, selling and/or performing home improvement work without being registered with the Division as a home improvement contractor (N.J.A.C. 13:45A-17.3(a)1,2; and
- b. Entering into home improvement contracts that did not comply with the requirements of N.J.S.A. 56:8-151 (e.g. failing to set forth the signatures of both parties) (N.J.A.C. 13:45A-17.13).

101. Defendant's conduct constitutes multiple violations of the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

## COUNT VII

### VIOLATION OF THE HOME IMPROVEMENT REGULATIONS BY DEFENDANTS

102. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 101 above as if more fully set forth herein.

103. The Home Improvement Regulations, among other things, prohibit certain acts and practices of a seller in connection with the sale, advertisement or performance of home improvement contracts.

104. At all relevant times, Defendant has been a “seller” within the definition of N.J.A.C. 13:45A-16.1.

105. At all relevant times, Defendant has entered into “home improvement contracts” within the definition of N.J.A.C. 13:45A-16.1.

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

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

.....

3. Bait selling:

.....

iv. Substitute products or materials for those specified in the home improvement contract, or otherwise represented or sold for use in the making of home improvements by sample, illustration or model, without the knowledge or consent of the buyer;

.....

4. Identity of Seller:

v. Misrepresent that the seller is part of any governmental or public agency in any printed or oral communication including but not limited to leaflets, tracts or other printed material, or that any licensing denotes approval by the government agency;

.....

7. Performance:

.....

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

....

9. Sales representations:

- ii. Knowingly fail to make any material statement of fact, qualification or explanation if the omission of such statement, qualification or explanation causes an advertisement, announcement, statement or representation to be false, deceptive or misleading;

10. Building permits:

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

....

11. Guarantees or Warranties:

- i. The seller shall furnish the buyer a written copy of all guarantees or warranties made with respect to labor services, products or materials furnished in connection with home improvements. Such guarantees or warranties shall be specific, clear and definite and shall include any exclusions or limitations as to their scope or duration. Copies of all guarantees or warranties shall be furnished to the buyer at the time the seller presents his bid as well as at the time of execution of the contract, except that separate guarantees or warranties of the manufacturer of products or materials may be furnished at the time such products or materials are installed.

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

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

.....

i. The legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller;

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

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

iv. The dates or time period on or within the work is to begin and be completed by seller;

....

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

108. Defendant has violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to:

- a. Misrepresenting to consumers that products or materials used in the home improvement were of a specific size, weight, grade or quality (e.g. contracted to install a 35 foot liner but only installed an 15 foot liner) (N.J.A.C. 13:45A-16.2(a)(2)(iii));
- b. Misrepresenting to consumers that products or materials used in the home improvement were of sufficient size, capacity or character to properly vent the consumer's appliances through the chimney (N.J.A.C. 13:45A-16.2(a)(2)(vii));
- c. Substituting products or materials for those specified in the home improvement contract without the knowledge or consent of the consumer (N.J.A.C. 13:45A-16.2(a)(3)(iv));
- d. Misrepresenting that a B&K Masonry representative was a government inspector and informing a consumer that if she did not have a chimney liner replaced, she would no longer be able to use her furnace and she could be fined (N.J.A.C. 13:45A-16.2(a)(3)(v));
- e. Failing to begin and/or complete home improvement work in the time period specified in the home improvement contract (N.J.A.C. 13:45A-16.2(a)(7)(ii));
- f. Failing to provide consumers with timely written notice of a delay in the commencement or completion of home improvement work (N.J.A.C. 13:45A-16.2(a)(7)(iii));
- g. Knowingly failing to inform consumers that permits were required for certain home improvement work performed at their homes (N.J.A.C. 13:45A-16.2(a)(9)(ii));
- h. Commencing home improvement work without confirming that the requisite permits had been issued (N.J.A.C. 13:45A-16.2(a)(10)(i));
- i. Failing to provide consumers with written guarantees or warranties made for

labor services, products or materials used that are specific, clear and definite and state all exclusions or limitations (N.J.A.C. 13:45A-16.2(a)(11)(i));

- j. Failing to include in home improvement contracts the signatures of all parties (N.J.A.C. 13:45A-16.2(a)(12));
- k. Failing to include in home improvement contracts the legal name (*i.e.* use of unregistered assumed business name) of the seller, (N.J.A.C. 13:45A-16.2(a)(12)(i));
- l. Failing to include in home improvement contracts the business address of the seller (N.J.A.C. 13:45A-16.2(a)(12)(i));
- m. Failing to include in home improvement contracts the legal name and the business address of the sales representative or agent who solicited or negotiated the contract (N.J.A.C. 13:45A-16.2(a)(12)(i));
- n. Failing to include in home improvement contracts a description of the work to be done and the principal products and materials to be used or installed in performance of the contract (N.J.A.C. 13:45A-16.2(a)(12)(ii));
- o. Failing to include in home improvement contracts a statement of the terms and conditions affecting the price of the contract, including cost of materials and hourly labor rate (N.J.A.C. 13:45A-16.2(a)(12)(iii));
- p. Failing to include in home improvement contracts the dates or time periods on or within which the work is to be completed (N.J.A.C. 13:45A-16.2(a)(12)(iv)).

109. Defendant's conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq

**COUNT VIII**

**VIOLATION OF THE ADVERTISING  
REGULATIONS BY DEFENDANT**

110. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 109 above as if more fully set forth herein.

111. The Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., address, among other issues, general advertising practices.

112. Specifically, the Advertising Regulations governing general advertising practices provide, in relevant part:

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

...

9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

[N.J.A.C. 13:45A-9.2(a)(9).]

113. Defendant has violated the Advertising Regulations by engaging in certain conduct including, but not limited to:

- a. Representing on the B&K Masonry Website that Defendant is a “fully licensed and insured chimney sweep[],” when such is not the case;
- b. Representing on the B&K Masonry Website that Defendant is “licensed and registered in . . . the State of New Jersey,” when such is not the case; and
- c. Representing on the B&K Masonry Website that [a]ll work is guaranteed,” when such is not the case.

114. Defendant’s conduct constitutes multiple violations of N.J.A.C. 13:45A-9.2(a)(9), each of which constitutes a per se violation of the CFA.

## PRAYER FOR RELIEF

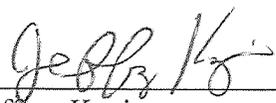
WHEREFORE, based upon the foregoing allegations, the Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts and omissions of Defendant constitute multiple violations of the CFA, N.J.S.A. 56:8-1 et seq., the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., and the regulations promulgated thereunder, specifically the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq. and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq.;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, members, managers, agents, servants, employees, representatives and independent contractors and all other persons or entities directly under his control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 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 Verified Complaint, as authorized by the CFA, N.J.S.A. 56:8-8;
- (c) Permanently enjoining Defendants and their owners, officers, directors, shareholders, founders, members managers, agents, members, servants, employees, representatives, independent contractors and all other persons or entities directly under its control, from engaging in any of the activities that are the subject of Plaintiffs' request for temporary and preliminary injunctive relief, as set forth in the accompanying *Order to Show Cause with Temporary Restraints Pursuant to Rule 4:52*;
- (d) Ordering Defendant 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 violation of the CFA, N.J.S.A. 56:8-1 et seq., the Contractors' Registration Act, N.J.S.A. 56:8-136 et seq., the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 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 Verified Complaint;
- (e) Appointing a receiver, pursuant to N.J.S.A. 56:8-8 and N.J.S.A. 56:8-9, at Defendant's expense, to assume control over the assets of Defendant, render

a full accounting and thereafter sell and/or convey such assets under the direction of the Court in order to provide restitution to any person, whether or not named in the Verified Complaint, who has sustained damage as a result of Defendant's unlawful acts;

- (f) Permanently enjoining L. Brown from conducting business under an unregistered assumed name, in violation of N.J.S.A. 56:1-2 and N.J.S.A. 56:8-2;
- (g) Permanently enjoining L. Brown 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, 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;
- (h) Directing Defendant to restore any affected person, whether or not named in this Verified Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (i) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (j) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-14.3;
- (k) Directing the assessment of cost and fees, including attorneys' fees, against Defendant 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
- (l) Granting such other relief as the interests of justice may require.

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

By:   
\_\_\_\_\_  
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: November 17, 2015  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter and controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the Contractors' Registration Act, N.J.S.A. 56:8-136, et seq., the Contractor Registration Regulations, N.J.A.C. 13:45A-17.1 et seq., the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendant, but have no direct information that any of those actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

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

By: Jeffrey Koziar  
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

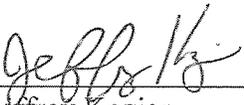
Dated: November 17, 2015

Newark, New Jersey

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

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

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

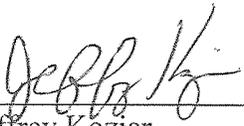
By:   
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: November 17, 2015  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Jeffrey Koziar, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs in this action.

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

By:   
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

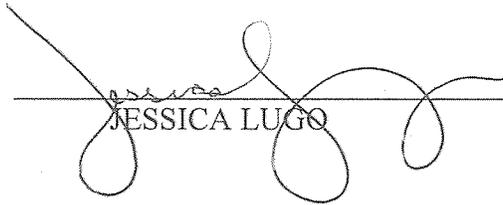
Dated: November 17, 2015  
Newark, New Jersey

VERIFICATION

I, Jessica Lugo, of full age, hereby certifies as follows:

1. I am an Investigator with the New Jersey Division of Consumer Affairs (“Division”), Office of Consumer Protection.
2. I have read the foregoing Verified Complaint and on my own personal knowledge and review of documents in possession of the Division, I know that the facts set forth herein are true and they are incorporated in this certification by reference, except for those alleged upon information and belief.
3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: *November 17, 2015*  
Newark, New Jersey

  
\_\_\_\_\_  
JESSICA LUGO