

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*,
RAÚL TORREZ, Attorney General,

Plaintiff,

v.

Case No. _____

FLAWLESS RESULTS, LLC,
JOHN STEVEN GEORGES SR.,
ROBERT DEAN MURPHY JR. also known as
BOBBY MURPHY, JACOB CHALMER TRYON,
and CROSS RIVER BANK,

Defendants.

COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT

Plaintiff, the State of New Mexico, through Attorney General Raúl Torrez and undersigned counsel (“the State”), brings this action against the above-named Defendants for violations of the New Mexico Unfair Practices Act (“UPA”), NMSA 1978, §§ 57-12-1 to -26 (1967, as amended through 2019). In support of this Complaint, Plaintiff states the following:

INTRODUCTION

1. Defendants John Steven Georges Sr., (“Georges”), Robert Dean Murphy Jr. (“Murphy”), and Jacob Chalmer Tryon (“Tryon”) engaged in a scheme to defraud hundreds of New Mexico consumers by offering to do remodeling work on consumers’ homes, obtaining loans for consumers to finance downpayments on the contracts, and then disappearing with the money without completing the contracted work.

PARTIES, JURISDICTION, AND VENUE

2. This action alleges a cause of action under the UPA, which provides in relevant part that an action brought by the Attorney General under the UPA “may be brought in the district court

of the county in which the person . . . has his principal place of business or in the district court in any county in which the person is using, has used or is about to use the practice which has been alleged to be unlawful under the [UPA].”

3. Venue is proper in this District, pursuant to NMSA 1978, Section 38-3-1 (1988) (providing that actions brought against foreign corporations may be brought in the county “where the cause of action originated”), and Section 57-12-8(A) (providing that an action brought by the Attorney General under the UPA “may be brought in the district court of the county in which the person . . . has his principal place of business or in the district court in any county in which the person is using, has used or is about to use the practice which has been alleged to be unlawful under the [UPA]”).

4. As a court of general jurisdiction, this court has subject matter jurisdiction over this matter. *See* N.M. Const. Art. VI, § 13.

5. Raúl Torrez, as the duly elected Attorney General of the State of New Mexico, is authorized to prosecute and initiate “all actions or proceedings . . . in which the state may be a party or interested when, in [the Attorney General’s] judgment, the public interest of the state requires such action[.]” NMSA 1978, § 8-5-2 (B) (1975); *see also* § 8-5-2 (J) (authorizing the Attorney General to appear before local, state, and federal courts “to represent and to be heard on behalf of the state when, in [the Attorney General’s] judgment, the public interest of the state requires such action”).

6. The Attorney General is further authorized to “bring an action in the name of the state alleging violations of the [UPA],” when the Attorney General “has reasonable belief that any person is using, has used or is about to use any method, act or practice which is declared by the

[UPA] to be unlawful, and that proceedings would be in the public interest.” NMSA 1978 § 57-12-8 (A) (1977).

7. The Attorney General brings this action pursuant to the Attorney General’s statutory authority because the Attorney General has reasonable belief that Defendants are using and have used methods, acts, or practices declared unlawful by the UPA and, in his judgment, it is in the public interest of the state to bring such action.

8. The Attorney General further enjoys *parens patriae* authority to bring this action on behalf of the State to protect the State’s “quasi-sovereign interest” in enforcing consumer protection laws, securing an honest marketplace, preventing Defendants and other persons from engaging in similar unfair and deceptive business practices, and otherwise maintaining the physical and economic health and well-being of a substantial segments of the state’s population.

9. Defendant Flawless Results LLC (“Flawless”) is a Domestic Limited Liability Company organized in New Mexico with a principal place of business at 3100 Pan American NE, Suite 11, Albuquerque, New Mexico 87107.

10. Defendant John Steven Georges is a resident of Bernalillo County, New Mexico and a co-owner of Flawless.

11. Defendant Bobby Dean Murphy Jr. is a resident of Bernalillo County, New Mexico and a co-owner of Flawless.

12. Defendant Jacob Chalmer Tryon is a resident of Bernalillo County, New Mexico and a co-owner of Flawless.

13. Defendant Cross River Bank is a state chartered bank organized in New Jersey, with a principal place of business in New Jersey, doing business in New Mexico.

14. Defendant Cross River Bank regularly finances loans to New Mexico consumers for services provided in New Mexico.

FACTUAL ALLEGATIONS

15. Upon information and belief, Defendants Georges, Murphy, and Tryon formed Flawless Results, LLC as a joint venture in December, 2021 (collectively, “the Flawless Defendants”).

16. Flawless advertised as an installer of windows, doors, and stucco for residential and commercial buildings in New Mexico, Colorado and Texas.

17. The New Mexico Construction Industries Division (“NMCID”) issued a contractor’s license to Flawless on March 2, 2022.

18. NMCID issued a general contractor’s license to Defendant Georges on April 6, 2023.

19. Flawless maintained office and/or showroom locations in Albuquerque, NM, Colorado Springs, CO, and El Paso, TX.

20. The New Mexico Department of Justice (“NMDOJ”) received multiple complaints from consumers who stated that they contracted with Flawless for home improvements and that Flawless failed to perform the work as agreed, including failing to obtain required city permits.

21. For example, in February 2023, a consumer contracted with Flawless to install new windows in his brick home. Defendants installed the wrong windows and left missing drywall around the windows. After months of attempting to get Defendants to complete their work, Defendants completed the drywall but never installed agreed-upon windows.

22. Consumers also reported discovering that Flawless failed to pull required work permits in both Santa Fe and Albuquerque.

Flawless Used Cross River Bank to Finance Consumers' Downpayments

23. Since many consumers could not afford to pay the full cost of the projects out-of-pocket, the Flawless Results Defendants arranged for Customers to obtain loans through their lending partner, Defendant Cross River Bank.

24. Upon information and belief, Flawless required consumers to use Defendant Cross River Bank if they needed to finance projects.

25. One consumer reported that she initially planned to finance the work through her own bank, but was told by Flawless that she must use Cross River Bank.

26. Flawless customers accessed these loans through an intermediary company called Momnt, which manages the application, payment processing and servicing for the Cross River Bank loans.

27. According to loan documentation, Flawless' agreement with Momnt and Defendant Cross River Bank provided that Flawless would cover application fees for its customers' loans.

28. Federal regulations require that all consumer credit agreements that finance services contain a clause known as the "FTC Holder Notice," which provides:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

See 16 CFR § 433.2.

29. Cross River Bank's loan agreements for Flawless customers do not contain the FTC Holder Notice, in violation of federal law.

30. In instances where consumers obtained loans to finance Flawless contracts, Flawless received downpayments (typically 50% of the total contract cost) from Cross River Bank, via Momnt.

31. Consumers were then stuck with the loan debt to Cross River Bank for the downpayments, including interest, even in cases where Flawless performed no work, incomplete work, or faulty work on the contracts.

Flawless Shuts Down Operations and Keeps Consumers' Money

32. On September 1, 2024, Defendant Murphy purchased three trucks, each valued over \$30,000 and titled jointly in the name of Flawless and Defendant Murphy.

33. On or around October 31, 2024, Flawless abruptly shut down.

34. At the time it shut down, Flawless fired its employees, closed its storefront locations and stopped answering calls.

35. Consumers with pending contracts with Flawless were given no warning and no refunds of their downpayments.

36. Consumers reported losses totaling over \$700,000 in money they paid Flawless for work it never completed.

37. For example, NMDOJ received a complaint alleging that in June of 2024, a consumer contracted with Flawless to replace his home's siding and window and door trim. The consumer paid Defendants over \$15,000 to start the work.

38. Flawless began removing the consumer's siding at the end of October 2024 and 12 days later stopped work and stopped all communication with the consumer.

39. On November 6, 2024, Defendant Murphy purchased two additional vehicles, each worth approximately \$40,000, which are titled to him personally.

COUNT I

UNFAIR AND DECEPTIVE TRADE PRACTICES

40. The State re-alleges and incorporates the factual allegations set forth above.
41. The UPA prohibits unfair and deceptive trade practices “in the conduct of any trade or commerce.” NMSA 1978 § 57-12-3 (1971).
42. To prove that a defendant engaged in an unfair or deceptive trade practice, the State must prove that:
- a. the defendant made an oral or written statement, a visual description, or a representation of any kind that was false or misleading;
 - b. the false or misleading representation was knowingly made;
 - c. the representation was made in connection with the sale of goods or services and in the regular course of the defendant’s business; and
 - d. the representation was of the type that may, tends to, or does deceive or mislead any person. *See Lohman v. Daimler-Chrysler Corp.*, 2007-NMCA-100, ¶ 5; UJI 13-2501 NMRA.
43. The Flawless Defendants’ conduct alleged above in entering into hundreds of remodeling contracts, collecting large downpayments and then failing to perform the work or refund customers constitutes the following unfair and deceptive trade practices, as laid out in NMSA Section 57-12-2 (D) (2019):
- a. [Subsection (9):] “offering goods or services with intent not to supply them in the quantity requested by the prospective buyer to the extent of the stock available, unless the purchaser is purchasing for resale;”

- b. [Subsection (10):] “offering goods or services with intent not to supply reasonable expectable public demand;”
- c. [Subsection (14):] “using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;” and,
- d. [Subsection (17):] “failing to deliver the quality or quantity of goods or services contracted for[.]”

44. Defendants also violated the Unfair Practices Act by making or accepting financing agreements for consumer services that failed to include the required FTC Holder Notice.

45. The Flawless Defendants violated the FTC Holder Rule, which provides that “[i]n connection with any sale or lease of goods or services to consumers . . . it is an unfair or deceptive act or practice . . . for a seller, directly or indirectly, to: (a) *Take or receive* a consumer credit contract which fails to contain the [FTC Holder Notice].” 15 U.S.C. 41 § 433.2 (emphasis added).

46. The failure to include the notice constitutes a violation of the UPA pursuant to NMSA 1978 Section 57-12-2 (D)(15), which defines such practices to include “stating that a transaction involves rights, remedies or obligations that it does not involve[.]” *See also Jaramillo v. Gonzales*, 2002-NMCA-072.

47. Notwithstanding the failure to include the notice, Defendant Cross River Bank is subject to liability for the unlawful practices of Flawless as the holder of the credit agreements. *See* NMSA 1978, § 55-3-305(e) (providing that if an instrument in a consumer transaction omits the FTC Holder Notice, the instrument should be treated as though the Holder Notice was present).

48. Upon information and belief, the Flawless Defendants willfully engaged in the unlawful conduct alleged.

49. The Flawless Defendants operated as a common enterprise and are jointly and severally liable for the conduct alleged herein. *See N.M. ex rel. Balderas v. Real Estate Law Center, P.C.*, 430 F. Supp. 3d 761, 865 (D. N.M. 2019) (recognizing that corporate entities operating in common enterprise may be jointly and severally liable for each other's actions).

50. A director of a corporation has a duty to act to prevent injuries to third parties where they have knowledge, amounting to acquiescence, of the corporation's wrongful acts. *C & H Const. & Paving Co., Inc. v. Citizens Bank*, 1979-NMCA-077, ¶ 12, 93 N.M. 150, 157.

51. Officers or agents are individually liable for violations of law committed by the corporation if the if the officers or agents participated in or directed the acts or practices, had knowledge and authority to control the acts or practices or acquiesced or sanctioned the acts or practices. *Lobato v. Pay Less Drug Stores, Inc.*, 261 F.2d 406, 408-09 (10th Cir. 1958).

52. As owners, directors and employees of Flawless, Defendants Georges, Murphy and Tryon either participated in, directed, or had knowledge and the authority to control Defendant Flawless' wrongful or deceptive acts or practices, or acquiesced or sanctioned them.

53. Defendant Cross River Bank is jointly and severally liable for Flawless' business activities, up to the amounts paid under the consumer credit contracts and including any costs and attorney fees available under the UPA. *See FTC, Commission Statements on the Holder Rule and Attorneys' Fees and Costs*, at 2-3 (Jan. 18, 2022) (confirming that the Holder Rule neither precludes nor limits awards of costs or attorney fees available under state law).

COUNT II

UNCONSCIONABLE TRADE PRACTICES

54. Defendants' acts alleged above resulted in a gross disparity between the value received by consumers and the price paid.

55. As such, Defendants' acts constituted an unconscionable trade practice. NMSA 1978, §57-12-2(E)(1), (2).

COUNT III

INJUNCTIVE, EQUITABLE, AND ANCILLARY RELIEF, INCLUDING THE DISGORGEMENT OF ALL ILL-GOTTEN GAINS FOR UPA VIOLATIONS

56. The State re- alleges and incorporates the allegations set forth above.

57. In any action filed pursuant to the UPA, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution. *See* NMSA 1978, §57-12-8.

58. When seeking injunctive relief pursuant to the UPA, the attorney general is not required to post bond. NMSA 1978, §57-12-8(A).

59. The State is entitled to an order requiring Defendants to disgorge ill-gotten gains and make restitution and an award of civil penalties not exceeding \$5,000 (five thousand dollars) for each willful unfair or deceptive trade practice. NMSA 1978 § 57-12-11 (1970).

PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that:

A. the Court permanently enjoin the Flawless Defendants from advertising, selling or performing contracting services in New Mexico, including revocation of any licenses issued by NMCID;

B. the Court void all unperformed contracts between the Flawless Defendants and consumers and order the Flawless Defendants to make restitution of all amounts paid or received on these contracts;

C. the Court void all credit agreements between Defendant Cross River Bank and consumers for whom Flawless failed to perform the work and order Cross River Bank to make

restitution to consumers for any and all payments made by consumers to Cross River Bank on those agreements;

D. the Court order Defendant Cross River Bank to remove any negative credit reporting related to consumers' loans for work that Flawless failed to perform;

E. the Court award judgment against Defendants, jointly and severally, for restitution under the UPA, for all consumers harmed by the Defendants' acts and omissions described in this Complaint and pursuant to Defendant Cross River Bank's liability under the FTC Holder Rule and its New Mexico state analog;

F. the Court order the Defendants to pay to the State of New Mexico a civil penalty of up to five thousand dollars (\$5,000.00) per violation, pursuant to the UPA;

G. the Court award the New Mexico Department of Justice attorney fees and costs incurred in the investigation and prosecution of this matter, against the Defendants, jointly and severally, pursuant to the UPA and pursuant to Defendant Cross River Bank's liability under the FTC Holder Rule and its New Mexico state analog; and

H. the Court award pre-judgment and post-judgment interest on all monies awarded, as permitted by NMSA 1978 Sections 56-8-3 through 56-8-4;

I. For such further relief as the Court deems just and proper.

Respectfully submitted,

ATTORNEY GENERAL RAÚL TORREZ
NEW MEXICO DEPARTMENT OF JUSTICE

By: /s/ Mari Kempton
Mari Kempton
Ben Lovell
Assistant Attorneys General
201 3rd St. NW

Albuquerque, New Mexico 87102
Phone: (505) 627-3378
mkempton@nmdoj.gov
blovell@nmdoj.gov
Attorneys for Plaintiff