

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-14-

STATE OF MAINE )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 KENNETH E. PETERS dba )  
 MADISON MATTRESS AND )  
 DISCOUNT FURNITURE )  
 )  
 Defendant )

COMPLAINT  
(Injunctive Relief Requested)

**I. INTRODUCTION**

1. The State brings this action against Kenneth E. Peters (“Defendant”) pursuant to the Maine Unfair Trade Practices Act (“UTPA”), Title 5, ch. 10, of the Maine Revised Statutes, seeking permanent injunctive relief, restitution, civil penalties, costs and attorney’s fees.

**II. PARTIES**

2. Plaintiff, State of Maine, is a sovereign state and brings this action by and through its Attorney General pursuant to 5 M.R.S. §§ 191 and 209 and the powers vested in her by common law.

3. Defendant, Kenneth E. Peters, is an individual with an address at 441 Solon Road, North Anson, Maine. He is the former sole proprietor of Madison Mattress and Discount Furniture in Madison, Maine.

**III. JURISDICTION AND VENUE**

4. This court has jurisdiction over this action pursuant to 4 M.R.S. § 105 and 5 M.R.S. § 209.

5. Venue is proper in the Superior Court of Kennebec County pursuant to 5 M.R.S. § 209.

6. The Defendant was at all times relevant to this complaint engaged in trade or commerce in and from the State of Maine, to wit: Defendant advertised, offered for sale, and sold furniture at retail directly to Maine consumers.

#### **IV. STATUTORY BACKGROUND**

7. Under the UTPA, 5 M.R.S. § 207, unfair or deceptive acts or practices in the conduct of any trade or business are unlawful.

8. Pursuant to 5 M.R.S.A. § 209:

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice. . . .

9. Pursuant to 5 M.R.S. § 209, each violation of § 207 that results from intentional and unfair or deceptive conduct is a civil violation for which a civil penalty of up to \$10,000 may be adjudged. In any case in which a permanent injunction is issued, the court may order costs of investigation and costs of the suit.

10. Pursuant to 14 M.R.S. § 1522(1)(A), the court shall allow the State's litigation costs, including court costs, reasonable attorney's and expert witness fees, should it prevail in an action brought pursuant to 5 M.R.S. § 209.

## **V. FACTS**

11. From 1993 until August, 2013, Defendant owned and operated Madison Mattress and Discount Furniture, a retail furniture business in Madison, Maine.

12. By July, 2011, Defendant was experiencing cash flow problems in the operation of his furniture business, including major suppliers' curtailing his ability to purchase inventory on credit.

13. In approximately July, 2011, Defendant arranged for Profit Management Promotions, described in its company website as a furniture "sales promotion, liquidation and consulting firm" that "specializes in high-impact sales promotions designed to raise money for furniture retailers or liquidate stores that have decided to close."

14. Defendant continued to experience significant cash flow problems after he terminated his relationship with Profit Management Promotions on or about May, 2012.

15. By February or March, 2013, all three of Defendants' major suppliers had stopped allowing Defendant to purchase furniture on credit and instead demanded payment in full prior to delivery.

16. Maine Revenue Services revoked Defendant's Resale Certificate, functionally terminating his ability to sell at retail, on or about July 14 or 15, 2013.

17. Defendant closed the business on or about July 16 or 17, 2013.

18. By the time Defendant ceased operating the business, all of his suppliers had stopped allowing Defendant to purchase furniture on credit and instead demanded payment in full prior to delivery.

19. Even though Defendant accepted payment in the form of cash, check or credit card, he or his agents pressured customers into paying for items in cash in the last few weeks before the business closed.

20. Defendant's normal practice was to require customers to pay 50% of the purchase price at the time they ordered furniture not in the existing inventory, but most customers paid for items in full when purchased, whether they were in stock or to be ordered.

21. Defendant continued to accept orders and payment from customers for furniture not in the existing inventory until the day he closed the business.

22. Defendant failed to procure merchandise for approximately 75-80 customers from whom he accepted approximately \$70,000 in advance payment.

23. Defendant knew at the time he accepted those orders that the advance payments would be applied not to procure the items purchased, but

instead for operating expenses and payments to suppliers for earlier customers' orders.

24. Defendant has failed to honor multiple customer requests for refunds.

25. Beginning in August 2013, the Attorney General received numerous complaints about Mr. Peters and his business Madison Mattress and Discount Furniture alleging that the business had collected pre-payments or deposits on furniture never delivered prior to the business closing its doors in mid-July 2013. The Attorney General ultimately received more than 30 consumer complaints.

### **COUNT I**

#### **(Deceptive Trade Practice)**

26. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

27. Defendant has engaged in the deceptive practice of inducing consumers to order and pay in advance for furniture without disclosing that their payments would be used not to procure the items purchased, but instead for operating expenses and payments to suppliers for earlier customers' orders.

28. Defendant has engaged in the deceptive practice of inducing consumers to order and pay in advance for furniture without disclosing that he was experiencing substantial cash flow difficulties and that he was at risk of losing his authority to re-sell merchandise at retail.

29. Defendant's conduct as described herein is deceptive in violation of 5 M.R.S. § 207 and is intentional.

**COUNT II**

**(Unfair Trade Practice)**

30. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

31. Defendant accepted advance payments from consumers for furniture and failed to deliver the furniture as promised.

32. Defendant failed to take reasonable steps to ensure his ability to fulfill the prepaid orders he accepted from consumers or issue prompt refunds.

33. The practices alleged in this count caused substantial harm to consumers that was not reasonably avoidable by the consumers themselves and is not outweighed by countervailing benefits to consumers or competition.

34. Defendant's conduct as described herein is unfair in violation of 5 M.R.S. § 207 and is intentional.

**COUNT III**

**(Fraud)**

35. Plaintiff repeats and realleges the preceding paragraphs of the complaint.

36. Defendant made false representations of, and/or intentionally failed to disclose, material facts with respect to his ability to honor and fulfill prepaid orders for the delivery of furniture for the purpose of inducing consumers to enter into the orders and pay in advance.

37. Defendant had knowledge of and/or recklessly disregarded the falsity of representations and the material omissions he made with respect to his ability to fulfill prepaid orders for the delivery of the furniture which has not been delivered.

38. Consumers justifiably relied on Defendant's misrepresentations and material omissions as true and acted upon them, causing damages to consumers.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff requests the following relief:

1. Declare that Defendant has violated the UTPA by inducing consumers to order and pay in advance for furniture without disclosing that their payments would be used for operating expenses and payments to suppliers for earlier customers' orders and that he was at risk of losing his authority to re-sell merchandise at retail.

2. Declare that Defendant has violated the UTPA by accepting advance payments from consumers without taking reasonable steps to ensure his ability to fulfill the prepaid orders he accepted from consumers or issue prompt refunds.

3. Declare that Defendant has committed fraud by accepting pre-paid orders while making false representations or failing to disclose material facts with respect to his ability to fulfill the orders.

4. Pursuant to 5 M.R.S. § 209 and M.R. Civ. P. 65, permanently enjoin Defendant, his agents, servants, employees and those persons in active

concert or participation with him who receive actual notice of the injunction from taking deposits or any payment in advance of delivering products or performing services in Maine.

5. Pursuant to 5 M.R.S. § 209 order Defendant to pay restitution to the Attorney General's Office on behalf of the consumers who were harmed by his unfair and deceptive practices.

6. Pursuant to 5 M.R.S. § 209, order Defendant to pay a civil penalty of \$10,000 per violation for each intentional violation of the Unfair Trade Practices Act.

7. Pursuant to 5 M.R.S. § 209 and 14 M.R.S § 1522(1)(A), order Defendant to pay the Attorney General its costs of suit and investigation, including attorney's fees.

8. Order such other and further relief as the Court may deem necessary to remedy the effects of Defendant's unfair and deceptive business practices.

Respectfully submitted,

JANET T. MILLS  
Attorney General

Dated: March 3, 2014

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CHRISTINA M. MOYLAN  
Me. Bar No. 7095  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006  
Tel. (207) 626-8838



Exhibit A to Complaint (State of Maine v. Kenneth E. Peters dba  
Madison Mattress and Discount Furniture)

List of Consumers

<b>NAME</b>	<b>AMOUNT</b>
Angela Avery	\$2,045
Arlene Hooper	\$1,064
Asa Taylor/Patricia Cornforth	\$799
Ashley Polson	\$280
Bryan Provost	\$839
Cassandra Christy	\$219
Deirdra Cacchillo	\$800
Ed/Nicki Burgess	\$250
Felicia Lambert	\$1,900
Gary Sinclair	\$899
George Barker	\$367
Heather Mood	\$650
Helen Targett	\$2,039
Joey/Michele Gilbert	\$555
John McCormick	\$1,100
Jon Whitten, Sr.	\$1,100
Josh Firmin	\$1,783
Juanita Robinson	\$114
Kat Snowplowing	\$300
Katherine Duchesne	\$3,675
Kathryn Clement	\$799
Linda Meunier	\$761
Lori Orbeton	\$367
Mark/Christine Demo	\$735
Marlene Lamoreau	\$1,365
Mary Ann Burrell	\$313
Mary Lou Hill	\$1,316
Maisie Huff	\$225
Nancy Later	\$440
Patricia Sullivan	\$840
Patty Moody	\$472
Peter Silver	\$200

Ray Riley	\$366
Ray Walters	\$103
Raymond Young	\$1,049
Robert Lake	\$762
Robert McKee	\$374
Scott Dyer	\$519
Sharon Provost	\$628
Shelly Lanouette	\$2,000
Tina Gilbert	\$734
Una Wyman	\$600

**Total:           \$34,746**

STATE OF MAINE  
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SUPERIOR COURT  
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STATE OF MAINE

Plaintiff

v.

KENNETH E. PETERS dba  
MADISON MATTRESS AND  
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Defendant

CONSENT JUDGMENT

Plaintiff, State of Maine ("Attorney General"), and Defendant Kenneth E. Peters dba Madison Mattress and Discount Furniture, by and through the undersigned counsel, have requested entry of a Consent Judgment. Therefore, upon consideration of the papers filed and consent of the parties hereto, it is hereby ORDERED and ADJUDGED as follows:

**JURISDICTION**

The parties agree that this Court has subject matter jurisdiction over this matter and jurisdiction over the parties and agree to the continuing jurisdiction of this Court over this matter and the parties. The Attorney General filed a Complaint for Injunctive and Other Statutory Relief (the "Complaint") against Defendants pursuant to the Maine Unfair Trade Practices Act ("UTPA"), 5 M.R.S. § 205-A *et seq.*

### **INJUNCTION**

Defendant, his agents, servants, employees and those persons in active concert or participation with him who receive actual notice of the injunction are enjoined from taking deposits or any payment in advance of delivering products or performing services in Maine. This injunction applies to Defendant as a business owner, in partnership or as a sole proprietor, and is not intended to prohibit Defendant from acting as an employee under the management and direction of another.

### **RESTITUTION**

Pursuant to 5 M.R.S. § 209, Defendants shall pay \$34,746 to the State of Maine Attorney General as restitution for distribution to individual consumers who lost money as a result of Defendants' conduct. The Attorney General shall distribute the money to consumers who have demonstrated to the Attorney General's satisfaction that they are owed money by the Defendants for deposits or pre-payment for goods never provided, as reflected in Exhibit A appended hereto.

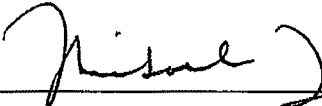
### **RETENTION OF JURISDICTION**

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree and Order to apply to the Court at any time for further order and direction as may be necessary or appropriate for the construction, enforcement, or execution of this Consent Decree and Order. Each and every violation of this Consent Decree and Order shall be treated as a separate contempt thereof.

**EFFECTIVE DATE**

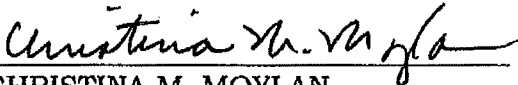
This Order shall be effective immediately upon its entry.

Dated: 2/9/14

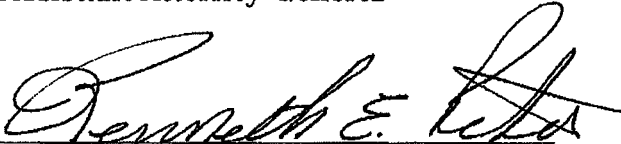
  
MAINE SUPERIOR COURT JUSTICE

JANET T. MILLS  
Attorney General

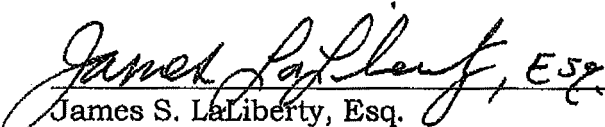
Dated: \_\_\_\_\_

  
CHRISTINA M. MOYLAN  
Assistant Attorney General

Dated: 2-27-14

  
KENNETH E. PETERS

Dated: 2/27/14

  
James S. LaLiberty, Esq.  
Attorney for Kenneth E. Peters

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Dated: 3/9/14

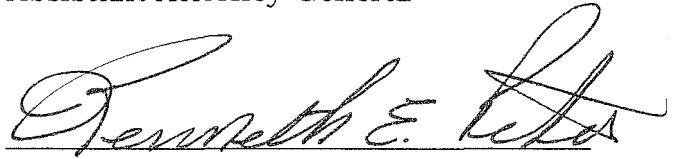
  
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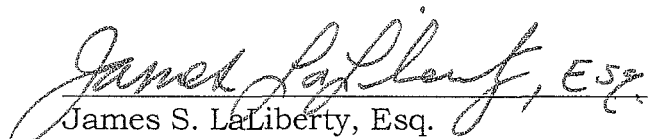
  
CHRISTINA M. MOYLAN  
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Dated: 2-27-14

  
KENNETH E. PETERS

JAMES S. LALIBERTY, ESQ.  
Attorney for Kenneth E. Peters

Dated: 2/27/14

  
James S. LaLiberty, Esq.  
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