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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 STATE OF OREGON, ex rel. JOHN R.
7 KROGER, Attorney General for the State of
8 Oregon ,

9 Plaintiff,

10 v.

11 JR FURNITURE USA, INC., a Washington
12 corporation,

13 Defendant.

Case No. 1007-10960

STIPULATED GENERAL JUDGMENT

14 Plaintiff State of Oregon, acting by and through Attorney General John Kroger, and
15 Defendant JR Furniture USA, Inc. have voluntarily entered into a Stipulated General Judgment
16 on the terms and conditions set forth below.

17 **I. RECITALS**

18 WHEREAS the State of Oregon has filed a Complaint against JR Furniture USA, Inc.
19 (“JR Furniture”) for a permanent injunction, civil penalties, restitution, and attorney fees, under
20 Oregon’s Unlawful Trade Practices Act, arising out of the advertising of a “grocery voucher”
21 promotion and the retention of certain customer payments;

22 WHEREAS this Court entered an order of partial summary judgment in the State’s favor
23 and against JR Furniture;

24 WHEREAS the State and JR Furniture, through their counsel, have agreed to the entry of
25 this Stipulated General Judgment by the Court without adjudication of any further issue of fact or
26 law other than those already decided by this Court;

STIPULATED GENERAL JUDGMENT

Page 1 of 8
DM2855287

Department of Justice
1515 SW Fifth Ave, Suite 410
Portland, OR 97201
(971) 673-1880 / Fax: (971) 673-1884

1 WHEREAS the Stipulated General Judgment reflects a negotiated agreement entered into
2 by the Parties as their own free and voluntary act, and with full knowledge and understanding of
3 the nature of the proceedings and their obligations and duties under this Stipulated Judgment;

4 IT IS HEREBY ORDERED, ADJUDGED and DECREED that Judgment shall be
5 entered, and is entered, as follows:

6 **II. JUDGMENT**

7 This Court enters the following judgment in favor of the State and against JR Furniture,
8 according to the stipulation of the parties:

9 **A. The order of summary judgment is adopted and incorporated.**

10 This Court's Amended Order on Summary Judgment is adopted and incorporated as part
11 of this Stipulated General Judgment, and is attached to this Stipulated General Judgment.

12 **B. Permanent injunction.**

13 1. JR Furniture shall obey and comply with Oregon's Unlawful Trade Practices Act,
14 ORS 646.605 to ORS 646.656, and all rules promulgated under that Act (collectively, "the
15 UTPA").

16 2. JR Furniture shall comply with Oregon Administrative Rule 137-020-0015 when
17 making any rebate or "free" offer.

18 3. JR Furniture shall ensure that all terms and conditions of "free" offers, rebates,
19 and other incentives are fully, clearly, and conspicuously disclosed in all advertisements,
20 including but not limited to its advertisements in print, on television, on the radio, and on the
21 internet.

22 4. JR Furniture shall ensure that its advertisements are clear and not likely to cause
23 confusion or misunderstanding.

24 5. JR Furniture shall not issue an offer or sell a product unless it has actual
25 knowledge that its offer or product is viable and that it can honor the terms of the offer.
26

1 6. JR Furniture shall clearly and conspicuously disclose all terms and conditions of a
2 sale prior to entering into a sale agreement with (or accepting payment from) a customer,
3 including but not limited to a full disclosure of any return or restocking fee.

4 7. Respondent shall not charge any fee, including a return or restocking fee, for
5 furniture delivered that a customer did not order or that is damaged prior to the customer's
6 written acceptance of it.

7 8. If JR Furniture cannot fulfill the written terms of a purchase agreement, such as
8 delivery of all ordered furniture, the customer may, at the customer's discretion, cancel either the
9 entire purchase agreement or the portion that was not delivered. Respondent shall provide the
10 customer a refund of any payments made for the cancelled portion of the purchase agreement in
11 no more than 10 business days after receipt of the customer's cancellation. The customer shall
12 not incur any charges for the cancellation.

13 9. JR Furniture shall not misrepresent, expressly or by implication, the terms of this
14 Judgment.

15 **C. Money Judgment.**

16 1. **Fees and Costs.** JR Furniture shall pay the State of Oregon for deposit into the
17 Department of Justice Protection and Education Revolving Account the amount of Fifty
18 Thousand Dollars (\$50,000) for all costs and attorney fees incurred in the investigation and
19 litigation against JR Furniture. JR Furniture is to pay Two Thousand Dollars (\$2,000)
20 immediately upon execution of this Judgment, and must then pay the State of Oregon Two
21 Thousand Dollars by no later than the 15th day of every month thereafter, for the next 24 months
22 (July 15, 2011 through June 15, 2013).

23 2. **Civil Penalties.** The State of Oregon is awarded a civil penalty of Ten Thousand
24 Dollars (\$10,000) in addition to the fees and costs award in Paragraph 1 of this Section. The civil
25 penalty shall be suspended contingent on JR Furniture's full compliance with the terms of the
26 Judgment, including the injunction and the payment terms. If this Court later determines that JR

STIPULATED GENERAL JUDGMENT

Page 3 of 8
DM2855287

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1 Furniture has violated this Judgment, JR Furniture shall pay the Civil Penalty in full, along with
2 any unpaid portion of the cost award, and along with an accrual of 9 percent annual interest on
3 the total amount owing.

4 3. **Payments.** Every payment due from JR Furniture under this Judgment shall be
5 made payable to the State of Oregon and shall be delivered on or before the due date to the
6 Oregon Department of Justice, attn: FF/CP, 1162 Court Street NE, Salem, OR 97301-4096, and
7 shall be made by certified check or money order.

8 4. **Failure to pay or bankruptcy.** In the event that JR Furniture fails to make any
9 payment required under this Judgment; makes an assignment for the benefit of its creditors; files
10 or has filed against it any proceedings under any reorganization, bankruptcy act or similar law; is
11 adjudicated bankrupt or becomes insolvent, then any unpaid portion of the Fees and Costs shall
12 become immediately due and payable without notice.

13 5. **Restitution.** If consumer restitution can be determined, DOJ will pay restitution,
14 at its discretion, from the money paid to it by JR Furniture to the affected consumers, based on
15 JR Furniture's representation and warranty that it distributed fewer than 75 grocery vouchers to
16 customers in Washington and Oregon combined. If this Court finds that JR Furniture
17 misrepresented the number of vouchers given to customers, JR Furniture may be held liable for
18 additional restitution.

19

III. ENFORCEMENT

20 1. **Applicability of the judgment.** This Judgment, including the permanent
21 injunction, applies to Defendant JR Furniture USA, Inc. and its principals, officers, directors,
22 agents, employees, representatives, successors and assigns, while acting personally or through
23 any corporation or other business entities, whose acts, practices or policies are directed,
24 formulated or controlled by JR Furniture.

25 2. **No limit on enforcement.** Nothing in this Stipulated General Judgment prevents
26 or limits the use of this Stipulated Judgment for purposes of enforcement by the Oregon Attorney

STIPULATED GENERAL JUDGMENT

Page 4 of 8
DM2855287

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1 General. Under ORS 646.642, the Court may impose a civil penalty for each violation of this
2 Judgment in addition to any other remedy allowed by law.

3 3. **Jurisdiction.** The Court retains jurisdiction over this action in order to take any
4 further action necessary to enforce or modify this Judgment and to grant any additional relief that
5 may be necessary and appropriate, including an award of fees and costs to the State in the event
6 of noncompliance by JR Furniture. In the event of the commencement of an enforcement action,
7 any objections to venue are hereby waived by JR Furniture.

8 4. **Investigation.** Nothing in this Judgment shall in any way preclude any
9 investigation or enforcement under any legal authority granted to the State for transactions not
10 subject to this action, or for a violation of the Judgment itself.

11 5. **No waiver.** Any failure by the State to exercise its rights under this Judgment
12 shall not constitute a waiver of those rights.

13 6. **No private right of enforcement.** No part of this Stipulated General Judgment
14 shall create a private cause of action or convert any right to any third party for violation of any
15 federal or state statute or law except that the Attorney General may file an action to enforce the
16 terms of this Stipulated Judgment.

17 **IV. GENERAL PROVISIONS**

18 1. JR Furniture recognizes and states that it is entering this Judgment voluntarily to
19 settle the litigation, and to ensure its future compliance with the laws and statutes of the State of
20 Oregon. JR Furniture represents that no promises or threats have been made by the Attorney
21 General's Office or any member, officer, agent or representative thereof to induce JR Furniture
22 to enter into this Judgment, except as provided herein.

23 2. This Judgment sets forth the entire agreement of the parties, and there are no
24 representations, agreements, or understandings, oral or written, between the parties relating to the
25 subject matter of this Judgment which are not fully expressed herein or attached hereto or set
26 forth in any stipulation filed currently herewith. In any action undertaken by the parties, no prior

STIPULATED GENERAL JUDGMENT

Page 5 of 8
DM2855287

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1 versions of this Judgment, and no prior versions of any of its terms, that were not entered by the
2 Court in this Judgment, may be introduced for any purpose whatsoever.

3 3. The headings in this Judgment are for convenience purposes only and are not
4 intended by the parties to lend meaning to the actual provisions of the Judgment.

5 4. This Stipulated Judgment does not constitute or imply approval of JR Furniture's
6 business practices by this Court, the State of Oregon, or the Attorney General, and JR Furniture
7 shall not make any representation or claim that it does.

8 5. Nothing in this Judgment waives, or shall be construed to waive, any individual
9 right of action by any consumer or any local, state, federal or other governmental entity against
10 JR Furniture.

11 6. This Judgment constitutes a single agreement that is not severable or divisible,
12 except that if any provision herein is found to be legally insufficient or unenforceable, the
13 remaining provisions shall continue in full force and effect.

14 7. Nothing in this Stipulated General Judgment shall be construed as relieving JR
15 Furniture of its obligation to comply with all applicable state laws, regulations, and rules, or as
16 granting permission to engage in any acts or practices prohibited by any law, regulation, or rule.

17 8. JR Furniture warrants and represents that the individual signing this Stipulated
18 General Judgment on behalf of JR Furniture is doing so in his or her official capacity and is fully
19 authorized by JR Furniture to stipulate to this General Judgment and to legally bind JR Furniture
20 to all of the terms and conditions of the Stipulated General Judgment.

21 9. The State of Oregon warrants and represents that the Assistant Attorney General
22 signing this Stipulated General Judgment is doing so in her official capacity and is fully
23 authorized by the State of Oregon to stipulate to this General Judgment and to legally bind the
24 State of Oregon to all of the terms and conditions of the Stipulated General Judgment.

25

26

STIPULATED GENERAL JUDGMENT

1 10. This document may be executed in any number of counterparts and by different
2 signatories on separate counterparts, each of which shall constitute an original counterpart hereof
3 and all of which together shall constitute one and the same document.

4
5 This Stipulated General Judgment is hereby accepted for entry of Judgment for all
6 purposes as set forth herein. **IT IS SO ORDERED, ADJUDGED AND DECREED.**

7
8 DATED this _____ day of JUN 22 2011 2011.

9
10
11 JEAN K MAURER
12 Multnomah County Circuit Court Judge

13 **Submitted by:**
14 Eva H. Novick, OSB #044294
15 Sheila H. Potter, #993485
16 Assistant Attorneys General
17 Oregon Dept. of Justice
18 1515 SW 5th Ave., Suite 410
19 Portland, OR 97201
20 Tel. 971-673-1880
21 Fax 971-673-1884
22 Email: eva.h.novick@doj.state.or.us
23 sheila.potter@doj.state.or.us

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STIPULATED GENERAL JUDGMENT

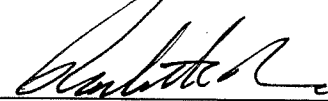
Page 7 of 8
DM2855287

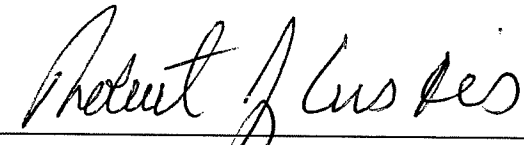
Department of Justice
1515 SW Fifth Ave, Suite 410
Portland, OR 97201
(971) 673-1880 / Fax: (971) 673-1884

1 **IT IS SO STIPULATED:**

2 JR Furniture USA, Inc. and its attorney have read and understand this Stipulated General
3 Judgment and each of its terms. JR Furniture agrees to every term of this Stipulated General
4 Judgment and consents to its entry.

5
6 JR Furniture USA, Inc.

7
8 By:  Date: June 15, 2011

9
10
11 By:  Date: 6/16/11

12 Robert J. Custis, Attorney for JR Furniture USA, Inc.

13
14 APPROVED:

15 PLAINTIFF, STATE OF OREGON

16
17 By:  Date: 6/20/11

18 Eva H. Novick, OSB #044294
19 Assistant Attorney General
20 Financial Fraud/Consumer Protection Section
21 Oregon Department of Justice
22 1515 SW 5th Ave., Suite 410
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON ex rel. JOHN
KROGER, Attorney General for the
State of Oregon,

Case. No. 1007-10960

Plaintiff,

AMENDED ORDER

vs.

JR FURNITURE, USA, INC., a
Washington corporation,

Defendant.

After this court entered its ORDER on defendant's motion for summary judgment and plaintiff's cross-motion for partial summary judgment, both parties submitted letter-briefing to the court further addressing defendant's statute of limitations defense.¹ That supplemental briefing, which is attached hereto and thereby incorporated into the trial court record, requires that the court's prior order be amended by this order. This AMENDED ORDER supersedes the court's order dated May 9, 2011.

Defendant also raised, in its letter-briefing, an additional point relating to the "grocery voucher" issue. That issue was already dealt with in the court's prior order and requires no amendment.

¹ The original ORDER was signed and mailed on May 9, 2011. The State's letter was dated May 6, 2011. However, the letter was sent without postage. After being returned, it was remailed on May 11, 2011 and received on May 12, 2011.

1 Defendant's motion for summary judgment and plaintiff's cross-motion for partial
2 summary judgment came on for hearing on May 5, 2011 at 2:30 p.m. Robert Custis
3 appeared for defendant. Eva Novick and Sheila Potter appeared for plaintiff.

4 The State asserts a claim, in three counts, against defendant, a furniture retailer,
5 alleging violations of Oregon's Unlawful Trade Practices Act ("UTPA"). The first count
6 relates to defendant's television, internet and newspaper ads offering "\$500 in Free
7 Groceries" to anyone who purchased at least \$500 in furniture from defendant. Plaintiff
8 alleges defendant's conduct violated ORS 646.608(1)(u) and OAR 137-020-0015(2)(e)
9 and (3)(c). The second count relates to defendant's charging customers a "restocking
10 fee" where, in one instance, furniture was delivered in a damaged condition and, in
11 another, the customer was asked to reapply for financing after six months, despite being
12 promised no interest for one year and, when the customer refused to reapply, the
13 furniture was repossessed. Plaintiff alleges defendant's conduct violated ORS
14 646.608(1)(k) and (s). The third count relates to defendant charging a restocking fee
15 after it failed to deliver furniture and, as a result, the customer cancelled the order.
16 Plaintiff alleges defendant's conduct violated ORS 646.607(2). Plaintiff seeks a
17 permanent injunction, civil penalties, attorney fees and costs.

18 Defendant's motion against Count 1 is based on the grounds that the subject
19 advertisements are not deceptive and do not violate the UTPA. In particular, defendant
20 argues that (1) there was no *willful* violation of the Act and (2) the ad was not deceptive
21 as a matter of law because it clearly referenced a grocery "voucher," not "free
22 groceries," and that the voucher system was fully explained to the customer, at the
23 store, prior to completion of a furniture sale.

1 The State responds that, as to the first point, when the State sues to enforce the
2 UTPA it does not need to prove willfulness, citing ORS 636.632(1) and *Rathgeber v.*
3 *James Hemenway, Inc.*, 335 Or 404, 413 n5 (2003). It only need prove willfulness to
4 recover a civil penalty. ORS 646.642(3). Therefore, assuming that there is no evidence
5 of willfulness in the summary judgment record, such absence is not fatal to plaintiff's
6 claim, although it may ultimately thwart its efforts to obtain some of the relief (civil
7 penalties) sought in that claim.

8 As to defendant's argument that the ad was not deceptive as a matter of law, the
9 State relies upon OAR 137-020-0015 which requires an advertiser using a "free offer" to
10 "clearly and conspicuously display in an advertisement of the "free" offer all material
11 terms, conditions, and limitations of accepting the "free" offer . . ." *Id.* at (2)(e)(A). In
12 other words, what happened at the retail store is irrelevant. The violation is based on
13 what is in, and what is missing from, the advertisement.

14 I agree with the State that, to obtain as least part of the relief sought, the State
15 need not prove willfulness, and what might have happened at the retail store is
16 irrelevant to whether the State can prove that the advertisements violated the UTPA and
17 the related OAR. Accordingly, defendant's motion against Count 1 is denied.

18 Defendant's motion against Count 2 is based on the fact that both the sales
19 agreements signed by its customers, and signage in the store, informed customers that
20 there was a 20% restocking fee on cancelled orders.

21 Plaintiff responds that it is not attacking the restocking fee, as such. The State
22 appears to agree that imposing such a fee, generally, is not violative of the UTPA.

1 However, the State argues that applying the restocking fee in the circumstances alleged
2 in Count 2 (after delivering damaged goods and after unilaterally altering the terms of a
3 financing agreement) was unlawful under 646.608(1)(k) and (s). Those subparts
4 provide:

5 **646.608 Additional unlawful business, trade practices; proof; rules.** (1) A
6 person engages in an unlawful practice when in the course of the person's
7 business, vocation or occupation the person does any of the following:

8 * * *

9 (k) Makes false or misleading representations concerning credit availability or the
10 nature of the transaction or obligation incurred.

11 * * *

12 (s) Makes false or misleading representations of fact concerning the offering
13 price of, or the person's cost for real estate, goods or services.

14 The fact that defendant's customers signed purchase agreements acknowledging
15 the existence of, or even agreeing to, the restocking fee does not give defendant free
16 rein to impose a restocking charge when it has delivered damaged goods or has acted
17 in a matter contrary to a preexisting credit arrangement. Defendant's motion against
18 Count 2 is denied. To the extent defendant seeks summary judgment against Count 3,
19 on the same basis as it seeks summary judgment on Count 2, that motion is denied, for
20 the same reasons as stated above.

21 Defendant also seeks summary judgment against that portion of Count 2 which
22 relates to defendant's transaction with Nicole and Derron Russell (Complaint paragraph
23 17) on the ground that the claim is time barred under ORS 12.110(2). That statute
24 provides that "[a]n action upon a statute for a forfeiture or penalty to the state or county
25 shall be commenced within two years."

1 In response, the State argues that the cited statute does not apply to its claim
2 and that there is no statute of limitations applicable to its claim, relying on ORS 12.250.
3 That statute provides: “**Actions by state, county or public corporations.** Unless
4 otherwise made applicable thereto, the limitations prescribed in this chapter shall not
5 apply to actions brought in the name of the state, or any county, or other public
6 corporation therein, or for its benefit.” Thus, ORS 12.250 only exempts the State where
7 the statutes in ch 12 are not “otherwise made applicable thereto.” A plain reading of the
8 two relevant statutes leads me to conclude that defendant is correct—ORS 12.110(2)
9 makes itself “applicable thereto” in that it specifically applies to “An action upon a statute
10 for a forfeiture or penalty to the state.” Here, the remedy sought is for a penalty, in the
11 name of the State. However, as is pointed out in the post-argument supplemental
12 letter-briefing provided by the parties, the conduct alleged in Count 2 is *not* the conduct
13 that occurred at the point of sale, more than two years prior to the filing of this action.
14 Rather, the operative facts relating to this claim arose in September of 2008, when the
15 customer was asked to reapply for financing after six months, despite being promised
16 no interest for one year and, when the customer refused to reapply, the furniture was
17 repossessed and a restocking fee was assessed. As the State points out in its
18 supplemental briefing, this conduct is alleged to have occurred less than two years
19 before the filing of this action. Accordingly, the claim, including the claim for a civil
20 penalty, is not time-barred. Defendant’s motion for summary judgment on this claim is
21 denied.

22 The State has moved for summary judgment on Count 1, the “free groceries”
23 claim. For the same reasons that defendant’s motion on Count 1 was denied, plaintiff’s

1 motion on Count 1 is granted. There is no dispute that defendant ran the "free
2 groceries" ad. There is no dispute that the ad stated "Make any purchase five hundred
3 dollars and up and receive five hundred dollars in free groceries." There is no dispute
4 that, to actually receive the "free" groceries, the consumer had to complete multiple
5 other steps, incurring costs for postage and potential registration fees, purchasing
6 \$2,000 in groceries, and waiting for up to 20 months to receive all of the promised
7 benefits. And, there is no dispute that, contrary to OAR 137-020-0015, the ads failed to
8 clearly disclose all of the terms and conditions of the "free" offer. Accordingly, plaintiff's
9 motion for partial summary judgment is granted.²

10 Dated this 13th day of May, 2011

/s/ Peter R. Chamberlain

Peter R. Chamberlain
Circuit Court Judge, pro tem

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15 cc: Robert Custis
16 Eva Novick

17

² Whether plaintiff can obtain a civil penalty for this violation will, as adverted to above, depend on whether plaintiff can prove that defendant's violation was "willful."

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

May 6, 2011

Pro Tem Judge Peter R. Chamberlain
Chamberlain Mediation Arbitration
2445 NW Westover Rd., No. 405
Portland, OR 97201

Re: State of Oregon v. JR Furniture USA, Inc.
Multnomah County Circuit Court Case No.: 1007-10960
DOJ File No.: 137420/FF3891-09

Dear Honorable Chamberlain:

This letter is to follow up on the matter that you took under advisement after oral argument yesterday. Upon further review of a question asked by the Court yesterday, regarding the applicability of a statute of limitation, the Department of Justice reviewed the facts and allegations relating to the single occurrence raised by JR Furniture. Please note that paragraph 17 of the complaint alleges that, while the Russells purchased the furniture in March 2008, JR Furniture retained the "restocking fee" when it picked up the furniture from the Russells in September 2008, after contacting them earlier that same month. Therefore, under any interpretation of ORS 12.110, no statute of limitations should apply to the restocking fee alleged in paragraph 17, as the complaint was filed in July 2010. We apologize for not having caught this yesterday at argument, but we wanted to bring this to your attention while the matter is still under advisement.

Sincerely,

Eva H. Novick
Assistant Attorney General
Financial Fraud/Consumer Protection Section

cc: Robert J. Custis
DM2757459

ROBERT J. CUSTIS, PC
ATTORNEYS AT LAW

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ROBERT J. CUSTIS
Licensed in Oregon

*New e-mail is
rjc@rjcustislaw.com*

May 10, 2011

VIA FACSIMILE 1/503/243-2019 and Regular mail

Pro Tem Judge Peter R. Chamberlain
c/o Chamberlain Mediation Arbitration
2445 NW Westover Road No 405
Portland, OR 97210

Re: State of Oregon ex rel JOHN KROGER, Attorney General for the State of
Oregon vs. JR Furniture USA, Inc.
Multnomah County Circuit Court Case No. 1007-10960
Our File No.: 1231-001

Dear Honorable Chamberlain:

I was advised today that the State has communicated with you asking to further supplement the record. As you will recall, we argued cross motions for summary judgment on May 5, 2011. Since the State took the liberty of making contact with you following our argument, I will briefly respond to their letter and add one additional comment of my own.

Statute of Limitation Argument: The State's letter of May 9, 2011 addresses the summary judgment motion that was filed related to the claims of Nicole and Derron Russell (found in paragraph 17 of the Complaint) and our assertion that the statute of limitations barred their claims through the State. As you will recall, the parties argued about the applicability of ORS 20.110 (2). Despite making the almost identical argument during the Rule 21 Motions, neither party made the argument that the language referenced by counsel in her letter removed the statute of limitations argument from consideration by the Court. Despite the existence of the language, neither of us addressed the question that even if the two year statute of limitation applied to this case, that the language of the paragraph clearly removed the issue of the two year statute.

The State is correct, that the language in paragraph 17 goes on to state that "...the beginning of September 2008, DEFENDANT contacted the Russells and informed them that they needed to re-apply for financing or pay the balance in full." Our response, however, is that despite this language, the two year statute of limitations would still bar

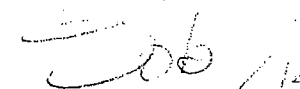
the claim on behalf of the Russells. ORS 20.110 (2) states that an action upon a statute for a penalty to the State shall be commenced within two years. This section requires that the State's action be brought within two years. In paragraph 18 the State seeks a determination the nature of the transaction was false or misleading and in paragraph 19 that the cost or offering price for the goods was false or misleading. Our response is simply that both of these claims accrued at the time of the sale to the Russells (March 29, 2008) more than two years prior to the filing of this action and not in September.

Strict Liability Argument related to Grocery Vouchers: My second comment would be related to allegations contained in paragraph 1 of the State's complaint. In paragraph 1 the State alleges "... The UTPA applies to business practices, such as those of the defendant ... A person acting in the course of the person's business ... is subject to civil penalties of up to \$25,000 per violation when the person willfully uses any act or practice declared unlawful ..." This paragraph then goes on to define "willful" violation as "... when the person committing the violation knew or should have known that the conduct of the person was a violation.

This language and assertion that the actions of JR Furniture were "willful" is incorporated into the language of the first count against JR Furniture (paragraph 9). As you will recall, the State argued that there was strict liability and that at the moment the grocery voucher advertisements were placed, that JR Furniture was in violation of the UTPA. This is not correct based on the State's own allegations contained in the complaint. As such their motion for summary judgment should be denied because there is no evidence of the intent of JR Furniture to willfully violate the UTPA. I would also note that since the State in paragraph 8 seeks a civil penalty that under the civil penalty statute the State is also required to provide evidence of willful conduct on the part of JR Furniture to mislead it's customers.

Thank you for your further consideration of these points.

Very truly yours,



Robert J. Custis

RJC/lb

cc: Eva H. Novick, Esq. (via fax and regular mail)
16104