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8 **STATE OF WASHINGTON**
 GRANT COUNTY SUPERIOR COURT

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 GARY W. CHAVERS, in his
13 individual capacity and as a member of
14 the marital community of GARY W.
15 CHAVERS and BEVERLY
16 CHAVERS, and d/b/a SUN & SAND
 MOBILE HOME PARK,

 Defendant.

NO.

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT

17 The Plaintiff, State of Washington, by and through its attorneys Robert W. Ferguson,
18 Attorney General, and Jennifer S. Steele, Jeffrey G. Rupert, and Patricio A. Marquez,
19 Assistant Attorneys General, brings this action against the Defendant named below. The State
20 alleges the following on information and belief:

21 **I. INTRODUCTION**

22 1.1 The Plaintiff, State of Washington, brings this action pursuant to RCW 19.86,
23 the Consumer Protection Act, RCW 31.04, the Consumer Loan Act, and RCW 63.14, the
24 Retail Installment Sales Act. Plaintiff seeks a permanent injunction, civil penalties, restitution,
25 attorney's costs and fees, and other relief the court determines just and equitable.
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1 1.2 As detailed below, Defendant Gary Chavers owns and operates approximately
2 54 mobile homes located in the Sun & Sand Mobile Home Park in Mattawa, Washington.
3 Defendant rents the homes, most of which are in very poor condition, to low-income
4 consumers, the vast majority of whom are farm workers who speak, read, and write little to no
5 English.

6 1.3 The City of Mattawa passed an ordinance requiring all rental properties to pass
7 health and safety inspections. Facing the possibility that the dilapidated homes in Sun & Sand
8 would need to be repaired to pass the health and safety inspections, Defendant decided to
9 require his tenants to “buy” the homes they were previously renting to avoid both the
10 application of the ordinance and the expense of fixing them to pass the inspections. Defendant
11 “sold” the homes to Sun & Sand’s tenants using complex legal documents that contained
12 unconscionable terms and failed to include legally required notices and disclosures. These
13 legal documents were written in English. The tenants, however, were told in Spanish by the
14 Defendant’s agent that the legal documents were not binding and did not obligate the tenants to
15 buy the mobile homes, but that they had to sign the documents or move out.

16 1.4 Defendant’s actions violated the Consumer Protection Act. In addition, they
17 also violated the Consumer Loan Act or, in the alternative, the Retail Installment Sales Act.
18 Defendant executed this scheme in the course of his business – every tenant living in Sun &
19 Sand at the time Defendant initiated the scheme was required to “buy” the home and all new
20 residents moving into Sun & Sand are required to “buy” the mobile homes. However, not even
21 Defendant treats these “sales” as legally binding. The “sales” of the mobile homes are a sham
22 and the “sales” are voidable.

23 1.5 Even if Defendant’s attempt to sell the homes could be considered legitimate,
24 the process and contracts he used to effectuate the sales are unconscionable and unlawful, in
25 violation of the Consumer Protection Act.
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VI. FACTS

6.1 Chavers purchased Sun & Sand in 1991. This purchase included the real property and several mobile homes that were located on the land. Since that time, Chavers purchased additional mobile homes and placed them on the property. Chavers' primary business activity at Sun & Sand is renting mobile homes to tenants.

6.2 Chavers resides in Seattle, Washington, and hired an on-site manager to operate Sun & Sand. The current park manager, Miriam Perez, resides at Sun & Sand, free of charge.

6.3 Gary Chavers directs the business activities of Sun & Sand and has final approval authority concerning all decisions related to Sun & Sand.

6.4 The area surrounding Mattawa has limited housing and abundant work in the orchards and vineyards, especially during harvest. Housing is a highly valued and scarce commodity in the Mattawa area.

6.5 The demand for housing is so high that vacancies at Sun & Sand, despite their poor condition, are only advertised through "word of mouth." Chavers has not had to advertise any vacancy or incur any advertising costs to find consumers to rent his homes. Vacancies are usually filled within several days.

The mobile homes at Sun & Sand are in poor condition

6.6 The mobile homes at Sun & Sand are dilapidated and deteriorating. The mobile homes became dilapidated and reached their current deteriorating condition in the years and decades that Chavers rented them to tenants and derived income from them. Examples of this include, but are not limited to:

- a. Trailers are infested by cockroaches and bedbugs. Numerous residents have been bitten by bedbugs, including children and newborn babies;
- b. There are holes in the floor and rotted floor boards;
- c. Stairs to the front door are rotted and unsafe;

- 1 d. Warped and malfunctioning doors fail to keep out the cold and moisture,
2 and are blown open by gusts of wind, even when locked;
- 3 e. The poor and unreliable condition of the doors, as described above, leaves
4 residents with little choice but to secure them from within, tying string
5 around the door knob and fastening it to a nail or screw in the wall, causing
6 an inadequate exit that could increase the risk of injury to the occupants;
- 7 f. In at least one instance, a mobile home was easily burglarized because the
8 lock on the door was so unreliable that the door could be pried open with
9 little more than a screwdriver;
- 10 g. Old windows leak when it rains, causing the window sills and frames to
11 rot;
- 12 h. In mobile homes with some of the poorest conditions, portions of the walls
13 and ceilings are marked with water stains or covered with mold;
- 14 i. In one mobile home, clothes grew moldy and were thrown away because
15 the closet was covered in green mold, as was the wall around a leaky
16 window in the same bedroom, where the residents slept;
- 17 j. In one mobile home, the roof over the living room collapsed, leaving
18 behind a pile of rubbish approximately three feet high; the hole in the roof
19 and the rubbish went unrepaired for over a month;
- 20 k. Residents have been left without functional plumbing for days, directly
21 exposing them to the risk of illness or injury;
- 22 l. Poor insulation and/or heating system problems cause some residents to
23 suffer through the cold and pay excessive electricity bills during the
24 winter;
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- 1 m. In one mobile home, tenants expressed concern to the Park manager
2 several times about exposed wires in their home; the tenants were ignored,
3 the wires caught fire, and the fire department was called to the scene;
4 n. Burners on the electric stoves provided by Sun & Sand commonly short
5 circuit, spark and have even caught fire – incidents apparently worthy of
6 Sun & Sand’s quick attention, likely due to the increased risk of fire;
7 o. The carpet is old and dirty in many mobile homes. In one instance, tenants
8 could not walk barefoot in their home because of the staples poking
9 through the carpet. In another, the carpet was so dirty that the children’s
10 knees would turn black from crawling around on it; and
11 p. Kitchen cabinets are in danger of falling off the wall such that residents are
12 fearful of placing items inside the cabinets.

13 6.7 In addition, some of the single-wide mobile homes at Sun & Sand have been
14 artificially divided into duplexes.

15 6.8 Six of the mobile homes are former trailers used by the Federal Emergency
16 Management Agency (“FEMA”) as temporary housing for displaced persons following natural
17 disasters. Chavers purchased these trailers for his Sun & Sand business. Former FEMA trailers
18 have caused a myriad of health problems across the country.

19 6.9 The remaining mobile homes were manufactured between 1953 and 1992, and
20 many are reaching the end of their useful life.

21 **Mattawa enacts an ordinance requiring inspections of rental properties**

22 6.10 In August 2009, a mobile home rental in Mattawa that was converted into a
23 “duplex” caught fire, trapping a woman and two young children who were killed because they had
24 no exit from which to escape.

25 6.11 In response to the deaths and because of the concerns regarding the safety and
26 quality of rental housing in Mattawa, the Mattawa City Council passed an ordinance in

1 December 2009 requiring all rental properties to be inspected at least once every two years.
2 Mattawa Municipal Code, § 5.24.020.

3 6.12 The Code requires rental units to comply with the standards of the Uniform
4 Housing Code and not present conditions that endanger or impair the health or safety of a tenant
5 including:

- 6 1. Structural members that are insufficient in size or strength to carry
7 imposed loads with safety;
- 8 2. Exposure of the occupants to the weather;
- 9 3. Plumbing and sanitation defects that directly expose the occupants to the
10 risk of illness or injury;
- 11 4. Lack of water, including hot water;
- 12 5. Heating or ventilation systems that are not functional or are hazardous;
- 13 6. Defective, hazardous, or missing electrical wiring or electrical service;
- 14 7. Defective or inadequate exits that increase the risk of injury to occupants;
- 15 8. Violations that increase the risks of fire; or
- 16 9. Violations of other applicable codes, rules or regulations.

17 Mattawa Municipal Code, 5.24.020.

18 6.13 The City sent letters to Mattawa landlords, including Chavers, informing them of
19 the new ordinance.

20 6.14 On January 11, 2011, Chavers sent the City of Mattawa a letter stating, “your letter
21 dated 12/13/10 was the first I heard of the ordinance.” In the letter, Chavers asked for 30 days to
22 get his “business in order.”

23 6.15 Rather than obtain the necessary inspection and bring the Sun & Sand mobile
24 homes into compliance with the ordinance, on February 1, 2011 — less than two months after
25 learning of the ordinance — Chavers required all of his tenants to sign purchase and sale
26 agreements by which he purported to “sell” the homes to the tenants.

1 6.16 On February 7, 2011, Chavers' attorney wrote a letter to the City of Mattawa
2 stating, "[T]he paperwork has been completed for the sale of each home to the residents within
3 Sun & Sand. Therefore, my client is not subject to the requirements of the City of Mattawa
4 Ordinance 493."

5 **Chavers requires tenants to sign Purchase & Sale Agreements**

6 6.17 To effectuate the purported sales, in late January 2011, Chavers gave the Park
7 manager, Miriam Perez, a stack of sales contracts that included the following documents:
8 Manufactured Home Purchase and Sale Agreement Specific Terms ("Purchase and Sale
9 Agreement"), Financing Addendum to Purchase & Sales Agreements, and Earnest Money
10 Promissory Notes. Chavers showed Perez how to fill out the Purchase and Sale Agreements and
11 related documents.

12 6.18 Through these documents, Chavers purported to sell the mobile homes to the
13 tenants. Chavers retained and continued to own the land that the mobile homes sat on. Thus, the
14 tenants would "own" their mobile home and rent the space of land that the mobile home sat on
15 from Chavers.

16 6.19 Perez filled out every Purchase and Sale Agreement according to Chavers'
17 instruction. Each of these Purchase and Sale Agreements had a closing date of December 15,
18 2011 and an "Addenda" stating, "Buyer to have until 12/15/11 for arrange financing" [sic].

19 6.20 Perez went to the tenants' mobile homes in February 2011 and told the tenants
20 they needed to sign the Purchase and Sale Agreements. The tenants were told that if they did not
21 sign the documents they would have to move out.

22 6.21 Perez explained to tenants, in Spanish, that the Purchase and Sale Agreement were
23 not real. Perez made statements that the documents were, for example, like a "cover up", that it
24 was not really a purchase, that it "wasn't a legal contract." Though the specifics of Perez's
25 explanations as to what the Purchase and Sale Agreement was, and why the tenants needed to sign
26 it, varied from tenant to tenant, the bottom line message was the same – the tenants were required

1 to sign, but signing the document did not, in fact, obligate the tenants to buy the mobile homes.
2 Furthermore, Perez assured the tenants that their monthly payments would remain the same and
3 they could move out at any time with proper notice—effectively, nothing would change.

4 6.22 Each of the Purchase and Sale Agreements were in English. Perez is a native
5 Spanish speaker who speaks and reads very limited English. Perez communicates with all of the
6 tenants in Spanish. She and Chavers knew that all or nearly all of the tenants of Sun & Sand
7 speak Spanish and that hardly any of the tenants speak English or are generally conversant in
8 English. Further, Perez and Chavers knew that few if any of the tenants of Sun & Sand can read
9 or comprehend written English.

10 6.23 Tenants signed the Purchase and Sale Agreements while not understanding what
11 they were signing. In fact, some tenants believed the Purchase and Sale Agreement was simply a
12 renewal of their rental agreement, or some other document related to the rental of their mobile
13 home. Due to Chavers' and Perez's deceptive and unfair acts, every tenant who lived at Sun &
14 Sand in February 2011 signed a Purchase and Sale Agreement dated February 1, 2011. Tenants
15 were not allowed to take time to review the documents before signing, or to have the documents
16 translated. Instead, the tenants were required to sign the documents in their mobile homes at the
17 time Perez unexpectedly presented them. If the tenants would not sign the documents, they were
18 told that they would have to move out.

19 6.24 Chavers established unconscionable purchase prices for the mobile homes.
20 However, because the tenants had been told that they were not really buying their homes and in
21 any event they did not understand the contracts, many tenants did not negotiate the purchase price,
22 interest rate, or other sales terms. Several tenants questioned the purchase price, but Perez
23 informed them that Chavers would not negotiate. Chavers "sold" the majority of the mobile
24 homes to tenants at prices generally between \$18,000 and \$25,000. But he "sold" several mobile
25 homes for \$70,000. Chavers' prices are far higher than the fair market value of the mobile homes.
26 For instance, according to the Grant County Assessor, Chavers purchased the six FEMA

1 dwellings for \$3,000 to \$4,000 in 2010 and then “sold” these same mobile homes two years later
2 for \$70,000 each. The assessed value of these mobile homes varied from \$16,280 to \$16,790.
3 While the FEMA trailers were manufactured in 2006, most of the mobile homes in the Park were
4 manufactured in the 1960s and 1970s and are at or are nearing the end of their useful life unless
5 they are extensively remodeled.

6 6.25 In conjunction with the Purchase and Sales Agreements, the tenants also signed a
7 rental agreement to rent the real property, or “lot”, that the home sat on. The rental agreement
8 was also dated February 1, 2011, and was for “Tenant(s), and owner of the manufactured homes.”
9 As each of the Purchase and Sale Agreements had a closing date of December 15, 2011, the
10 tenants paid only the monthly rental amounts listed in the rental agreement (pertaining only to the
11 lot the home sat on) through 2011.

12 6.26 Because the tenants did not know that they had entered into contracts to buy the
13 mobile homes, the tenants did not understand that the contract obligated them to arrange for
14 financing. The tenants did not arrange for financing. Therefore, the sales did not close by
15 December 15, 2011, and the Purchase and Sale Agreements expired.

16 **Chavers used the Sun & Sand mobile homes as collateral for a loan**

17 6.27 In September 2011, the Chavers obtained a \$949,725 loan from Yakima National
18 Bank. The loan is secured by a Deed of Trust on the real property that makes up Sun & Sand.
19 The loan is also secured by a commercial lien on the mobile homes located at Sun & Sand. The
20 title of each mobile home in Sun & Sand was transferred to make Yakima National Bank the legal
21 owner, with the Chavers as the registered owners.

22 6.28 When applying for the loan, Chavers failed to disclose to Yakima National Bank
23 that he was in the process of selling the mobile homes that he was offering as collateral for the
24 loan.

25 **Chavers requires tenants to sign Conditional Sales Contracts or move out**

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1 6.29 Recognizing that his first attempt to avoid the Mattawa health and safety
2 ordinance failed because the 2011 Purchase and Sale Agreements expired when the tenants did
3 not obtain financing for the trailers, Chavers made another attempt to avoid application of the
4 ordinance. On January 2, 2012, Perez approached the tenants, either in their own homes or when
5 they came to pay monthly rent, and informed them they needed to sign another sales contract.
6 The second contract was called a "Mobile Home Conditional Sales Contract and Security
7 Agreement" (Conditional Sales Contract).

8 6.30 As with the February 2011 Purchase and Sale Agreements, Chavers showed Perez
9 how to fill out the Conditional Sales Contracts and Perez filled out every Conditional Sales
10 Contract according to Chavers' instruction. Chavers included the same unconscionable purchase
11 prices for the mobile homes that he had included in the 2011 Purchase and Sale Agreements.
12 Unlike the Purchase and Sale Agreements, Chavers structured the Conditional Sales Contracts as
13 purchase agreements financed by Chavers.

14 6.31 Tenants were again told that they must sign the Conditional Sales Contracts or
15 they would have to move out. This included tenants who lived in only one-half of a mobile home
16 that had been artificially divided into a "duplex;" they had to sign the single Conditional Sales
17 Contract for the duplex trailer with their unrelated neighbors living in the other half. Perez spoke
18 with each tenant in Spanish regarding the Conditional Sales Contracts, which were written in
19 English. Tenants were not afforded time to review or translate them. Again, no negotiations
20 occurred concerning the terms of the Conditional Sales Contracts, including the purchase price.
21 Significantly, the tenants were not told, and had no idea, they were obtaining a loan from Chavers
22 for the purchase price of the mobile homes.

23 6.32 Chavers evicted at least one tenant who refused to sign documents from Sun &
24 Sand.

25 6.33 Even though they signed the Conditional Sales Contracts, many tenants did not
26 believe they were buying their mobile homes or that they own or have an ownership interest in

1 their homes. When asked if they are “renting” their mobile home or whether they are “buying” or
2 “own” their mobile homes, tenants state that they are “renting” and do not own their mobile
3 home.

4 **Not even Chavers treats the Conditional Sales Contracts as real sales contracts**

5 6.34 Chavers does not treat the Conditional Sales Contracts as legitimate legal
6 instruments. For example, Chavers did not pay excise tax on the sales. Furthermore, even after
7 they signed the Conditional Sales Contracts, the tenants continued to pay, and Chavers continued
8 to accept, identical monthly payment as when the tenants rented the mobile homes. However, if
9 the Conditional Sales Contracts were legitimately implemented, the tenants should have paid the
10 monthly payment due under the February 1, 2011 rental agreements (renting the lot only) plus the
11 monthly payment due under the Conditional Sales Contracts (for the purported purchase of the
12 home). For example, Sun & Sand’s records reflect that tenant Y.F. signed a rental agreement on
13 February 1, 2011 under which she agreed to pay Sun & Sand \$615 in rent every month for the lot.
14 When Y.F. signed the Conditional Sales Contract on January 2, 2012, the agreement provided that
15 she owed \$165.10 per month to purchase the mobile home. If the Conditional Sales Contract was
16 a real contract, she should have been required to pay \$780.10 every month (\$615 to rent the lot
17 and \$165.10 to purchase the mobile home), yet she continued to pay \$615 per month. Further,
18 Y.F. received a receipt from Sun & Sand on February 5, 2012 and March 5, 2012 in the amount of
19 \$615 for “Space Rent.” The title of the receipt was changed beginning on April 6, 2012 to say
20 “Space Rent and House Payment” and the price went up to \$620, apparently for being one day
21 late on the payment. In May, Y.F. paid \$615 and Sun & Sand gave her a receipt labeled “Space
22 Rent and House Payment.”

23 6.35 Apparently realizing that he was not following his own scheme or the terms of the
24 Conditional Sales Contracts, Chavers had each of the tenants sign yet another document, a new
25 lease for the lot, dated February 1, 2013. The 2013 lease lowered the monthly rental payment for
26 the lot so that the total rent due for the mobile home lot plus the “house payment” equaled what

1 the tenants paid in total rent on February 1, 2011. For example, Y.F.'s monthly rent for the lot
2 decreased to \$449.90. On the top of Y.F.'s 2013 rental agreement, Chavers instructed Perez to
3 handwrite the following information:

4 Space rent 449.90

5 House payment 165.10

6 Total payment \$615.00

7 6.36 Residents who moved out of Sun & Sand after signing the Conditional Sales
8 Contracts were treated as renters, not owners, of the mobile homes. Sun & Sand returned their
9 security deposits. The tenants were not required to sell or take the mobile home with them. In
10 fact, some tenants were told they could not take their mobile home. They did not continue
11 making payments to Chavers under the Conditional Sales Contracts after moving out of the Park.
12 Nor did Chavers buy the mobile homes back from them or seek to foreclose. Instead, even though
13 Chavers did not own the mobile home according to the Conditional Sales Contract with the prior
14 tenant, Chavers would treat the mobile home as if he did own it. Chavers would then conduct
15 another sham transaction with the new tenants who moved into the vacant mobile home, requiring
16 them to sign a Conditional Sales Contract purportedly "buying" the mobile home from Chavers.
17 Thus, if the Conditional Sales Contracts signed by the original tenants in 2012 were legitimate,
18 Chavers did not treat them as such.

19 **The Conditional Sales Contracts are substantively and procedurally unconscionable**

20 6.37 The Conditional Sales Contracts that Chavers used to avoid the health and safety
21 ordinance are procedurally and substantively unconscionable. The totality of the circumstances
22 establishes that the contracts are procedurally unconscionable due to blatant unfairness in the
23 bargaining process, a lack of meaningful choice, and fraudulent inducement. The contracts are
24 procedurally unconscionable because (a) Defendant's agent misrepresented the purpose and legal
25 effect of the contracts; (b) due to the lack of bargaining power by the tenants, the contracts were
26 neither negotiated nor subject to negotiation; (c) the contracts were entered into due to fraud,

1 duress, and inequitable actions on the parts of the Defendant; (d) tenants were required to sign the
2 contracts on the spot and were not permitted time to thoroughly review the contracts or to seek
3 legal advice or assistance from someone who could read English; (e) tenants were required to sign
4 the contracts or face eviction from their rental units; (f) Defendant failed to provide legally
5 required disclosures under the Retail Installment Sales of Goods and Services Act, the Truth in
6 Lending Act, and the Consumer Loan Act; (g) Defendant failed to provide the legally required
7 Mobile Home Notice Affidavit informing the tenants that local jurisdictions may deny a permit to
8 site mobile homes manufactured before 1976; (h) the non-negotiated contract terms purport to
9 disclaim all warranties, which is deceptive given that the contract requires Defendant to maintain
10 the property in a habitable condition for ten years and that Defendant did not effectively disclaim
11 the implied warranties of merchantability and fitness for a particular purpose; and/or (i) for those
12 tenants who were living in one half of a duplex, they were required to sign non-assignable
13 contracts with persons to whom they are not related and with whom they did not expect to live for
14 the 30-year duration of the contracts. All of these problems are compounded because Defendant
15 knew or should have known the tenants did not understand the contracts because the contracts
16 were written in English when Defendant knew or should have known that tenants understand little
17 or no written English.

18 6.38 The contracts are substantively unconscionable because (a) the non-negotiated sale
19 prices are grossly excessive and significantly higher than the fair market value for the trailers; (b)
20 the purported "sales" contracts are designed to, and have in fact, removed the tenants from the
21 protections of the Mattawa Municipal Code that are intended to protect the tenants' health and
22 well-being; (c) even if the tenants make 30 years' worth of payments, they will receive title to a
23 mobile home near, at, or past the end of its useful life; (d) Defendant breached his contractual
24 obligation to maintain the properties as well as the implied warranties of merchantability and
25 fitness for a particular purpose under Washington's Uniform Commercial Code.
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1 6.39 The unconscionable terms pervade the contracts. The appropriate remedy is to
2 void or reform the contracts.

3 6.40 It is a violation of the CPA to misrepresent the terms of a transaction or to fail to
4 disclose material terms. Grossly unfair or unconscionable contracts also violate the CPA. *State v.*
5 *Kaiser*, 161 Wn. App. 705, 722, 254 P.3d 850 (2011); *see also Mellon v. Regional Trustee*
6 *Services Corp. et al.*, 182 Wn. App. 476, 490, 334 P.3d 1120, (2014).

7 **The Conditional Sales Contracts violate the CLA or alternatively violate RISA**
8

9 6.41 Further evidencing that the Conditional Sales Contracts are sham contracts,
10 Chavers did not comply with the Consumer Loan Act (“CLA”), RCW 31.04, in extending credit
11 to the tenants. The CLA requires that any person making a secured or unsecured consumer loan
12 must first obtain a license from the Department of Financial Institutions. In addition to requiring a
13 license, the CLA prohibits unfair and deceptive practices, requires certain disclosures, and
14 prohibits making loans from an unlicensed location. The CLA applies to all loans made in
15 Washington unless an exemption applies. Violations of the CLA are *per se* violations of the CPA.
16 RCW 31.04.208.

17 6.42 Even if Chavers’ scheme to evade the Mattawa Municipal Code could somehow
18 be viewed as a legitimate attempt to sell the mobile homes, Chavers failed to comply with the
19 CLA. Chavers violated the CLA by making unlicensed loans. RCW 31.04.035. Chavers also
20 violated the CLA by making procedurally and substantively unconscionable loans as described
21 above, failing to make the required Truth in Lending Act disclosures (see Paragraph 6.48, *infra*,
22 and RCW 31.04.102), engaging in a scheme to mislead borrowers, and making loans from
23 unlicensed locations in violation of RCW 31.04.027(1), (2), (6), and (14). Violations of the CLA
24 are *per se* unfair and deceptive acts and violate the Consumer Protection Act. *See*
25 RCW 31.04.208.
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1 6.43 It appears that Chavers may have attempted to make the Conditional Sales
2 Contracts “retail installment sales contracts” pursuant to RCW 63.14, the Retail Installment Sales
3 of Goods and Services Act (“RISA”). For example, the contracts list a purchase price, the amount
4 owed, the interest rate, the number of years of the loan, and purport to allow Chavers to retain title
5 and a security interest in the mobile homes until all payments were made. Washington law
6 permits conditional sales contracts, defined as “retail installment contracts” in
7 RCW 63.14.010(11), subject to the requirements of RISA. For those contracts that meet the
8 statutory requirements of RISA, a seller is permitted to retain title until the buyer makes all
9 payments. The Attorney General may bring an action to restrain and prevent violations of
10 RISA. RCW 63.14.190.

11 6.44 “Retail installment sales contracts” that comply with RISA are exempt from the
12 CLA. RCW 31.04.025(2). Chavers’ Conditional Sales Contracts do not comply with RISA.

13 6.45 RISA requires that every Retail Installment Contract include a Notice to Buyer
14 “directly above the space reserved in the contract for the signature of the buyer,” that informs the
15 buyer, among other things, that he is entitled to a copy of the contract and that he may pay off the
16 full unpaid balance due under the contract at any time. RCW 63.14.040(2). None of the contracts
17 that the tenants signed included the Notice required by RCW 63.14.040(2).

18 6.46 RCW 63.14.040(1) also requires that every Retail Installment Contract include
19 specific terms in the sequence specified by the statute. None of Chavers’ contracts list the place
20 of business of the seller and the residence of the buyer as required by RCW 63.14.040(1). None
21 lists the date on which the payments are due as required by RCW 63.14.040(1)(j). None includes
22 the required provisions of RCW 63.14.040(1)(d), (e), and (f). Further, none of Chavers’ contracts
23 include the required information in the proper sequence.

24 6.47 Because the Conditional Sales Contracts do not comply with RISA, the exemption
25 in the CLA for contracts governed by RISA does not apply. RCW 31.04.025(2). Thus,
26

1 Defendant violated the CLA. In the alternative, if the exemption in the CLA for RISA contracts is
2 applicable, Defendant violated RISA.

3 **Chavers did not provide required disclosures to the tenants**

4 6.48 Regardless of whether the Conditional Sales Contracts are governed by RISA or
5 the CLA, the Truth in Lending Act ("TILA"), 15 U.S.C. §§1601, *et seq.*, applies to the
6 transactions once Chavers entered into five Conditional Sales Contracts with the tenants.
7 Regulation Z, 12 C.F.R. Part 226.2(a)(17)(v); *see also* RCW 31.04.102 (CLA requirement that
8 TILA disclosures be made). For purposes of TILA, if the Conditional Sales Contracts are valid
9 contracts, Chavers was a "creditor" who "regularly extended credit" and the mobiles homes that
10 Chavers sold to the tenants are "dwellings." *See* 15 U.S.C. § 1602(g) and (w). The tenants
11 resided in the mobile homes that Chavers sold to them and the transactions were secured by the
12 tenants' dwellings.

13 6.49 Chavers was required to provide TILA disclosures to the tenants when the
14 transaction was consummated. 15 U.S.C. § 1638(b)(1); Reg. Z § 1026.17(b). TILA required
15 Chavers to disclose the details of the credit transaction in a specified format. 15 U.S.C. § 1638(a).
16 Chavers did not provide any TILA disclosures to the tenants.

17 6.50 Chavers also was required to provide tenants who were "purchasing" mobile
18 homes manufactured before June 15, 1976, with notice that local jurisdictions may deny a permit
19 to site the mobile home if the tenant decided to move the mobile home to a different location. *See*
20 RCW 46.12.700(3). Many of the mobile homes were manufactured before this date. Chavers did
21 not provide any of the tenants who purchased these mobile homes the required notice.

22 **Chavers materially breached the contracts**

23 6.51 Assuming that the contracts are legitimate sales and not a sham to avoid
24 application of the Mattawa Municipal Code, Chavers materially breached the contracts in an
25 unfair and deceptive manner. In Paragraph 8 of the Mobile Home Conditional Sales Contract and
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1 Security Agreements, Chavers agreed that he would maintain the property in "a good habitable
2 and operating condition and experience" at Chavers' expense for ten (10) years. Chavers also
3 agreed that he would "keep and maintain the Property, at Seller's expense, in as good a condition
4 and state of repair as it was on the date of this Agreement, reasonable wear and tear excluded."

5 6.52 Chavers breached and continues to breach Paragraph 8 of the Conditional Sales
6 Contracts. Many of the mobile homes were and are not in a good habitable and operating
7 condition.

8 6.53 Under Washington law, a warranty that goods are merchantable and fit for a
9 particular purpose is implied in all contracts. RCW 62A.2-314 and -315. Despite Chavers'
10 assurance in Paragraph 8 of the Conditional Sales Contract that he would maintain the property in
11 "a good habitable and operating condition and experience," Chavers included a provision in the
12 Conditional Sales Contract that purported to disclaim all warranties and limited the consumers'
13 remedies:

14 DISCLAIMER OF WARRANTIES – LIMITATION OF REMEDIES

15 PURCHASER SPECIFICALLY UNDERSTANDS AND AGREES THAT
16 SELLER IS NOT THE MANUFACTURER NOR GUARANTOR OF THE
17 PROPERTY AND THAT THE SELLER MAKES NO WARRANTIES OR
18 GUARANTEES OF ANY KIND WITH RESPECT TO THE PROPERTY,
19 EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY OR
20 FITNESS FOR A PARTICULAR PURPOSE. PURCHASER ACCEPTS
21 AND TAKES THE PROPERTY "AS IS". SELLER SHALL HAVE NO
22 RESPONSIBILITY AND SHALL NOT BE LIABLE TO PURCHASER
23 FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES
24 WITH RESPECT TO THE PROPERTY FOR ANY BREACH OF
25 WARRANTY. PURCHASER FURTHER CERTIFIES AND AGREES
26 THAT THE DISCLAIMER OF WARRANTIES AND LIMITATION OF
REMEDIES SET FORTH IN THIS PARAGRAPH WERE
SPECIFICALLY BARGAINED FOR BETWEEN SELLER AND
PURCHASER AND CONSTITUTE A MATERIAL PART OF THE
BASIS OF THE BARGAIN FOR THIS AGREEMENT.

25 Paragraph 13 of the Conditional Sales Contracts. Chavers also sought to have the tenants disclaim
26 certain implied warranties by stating in Paragraph 12 that the tenants had inspected the goods.

1 6.54 It is unfair and deceptive to include non-negotiated terms that purport to disclaim
2 the warranties of merchantability and fitness for a particular purpose and assert that the property
3 was sold "as is" while, in the same agreement, contradict those provisions and purport to maintain
4 the property in "a good habitable and operating condition and experience" for ten years at
5 Chavers' expense. These disclaimers have the capacity to deceive the consumers into believing
6 that certain basic contractual rights and warranties do not exist, when in fact they do.

7 6.55 Chavers' warranty disclaimers and limitations of remedies did not comply with the
8 Uniform Commercial Code. For purposes of the Uniform Commercial Code, Chavers is a
9 "merchant" with respect to goods of the kind as defined by RCW 62A.2-104. While general
10 disclaimers of the implied warranty of merchantability and fitness for particular purposes can be
11 excluded by "as is" clauses and offers of inspection between merchants, Washington law has
12 different requirements for goods purchased for personal family, or household use. RCW 62A.2-
13 316(4) provides that "in any case where goods are purchased primarily for personal, family, or
14 household use," general disclaimers and offers of inspection are ineffective. Rather, a disclaimer
15 is only effective "insofar as the disclaimer sets forth with particularity the qualities and
16 characteristics which are not being warranted" and that disclaimer is negotiated. RCW 62A.2-
17 316(4)

18 6.56 Chavers did not set forth with particularity any qualities and characteristics that are
19 not being warranted. Chavers also did not negotiate the disclaimer because it appeared in pre-
20 printed forms written in English, which the tenants could not read or understand. Chavers
21 required the tenants to sign the forms under the threat that if they did not, they would have to
22 move out of their homes. Therefore, despite Paragraphs 12 and 13 of the Conditional Sales
23 Contract, the warranties of merchantability and fitness for a particular purpose were not
24 disclaimed.

25 6.57 Chavers breached the warranties of merchantability and fitness for a particular
26 purpose as to many of the mobile homes. Many of the mobile homes were and are in poor

1 condition, are not of fair average quality, are not fit for daily living by a person or family, and
2 would not pass without objection in the trade. Selling a mobile home implies that it is habitable,
3 in reasonable repair, and is fit for human occupation, and many of the Sun & Sand mobile homes
4 were not.

5 **The equity stripping provision**

6 6.58 While it is highly unlikely that any tenant would ever gain any equity in a mobile
7 home due to the unconscionable purchase prices, even if they did, Chavers ensured that the equity
8 would be lost through unfair and deceptive means. The Conditional Sales Contracts provided that
9 the tenants could sell the mobile homes only if Chavers approved. Chavers also included an
10 equity stripping provision: Paragraph 24 of the Conditional Sales Contracts gives Chavers a
11 "Right of First Refusal to Purchase" whereby the tenant could sell the mobile home to a third
12 party only after first offering the mobile home for sale to Chavers. Chavers guaranteed for
13 himself a favorable purchase price; instead of matching a third-party offer, Chavers was obligated
14 to pay the tenant only "the amount by which the principal balance of the Purchase Price under this
15 Agreement has been reduced by the application of all payments actually made by the Seller" of
16 the outstanding loan. For instance, if a tenant owed a principal balance of \$8,000 on the
17 Conditional Sales Contract, but was able to sell the mobile home for \$15,000 to a third party,
18 Chavers apparently would only have to pay \$8,000 to the tenant to buy back the mobile home.
19 The tenant would lose the \$7,000 of equity. Further, if he chose to do so, Chavers could then sell
20 the same mobile home to the same third party for \$15,000. Thus, in the unlikely event that there
21 was equity in a mobile home, Chavers could convert it.

22
23 **If the Conditional Sales Contracts are not voided, the contracts should be reformed to a**
24 **purchase price equaling fair market value and commercially reasonable terms**

25 6.59 Chavers committed a multitude of unfair and deceptive practices with the
26 Conditional Sales Contracts. If the contracts are not voided, the Court should reform them to a

1 purchase price equaling fair market value of the mobile home and commercially reasonable terms;
2 the Court also should order Defendant to provide required disclosures and then allow the tenants
3 an opportunity to rescind the transactions. The Court should also order Defendant to comply with
4 their contractual obligations to maintain the properties, and the implied warranties of
5 merchantability and fitness for a particular purpose.

6 6.60 A unilateral mistake by the tenants will support reformation when the other party
7 to the contract engages in fraud or inequitable conduct. *Washington Mut. Sav. Bank v. Hedreen*,
8 125 Wn.2d 521, 525, 886 P.2d 1121 (1994). As detailed throughout this Complaint, Chavers
9 engaged in fraud and inequitable conduct in the formation and performance of the Conditional
10 Sales Contracts by knowingly concealing material facts from the tenants that he had a duty to
11 disclose and failing to comply with the contracts.

12 6.61 If the purchase prices for the trailers in the Conditional Sales Contracts were
13 reformed to fair market value prices, many of the tenants may have paid off the loans because the
14 mobile homes were worth so little. Further, the tenants would be buyers in the ordinary course
15 pursuant to RCW 62A.9A-320(a).

16 **VII. FIRST CAUSE OF ACTION**
17 **(Violations of the Consumer Protection Act)**

18 7.1 Plaintiff realleges and incorporates by reference the allegations set forth in each of
19 the preceding paragraphs of this Complaint.

20 7.2 As detailed throughout this Complaint, Defendant engaged in, and is perpetrating,
21 a scheme to "sell" mobile homes to consumers, when in fact he did not actually sell the homes to
22 any tenant. Defendant developed this scheme to evade the City of Mattawa ordinance requiring
23 inspection of rental properties and avoid the expense of improving the poor living condition of the
24 homes. In furtherance of this scheme Defendant required tenants to sign Conditional Sales
25 Contracts, the existence of which leaves tenants in a position of uncertainty with respect to their
26 status as tenants of Sun & Sand.

1 7.3 Defendant's actions constitute unfair or deceptive acts or practices in trade or
2 commerce that are contrary to the public interest and are not reasonable in relation to the
3 development or preservation of business in violation of RCW 19.86.020.

4 **VIII. SECOND CAUSE OF ACTION**
5 **(Violations of the Consumer Protection Act)**

6 7.4 Plaintiff realleges and incorporates by reference the allegations set forth in each of
7 the preceding paragraphs of this Complaint.

8 7.5 Even if the sales are not shams, Defendant's conduct violates the Consumer
9 Protection Act. Defendant required tenants to sign Conditional Sales Contracts that are
10 procedurally and substantively unconscionable. The totality of the circumstances establishes that
11 the Conditional Sales Contract are procedurally unconscionable due to blatant unfairness in the
12 bargaining process and a lack of meaningful choice because (a) due to the lack of bargaining
13 power by the tenants, the contracts were neither negotiated nor subject to negotiation; (b)
14 Defendant's agent misrepresented the purpose and legal effect of the contracts; (c) the contracts
15 were entered into due to fraud and inequitable actions on the parts of the Defendant; (d) tenants
16 were required to sign the contracts on the spot and were not afforded time to review them or to
17 seek legal advice or assistance from someone who could read English; (e) tenants were required to
18 sign the contracts or face eviction from their rental units; (f) Defendant failed to pay excise tax on
19 the sale of the homes, exposing tenants to tax liability; (g) Defendant failed to provide legally
20 required disclosures under RCW 46.12.700(3), RISA, the Truth in Lending Act, and the
21 Consumer Loan Act; (h) the non-negotiated contract terms purported to disclaim all warranties,
22 which is deceptive given that the contracts required Defendant to maintain the property in a
23 habitable condition for ten years and that Defendant did not effectively disclaim the implied
24 warranties of merchantability and fitness for a particular purpose; and (i) for those tenants who
25 were living in a home Defendant had converted to a duplex, they were required to sign non-
26 assignable contracts with persons to whom they are not related and with whom they did not

1 expect to live for the 30-year duration of the contracts. All of these problems were compounded
2 because Defendant knew or should have known the tenants did not understand the contracts – and
3 were incapable of identifying any discrepancies between Defendant’s agent’s representations
4 about the contracts and the contract terms as written – because the contracts are written in English
5 when Defendant knew or should have known that tenants understood little or no written English.
6 Further, Defendant has collected and continues to collect monies due on these procedurally unfair
7 and unconscionable documents.

8 7.6 The contracts are substantively unconscionable because (a) the non-negotiated sale
9 prices were grossly excessive and significantly higher than the fair market value for the trailers;
10 (b) the purported “sales” contracts are designed to and do in fact remove the tenants from the
11 protections of the Mattawa City Code that are intended to protect their health and wellbeing; and
12 (c) even if the tenants made 30 years’ worth of payments, they would receive title to a mobile
13 home near, at, or past the end of its useful life. These terms are one-sided and overly harsh, shock
14 the conscience, and are exceedingly calloused. Unconscionable contracts violate the Consumer
15 Protection Act. *State v. Kaiser*, 161 Wn. App. 705, 722-23, 254 P.3d 850 (2011). The
16 unconscionable contracts constitute unfair or deceptive acts or practices in trade or commerce and
17 are contrary to the public interest in violation of RCW 19.86.020. Defendant’s actions are also
18 substantively unfair because he has collected and continues to collect monies due on these
19 substantively unfair and unconscionable documents.

20 7.7 Further, Defendant breached his contractual obligation to maintain the properties
21 as well as the implied warranties of merchantability and fitness for a particular purpose under
22 Washington’s Uniform Commercial Code. Defendant’s actions in failing to comply with the
23 contracts and the implied warranties constitute unfair or deceptive acts or practices in trade or
24 commerce that are contrary to the public interest in violation of RCW 19.86.020.
25
26

1 7.8 Defendant's actions constitute unfair or deceptive acts or practices in trade or
2 commerce that are contrary to the public interest and are not reasonable in relation to the
3 development or preservation of business in violation of RCW 19.86.020.

4 7.9 In addition to the other remedies provided for in RCW 19.86, the contracts should
5 be voided or reformed.

6 **IX. THIRD CAUSE OF ACTION**
7 **(Violations of the Consumer Loan Act)**

8 7.10 Plaintiff realleges and incorporates by reference the allegations set forth in each of
9 the preceding paragraphs of this Complaint.

10 7.11 If Defendant's scheme to evade the Mattawa Municipal Code is viewed as a
11 legitimate attempt to sell the mobile homes, Defendant was required to comply with the CLA.
12 Defendant failed to comply with the CLA.

13 7.12 Defendant violated the CLA by making unlicensed loans. RCW 31.04.035.

14 7.13 Defendant violated the CLA by engaging in the unfair and deceptive practices in
15 making the purported consumer loans to the tenants as described throughout this complaint.
16 RCW 31.04.027(2). The unfair and deceptive practices are summarized throughout this
17 complaint.

18 7.14 Defendant also failed to make the required disclosures, engaged in a scheme to
19 mislead borrowers, and made loans from unlicensed locations in violation of RCW 31.04.027(1),
20 (6), and (14).

21 7.15 Violations of the CLA are *per se* unfair and deceptive acts and violate the
22 Consumer Protection Act. *See* RCW 31.04.208. Defendant's actions occurred in the conduct of
23 trade and commerce. Defendant's actions vitally affect the public interest. *See* RCW 31.04.208.
24 Therefore, the above conduct violates RCW 19.86.020.

25 7.16 Notwithstanding that the conduct violates the CLA and is therefore a *per se*
26 violation of the CPA, Defendant's acts or practices described in this Section constitute unfair or

1 | deceptive acts or practices in trade or commerce and are contrary to the public interest in violation
2 | of RCW 19.86.020.

3 | **X. FOURTH CAUSE OF ACTION**
4 | **(Violations of the Retail Installment Sales Act)**
5 | **(Alternative claim)**

6 | 7.17 Plaintiff realleges and incorporates by reference the allegations set forth in each of
7 | the preceding paragraphs of this Complaint.

8 | 7.18 In the alternative to the third cause of action, if Defendant's scheme to evade the
9 | Mattawa Municipal Code is viewed as a legitimate attempt to sell the mobile homes, the
10 | Conditional Sales Contracts violated RISA.

11 | 7.19 RISA requires that every retail installment contract include a Notice to Buyer
12 | "directly above the space reserved in the contract for the signature of the buyer," that informs the
13 | buyer, among other things, that he is entitled to a copy of the contract and that he may pay off the
14 | full unpaid balance due under the contract at any time. RCW 63.14.040(2). None of the
15 | Conditional Sales Contracts that Defendant had the tenants sign included the Notice required by
16 | RCW 63.14.040(2).

17 | 6.62 RCW 63.14.040(1) also requires that every retail installment contract include
18 | specific terms in the sequence specified by the statute. None of the Conditional Sales Contracts
19 | list the place of business of the seller and the residence of the buyer as required by
20 | RCW 63.14.040(1). None list the date on which the payments were due as required by
21 | RCW 63.14.040(1)(j). None includes the required provisions of RCW 63.14.040(1)(d), (e), and
22 | (f). Further, none of the Conditional Sales Contracts included the required information in the
23 | proper sequence.

24 | 6.63 Plaintiff seeks an injunction to restrain and prevent violations of RISA.

25 | **XI. PRAYER FOR RELIEF**

26 | Wherefore, the State prays for the following relief:

1 11.1 A declaration that Defendant's acts described above are unfair or deceptive acts or
2 practices in trade or commerce, affecting the public interest, and in violation of the Consumer
3 Protection Act, RCW 19.86;

4 11.2 Should the Court find the "sales" contracts were a sham and the contracts should
5 be voided, the State prays for the following relief:

- 6 a. A declaration that Defendant violated the Consumer Protection Act,
7 RCW 19.86.020.
- 8 b. A declaration that the "sales" were a sham.
- 9 c. An injunction requiring Defendant to allow the tenants an opportunity to
10 void the Conditional Sales Contracts or, in the alternative, an injunction
11 voiding the Conditional Sales Contracts.
- 12 d. An injunction requiring Defendant to comply with Mattawa Municipal
13 Code, Chapter 5.24.
- 14 e. An injunction requiring Defendant to maintain the properties "in a good
15 and habitable and operating condition and experience."
- 16 f. An injunction requiring that Defendant comply with the terms of the
17 existing Manufactured Home Lot One-Year Rental Agreements.
- 18 g. An injunction prohibiting Defendant from inserting unconscionable
19 terms in any future dealings with the tenants.
- 20 h. An injunction prohibiting Defendant from retaliating against the tenants.
- 21 i. An injunction requiring court approval for any increases in rent for the
22 next five years.

23 11.3 Should the court find the "sales" contracts are not a sham, the State prays for the
24 following relief:

- a. A declaration that Defendant violated the Consumer Protection Act, RCW 19.86.020.
- b. A declaration that Defendant violated the Consumer Loan Act, RCW 31.04, which is a *per se* violation of the Consumer Protection Act. RCW 31.04.208, or, in the alternative that Defendant violated the Retail Installment Sales Act, RCW 63.14.
- c. Reformation of the contracts to provide that the purchase price of each manufactured home is equal to the fair market value of the home.
- d. Reformation of the contracts to commercially reasonable terms.
- e. An injunction requiring Defendant to provide all disclosures required by law.
- f. An injunction requiring Defendant to allow the tenants an opportunity to rescind the transactions once all disclosures required by law are made.
- g. An injunction requiring Defendant to comply with his contractual obligations to maintain the properties "in a good and habitable and operating condition and experience."
- h. An injunction requiring Defendant to comply with the implied warranties of merchantability and fitness for a particular purpose.
- i. An injunction requiring Defendant to provide purchasers with Mobile Home Notice Affidavits as required by RCW 46.12.700(3).
- j. An injunction prohibiting Defendant from inserting unconscionable terms in any future dealings with the tenants.
- k. An injunction prohibiting Defendant from retaliating against the tenants.

1 l. An injunction requiring court approval for any increases in rent for the
2 next five years.

3 m. An injunction requiring Defendant to pay the excise tax for the sale of
4 the mobile homes.

5 11.4 An award of civil penalties in the amount of \$2,000 for each and every violation of
6 the Consumer Protection Act, pursuant to RCW 19.86.140;


7 11.5 An order necessary to restore to any person any monies or property, real or
8 personal, which may have been acquired by means of an act prohibited by the Consumer
9 Protection Act, pursuant to RCW 19.86.080(2);

10 11.6 An award of the State's reasonable costs and attorney's fees incurred in this action,
11 pursuant to RCW 19.86.080(2); and

12 11.7 Any other relief the Court determines is just and equitable.

13 Dated this 13th day of March, 2015.

14
15 ROBERT W. FERGUSON
16 Attorney General

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18 
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