

I. PARTIES, JURISDICTION, AND VENUE

A. Plaintiff

1. The Vermont Attorney General is authorized under the Vermont Consumer Protection Act, 9 V.S.A. § 2458, to sue to enforce the CPA's prohibitions on unfair and deceptive acts and practices in commerce.

2. The Vermont Attorney General has the right to appear in any civil action in which the state has an interest. 3. V.S.A. § 157. The Vermont Attorney General has an interest in ensuring that entities that do business in Vermont do so in a lawful manner.

B. Defendants

3. Defendant Limlaw's Pulpwood, Inc., is a Vermont corporation with its principal place of business located at 261 VT Route 25, West Topsham, VT 05086-9741. Defendants Limlaw's Pulpwood, Inc., also does business as Limlaw Chipping & Land Clearing, Inc., and Limlaw Chipping and Landscaping, a/k/a Limlaw Chipping, and are located at 261 VT Route 25, West Topsham, VT 05086-9741.

4. Defendant Bruce Limlaw is an individual who is the sole owner and officer of Defendant Limlaw's Pulpwood and resides at 261 VT Route 25, West Topsham, VT 05086-9741.

5. Defendants operates a business that produces and delivers heating woodchips to consumer for use in the woodchip boilers.

C. Jurisdiction and Venue

6. The Court has personal jurisdiction over Defendants because they have transacted substantial business in the State and the unlawful acts alleged herein have been committed in the State.

7. Defendants were, at all times relevant hereto, engaged in trade or commerce in the State. Defendants knowingly deceptively weighed the woodchip loads, and provided consumers with false invoicing resulting in overcharging consumers.

8. Venue lies in the Washington Unit of the Superior Court of the State of Vermont pursuant to 12 V.S.A § 402.

9. This action is in the public interest.

II. LEGAL FRAMEWORK

10. The Vermont CPA prohibits unfair and deceptive acts and practices in commerce. 9 V.S.A. § 2453.

11. The Vermont Department of Motor Vehicles regulates commercial truck weights and requires that trucks apply for and receive a Special Excess Weight Permit (“SEW”) which provides that delivery trucks can carry loads of up to 90,000 lbs. 23 V.S.A. § 1392.

12. DMV Regulation 23 V.S.A. § 1392 (17) provides some cushion for the truck weights with a SEW permit and does not consider a truck overweight until it exceeds 99,000 lbs. Once a truck exceeds 99,000 lbs. it is considered to be in violation of 23 V.S.A. § 1392.

13. A violation of the SEW permit is an unfair act or practice commerce, in violation of the CPA 9 V.S.A. §2453 and is thereby subject to the penalty provisions established in 9 V.S.A. §2458.

III. FACTS

14. Defendants Limlaw operates a business that produces and delivers heating woodchips to Consumers for use in their woodchip boilers.

A. **Wood Chip Delivery Methods**

15. Heating woodchips generally are delivered and billed to consumers by charging for the net weight (“Net Weight”) of the load woodchips delivered. The State accepts two methods for determining the Net Weight of a commercial load, the In and Out method and the Predetermined Tare Weight method.

16. ***In and Out Method:*** The preferred and most accepted system for weighing commercial loads of this kind is what is described as an “in and out” weighing method. A scale at the entrance of the receiving facility , if it is equipped with a scale, or a registered roadside scale on the way to the receiving facility, first weights the fully loaded vehicle to determine the Gross Vehicle Weight (“GVW”). Once the vehicle is unloaded at the receiving facility, it obtains a second weight of the empty vehicle either when exiting the facility if it is equipped with a scale, or at a registered roadside scale along the return to its point of origin. This second weight is known as the vehicle’s tare weight (“Tare Weight”). To calculate the Net Weight, the Tare Weight is subtracted from the GVW. The resulting Net Weight accurately represents the weight of the load of woodchips to be billed to the consumer, especially if the receiving facility is equipped with a scale at the entrance, and reasonably represents the weight of the load if the weights are taken

at a registered roadside facility, any variation being accounted for in the change of fuel on board due to the travel. This method typically results in one time and date stamped scale slip listing the “in and out” weights (GVW and Tare Weight), or two time and date stamped scale slips; one reflecting the GVW and the second reflecting the Tare Weight of the vehicle.

17. ***Predetermined Tare Weight Method:*** As a less preferred but utilized system for weighing commercial loads of this kind, the State of Vermont accepts that commercial trucking operations can use predetermine Tare Weights (“Predetermined Tare Weight”). A Predetermined Tare Weight is particular to a specific truck or truck and trailer combination recorded on a registered scale, and subtract those Predetermined Tare Weights from the GVW of those matching truck and trailer combinations (also recorded on a registered scale), to determine the Net Weights of the loads delivered for accurate billing and record keeping purposes. To predetermine the Tare weight for a specific truck and/or truck and trailer combination, that truck or truck and trailer combination is weighed empty of load on a registered scale and the weight recorded in the form of a time and date stamped scale slip. This time and date stamped slip would represent that truck or truck and trailer combination’s Predetermined Tare Weight. If more than one truck and trailer combination are in use, this technique would be repeated to predetermine the Predetermined Tare Weight for each truck and trailer combination used in deliveries. These Predetermined Tare Weights would be kept in the manner of a list Predetermined Tare weights representing each truck , and

truck and trailer combination in use, to reference in the calculation used to determine the Net Weight of the delivery. These Net Weights would subsequently be used for accurate delivery and billing records. This method allows the company to only capture the GVW on a registered scale, producing a time and date stamped scale slip. This slip is then assigned to the Predetermined Tare Weight for that specific truck or truck and trailer combination in calculating the Net Weight of the woodchip load for billing purposes.

18. For most of its deliveries, Limlaw uses the scale located at its place of business and the Predetermined Tare Weight method to determine the Net weight of the wood chips delivered to Consumers. The one exception being the Ryegate Power Plant Ryegate Power Plant which has its own scale and utilizes the in and out method to determine Net Weight.

B. Consumer Overcharges

19. Defendants routinely added weight to the scale with the tractor with a bucket filled was a daily practice and done to make the woodchip load appear heavier. Thus, resulting in overcharging Consumers.

20. On several occasions Defendants swapped out weight slips from one truck to a heavier truck to make the woodchip weight seem heavier than it was and thus overcharging customers.

21. On several occasions Defendants removed woodchips out of a weighed truck bound for delivery for his own use. Thus, consumers were charged for wood chips they did not receive.

22. On several occasions Defendants removed woodchips directly from logging site back to be screened and then weighed. Defendants delivered unscreened and unweighted woodchips directly to consumer. Defendants would provide weight slips without these truck loads being weighted. Thus, Consumers were paying for unverified weights and unscreened woodchips.

C. Violation of SEW Permits

23. DMV Regulation DMV Regulation 23 V.S.A. § 1392 (17) s allows Special Excess Weight (“SEW”) permitted trucks to vary their weight up to 99,000 lbs. without issuing a violation. However, any SEW permitted vehicle weight in excess of the 99,000 lbs. is a violation of DMV law and the SEW permit.

24. From at least 2015 to present, Defendants had SEW permits which allowed for certain Limlaw trucks to weigh 90,000 lbs., but Limlaw trucks exceeded the permitted weight on many occasions.

25. Defendants had at least 77 deliveries over 100,000, and therefore are in violation of DMV law and their SEW permit.

VIOLATIONS OF THE LAW

COUNT ONE

Deceptive Acts and Practices in Violation of 9 V.S.A § 2453

26. The State realleges and incorporates by reference each of the allegations contained in all paragraphs of this Complaint as though fully alleged herein.

27. Defendants engaged in in deceptive acts and practices in commerce in violation of the Vermont Consumer Protection Act. 9 V.S.A. § 2453 (a), by making material misrepresentations that are likely to deceive a reasonable consumer. The meaning ascribed to Defendant's claims herein is reasonable given the nature of those claims.

28. Defendants' deceptive acts include making materially false or misleading statements regarding:

- a. falsifying invoices to consumers;
- b. falsifying weight of delivery trucks by driving a tractor onto the scale;
- c. replacing weight slips with weight slips for heavier loads;
- d. delivering unscreened and unweighted wood chips to consumers with premade weight slips; and
- d. removing woodchips from an already weighed woodchip loads for personal use.

COUNT TWO
Unfair Acts Practices in Violation of 9 V.S.A. § 2453

29. The State realleges and incorporates by reference each of the allegations contained in all paragraphs of this Complaint as though fully alleged herein.

30. Defendants engaged in and are continuing to engage in unfair acts and practices in commerce, in violation of the Vermont Consumer Protection Act, 9

V.S.A. § 2453(a), which offend public policy as it relates to privacy of Vermont's consumers; are immoral, unethical, oppressive and unscrupulous; and cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers to competition.

31. Defendants unfair acts include:

- a. failing to provide consumers with accurate invoicing;
- b. failing to accurately assign weights to trucks and trailers required to employ the Predetermined Tare Weight Method resulting in inaccurate invoices to consumers; and
- c. violating of DMV's SEW permits is an unfair and deceptive act in commerce; and

PRAYER FOR RELIEF

WHEREFORE, the State of Vermont respectfully requests the Court enter judgment in its favor and the following relief:

- a. A judgment in its favor and against Defendants on each cause of action asserted in the Complaint;
- b. A permanent injunction prohibiting Defendants from engaging in unfair or deceptive acts and practices described in the Complaint;
- c. A judgment requiring Defendants to disgorge all funds acquired and/or retained as a result of any acts or practices found to be unlawful;

- d. Statutory civil penalties in the amount of \$10,000 for each violation of the Vermont Consumer Protection Act;
- e. The award of costs and fees to the State of Vermont; and
- f. Such other and further relief as the Court deems appropriate.

Dated at Montpelier, Vermont, this 27th day of July, 2022.

STATE OF VERMONT

SUSANNE R. YOUNG
ATTORNEY GENERAL

Respectfully submitted:



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