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JAN 25 2008 FILED 5:00 P.M.
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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, ex rel. TERRY
GODDARD, Attorney General,

11 Plaintiff,

12 -vs-

13 SOUTHWESTERN FURNITURE OF
14 WISCONSIN, L.L.C., D/B/A
ASHLEY FURNITURE HOMESTORE, a
15 Wisconsin Limited Liability Company,

16 Defendant(s).
17

Case No: CV2008-008811

CONSENT JUDGMENT

(Assigned to Hon. Bethany G. Hicks)

18 The State of Arizona, having filed a complaint alleging violations of the Arizona
19 Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*; Defendant, Southwestern Furniture of
20 Wisconsin, L.L.C., D/B/A Ashley Furniture Homestore, a Wisconsin Limited Liability
21 Company ("Southwestern") having been served with a copy of the complaint; having been fully
22 advised of the right to a trial in this matter and, after receiving advice of counsel, having waived
23 the same; admit that this Court has jurisdiction over the subject matter and the parties for
24 purposes of entry of this Consent Judgment and acknowledges that this Court retains jurisdiction
25 for the purpose of enforcing this Consent Judgment.
26

1 b. **“Zero interest financing”** means any representation in an advertisement
2 that consumers can purchase merchandise through a finance plan that may
3 result in no finance charge having been paid or assessed for period of time
4 (e.g. “0 Interest,” “No interest,” or “No interest, no payments for 12
5 months”).

6 c. **“As is”** refers to a purchase of merchandise directly from a Southwestern
7 retail store without any warranty, including without limitations, those in
8 which Southwestern’s invoices designate the sale to be “as is.”

9 5. The Effective Date of this Consent Judgment is the date it is signed by the Court.

10 **B. Application:**

11 6. This Order applies to Southwestern Furniture, L.L.C., any entity controlled by
12 Southwestern, any successor entity or entities, whether by acquisition, merger or otherwise, to
13 the extent they are operating a retail furniture business in Arizona, and to their current and future
14 principals, officers and directors, assigns and successors, managerial or supervisory employees,
15 and to any other employees or agents having responsibilities with respect to the subject matter of
16 this Order, but not in any individual capacity.

17 **C. General Requirements:**

18 7. Southwestern shall comply with the Consumer Fraud Act, A.R.S. § 44-1521 *et*
19 *seq.*, as it is currently written, or as it is amended in the future.

20 8. If a disclaimer or disclosure is necessary in any part of an advertisement, it shall
21 be made in a manner, with respect to the type of medium used for the advertisement, that is
22 noticeable, readable, and understandable by ordinary consumers to whom the advertisement is
23 directed, and any printed statement shall be in no less than 5-point type. .

24 9. For all advertisements in any medium that offer “zero interest financing”, each
25 advertisement will include, wherever applicable, no less than the following statement: that a
26 minimum purchase applies.

1 10. Within ten (10) days of the Effective Date of this Order Southwestern shall
2 prepare a summary of the injunctive terms of this Order for all persons employed by or
3 contracting with Southwestern who will be responsible for complying with the Order. Within
4 thirty (30) days of the Effective Date of this Order, Southwestern shall provide a copy of the
5 summary to the Attorney General.

6 **D. Delivery and Cancellation of Orders:**

7 11. At the time of purchase, Southwestern shall not provide a customer with an
8 estimated delivery time unless it has a reasonable basis for making that estimate. Southwestern
9 may include a written explanation that the actual delivery time may be affected by unforeseen
10 events that are not within Southwestern's control. Such an explanation shall not be a basis for
11 modifying the requirements of paragraphs 12 to 14, below.

12 12. At the time of purchase, estimated delivery times shall be put in writing, and
13 Southwestern shall not orally modify or make statements inconsistent with the written estimate,
14 including but not limited to representations that a customer can expect that delivery will likely
15 be less than the estimated delivery time. If after a purchase new information about the estimated
16 delivery time becomes known to Southwestern, and if a customer requests additional
17 information, nothing herein restricts Southwestern from providing such information to a
18 customer.

19 13. At the time of purchase, Southwestern shall disclose in writing to a customer that
20 the customer may cancel his order and receive a refund within thirty (30) days of the request for
21 refund if Southwestern fails to deliver the merchandise on or before thirty (30) days after the
22 written estimated delivery date.

23 14. Southwestern shall not require a customer to accept delivery of any merchandise
24 that is damaged or defective at the time of delivery. This provision does not apply to
25 merchandise sold "as is" and designated "as is" on the sales invoice.

26 15. Southwestern shall disclose in writing to a customer at the time a customer

1 purchases merchandise from Southwestern that if merchandise is delivered in damaged or
2 defective condition and a customer so notifies Southwestern within three (3) business days after
3 delivery, Southwestern shall, within thirty (30) days after the timely notification, either replace
4 or repair the merchandise, or if Southwestern is unable to replace or repair the merchandise
5 within thirty (30) days Southwestern shall instead offer the customer a full refund. If
6 Southwestern elects to repair the merchandise, Southwestern shall repair the merchandise in a
7 workmanlike manner and correct all material defects existing at time of delivery. Nothing herein
8 applies to damage caused after delivery of merchandise.

9 16. Nothing herein shall prohibit Southwestern from offering to resolve a complaint of
10 late delivery or damaged or defective merchandise with any additional options or combination
11 of options, including waiver of a delivery fee, cash discount, credit for future purchase, or
12 establishment of a new delivery, repair or replacement date, so long as Southwestern does not
13 misrepresent a customer's rights or refuse to honor a customer's valid request to cancel or obtain
14 a refund.

15 17. With respect to the purchase of merchandise, Southwestern shall not charge a
16 restocking or other fee when a customer cancels an order or requests a refund of his purchase
17 price as permitted by paragraphs 13 and 15 of this Order.

18 18. Southwestern shall not represent that an order for merchandise is a special order
19 unless Southwestern manufactures that item specifically to fill an individual customer's order.
20 Southwestern may inform customers that merchandise is ordered from factory to warehouse
21 based on individual customer purchases.

22 **E. Advertising:**

23 19. If Southwestern makes any statement in print media representing the availability
24 of zero interest financing that is conditioned on a minimum purchase amount, Southwestern
25 shall clearly and conspicuously disclose the minimum purchase amount in no smaller than 5-
26 point type.

1 20. Southwestern shall not use the unmodified term “leather” to refer to the covering
2 of furniture, unless all of the covering of such furniture is leather. Southwestern may use terms
3 modifying “leather,” such as “leather match” to indicate that the covering of furniture is not
4 100% leather, if Southwestern discloses the meaning of the modified term in conjunction with
5 its use.

6 21. Southwestern shall not advertise a price for the sale of merchandise as an “Ashley
7 direct” or similar price unless the merchandise is in fact purchased by Southwestern Furniture
8 Industries, Inc. from Ashley Furniture Industries, Inc.

9 22. In any advertisement, Southwestern shall not use terms such as “sale”, “discount”,
10 “savings”, or “savings event”, unless this is in fact true. Those terms may relate to the selling
11 price of individual items, as well as other reductions, such as offers of reduced financing terms,
12 offers to sell a second item of merchandise at a reduction from Southwestern’s regular price, and
13 offers to sell a package of merchandise at a total price less than the sum of Southwestern’s own
14 regular price.

15 **F. Consumer Restitution:**

16 23. Within thirty (30) days after the Effective Date of this Consent Judgment,
17 Southwestern shall pay one thousand nine hundred seventy-five dollars (\$1975.00) as restitution
18 for restocking fees to those consumers designated as “Restocking Fee Complaint Consumers”
19 whose names were provided to Southwestern prior to the Effective Date of this Consent
20 Judgment.

21 24. Within thirty (30) days after the Effective Date of this Consent Judgment,
22 Southwestern shall communicate in writing with those four (4) consumers designated as
23 “Damage Complaint Consumers” whose names were provided to Southwestern prior to the
24 Effective Date of this Consent Judgment and offer those consumers the following options to
25 resolve their complaints:

26 a. Replacement of the furniture complained of with new furniture of the same

1 kind or similar furniture with the same or higher purchase price at no additional cost;

2 b. Return of the furniture for a full refund (totaling \$8,073.82 for all damage
3 Complaint Consumers); or

4 c. Payment of compensation to the consumer equal to 50% of the purchase
5 price of the furniture complained of.

6 25. Within sixty (60) days after the Effective Date of this Consent Judgment
7 Southwestern shall provide a written report to the Attorney General describing the actions taken
8 with respect to each consumer designated under paragraphs 23 and 24, including whether and
9 how the complaint was resolved.

10 **G. General Terms:**

11 26. Without admitting any liability and solely to resolve this matter without the fees,
12 expenses, and risks of any litigation, Southwestern shall pay to the Arizona Attorney General the
13 amount of four hundred thousand dollars (\$400, 000.00) for attorneys' fees and costs of
14 investigation, to be used for consumer fraud education and for investigative and enforcement
15 operations of the consumer protection division in accordance with A.R.S. § 44-1531.01(C).

16 27. Southwestern shall not represent or imply that the Attorney General, the State of
17 Arizona, or any agency thereof has approved any of their actions in Arizona or has approved any
18 of their past, present or future business practices in Arizona, and Southwestern is enjoined from
19 directly or indirectly representing anything to the contrary.

20 28. This Court retains jurisdiction of this matter for the purposes of entertaining an
21 application by Plaintiff, State of Arizona, for the enforcement of this judgment.

22 29. This Consent Judgment may be modified or vacated by order of this Court. After
23 providing at least thirty (30) days written notice and after making a good faith effort to obtain
24 concurrence of the other party for the requested order to modify or vacate, which concurrence
25 shall not be unreasonably withheld, the party seeking an order to modify or vacate may petition
26 this Court therefore. The Court will modify or vacate this Consent Judgment upon a showing of

1 good cause.

2 30. Before initiating any proceeding to enforce this Consent Judgment the Attorney
3 General shall provide at least thirty (30) days' written notice to Southwestern of its intent to
4 initiate such proceedings, and shall give Southwestern a reasonable opportunity to cure any
5 alleged violation. Whenever possible, the parties shall seek to resolve an alleged violation of this
6 Consent Judgment by discussion. In addition, in determining whether to enforce this Consent
7 Judgment or to seek an order for monetary, civil contempt, or any other relief or sanction, the
8 Attorney General shall give good faith consideration to whether Southwestern has taken
9 corrective action designed to cause the claimed violation to be cured and to prevent future
10 occurrences.

11 31. This Consent Judgment is entered as a result of a compromise and settlement
12 agreement between the parties. Only the parties to this action may seek enforcement of this
13 Consent Judgment. Nothing herein is intended to create a private right of action by other parties.

14
15 DATED this 22nd day of January 2008

16 **BETHANY G. HICKS**

17 _____
18 Judge of the Superior Court

19 **CONSENT TO JUDGMENT**

20 1. Southwestern Furniture of Wisconsin, L.L.C., a Wisconsin limited liability
21 company, states that no promise of any kind or nature whatsoever was made to it to induce it to
22 enter into this Consent Judgment and that it has entered into the Consent Judgment voluntarily.

23 2. Southwestern Furniture of Wisconsin, L.L.C., a Wisconsin limited liability
24 company, has fully read and understood this Consent Judgment, understands the legal
25 consequences involved in signing it, asserts that this is the entire agreement of the parties, and
26 that there are no other representations or agreements not stated in writing herein, and no force,

1 threats, or coercion of any kind have been used to obtain its signature.

2 3. Southwestern Furniture of Wisconsin, L.L.C., a Wisconsin limited liability
3 company, acknowledges that Plaintiff's, State of Arizona's, acceptance of this Consent
4 Judgment is solely for the purpose of settling this litigation and does not preclude the Plaintiff,
5 or any other agency or officer of this State, or subdivision thereof, from instituting other civil or
6 criminal proceedings as may be appropriate now or in the future.

7 4. Southwestern Furniture of Wisconsin, L.L.C., a Wisconsin limited liability
8 company, represents and warrants that the person signing below on its behalf is duly appointed
9 and authorized to do so.

10
11 DATED this 3rd day of Jan, 2008

12 Southwestern Furniture of Wisconsin, L.L.C.

13
14 By: _____

15 Its: _____

16 APPROVED AS TO FORM AND CONTENT:

17
18 **TERRY GODDARD**
19 **Attorney General**

20 By: [Signature]
21 Robert A. Zumoff
22 Senior Litigation Counsel
23 Counsel for Plaintiff

24 By: [Signature]
25 James A. Craft
26 Gammage & Burnham
Counsel for Defendant

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25 ///
26 ///PHX-CLU-2007-0489/109430