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UNION CITY BOARD OF	:	SUPERIOR COURT OF NEW JERSE
EDUCATION	:	LAW DIVISION: HUDSON COUNTY
	:	
Plaintiff	:	Docket No.
	:	
vs.	:	
MALOR & CO. and/or MALOR	:	
& COMPANY, INC., GARLY	:	
BENOIT, ABC CORPS 1-5	:	COMPLAINT and JURY DEMAND
and/or JOHN DOES 1-5,	:	
(fictitious names)	:	

Plaintiff, **Union City Board of Education**, located at 3912 Bergen Turnpike, in the City of Union City, County of Hudson and State of New Jersey, by way of Complaint against Defendants **Malor & Co. and/or Malor & Company, Inc., Garly Benoit, and/or ABC Corps 1-5 (fictitious names)**, says:

1. Upon information and belief, Malor & Co. and/or Malor & Company, Inc. (Malor) is an entity authorized to do business in the State of New Jersey and Garly Benoit (Benoit) is the principal of said entity.
2. ABC Corp. 1-5 represents fictitious defendant corporations, whose identities are not yet known, and who were responsible for the design, manufacture, marketing, sale, or installation of classroom technology.

3. On May 24, 2022, the **Union City Board of Education** (UCBOE) publicly advertised a bid for various technology. The bid opening was scheduled for June 15, 2022 at 10:00, at which time the bid submissions were publicly opened and read. As the result, at its meeting on June 16, 2022, the Union City Board of Education awarded defendants a contract in the total amount of \$366,559.60, for the provision of the following technology, in the following amounts, based on their bid submission:

- HP Chromebooks** - per unit \$201.77/each; total cost \$201,770.00
- iMac Desktop computers** - per unit \$1,449.87/each; total cost \$69,593.76
- Promethean Boards** - per unit \$4,199.89/each; total cost \$25,199.34
- STEM PILOT FLIGHT SIMULATOR STATIONS** - per unit \$9,999.50/each; total cost \$69,996.50 (See Exhibit A)

4. Malor's signed contract is dated June 20, 2022.

5. Thereafter, three purchase orders issued. (See below) for the following items:

PO	PO Date	Item	#	\$per	Total \$
2203817	6/30/2022	Prom.Boards	6	\$4,199.89	\$25,199.34
2203817	6/30/2022	HP Printer	13	\$719.29	\$9,350.07
2203817	6/30/2022	HP Printer	1	\$769.77	\$769.77
2300944	9/9/2022	HP Chromebooks	1000	\$201.77	\$210,770.00
2300944	9/9/2022	iMacs	48	\$1,449.87	\$69,593.76
2300944	9/9/2022	Prom. Boards	6	\$4,199.89	\$25,199.34
2301322	10/7/22	Stem Pilot Sim.	7	\$9,999.50	\$69,996.50
				TOTAL	\$401,879.48

6. Three checks have been issued by the UCBOE and cashed by Malor in the total amount of \$401,879.48:

- PO #2203817 - 06/30/2022 Ck #CO00204585 Date 11/17/2022 \$35,319.88
- PO #2300944 - 09/09/2022 Ck #CO00204023 Date 09/29/2022 \$296,563.10
- PO #2301322 - 10/07/2022 Ck #CO00204585 Date 11/17/2022 \$69,996.50

7. Pursuant to Section 4.2 of the Bid Specifications which governs time of completion of the Contract, the Contractor shall provide the technology equipment within ninety (90) days of Notice of Award. Further, in the event of an unforeseen delay in delivery of the technology equipment, any time period beyond the ninety days shall be agreed to by the parties in writing. That period was extended and ultimately expired on March 5, 2023.

8. Malor and/or Benoit were advised that failure to deliver the items contracted for by March 7, 2023, would result in the cancellation of the contract pursuant to paragraphs 5.1.8, 5.1.9 and 6.1 and that the defendants return and reimburse the sum of \$391,758.94 to plaintiffs.

9. Despite repeated requests, defendants, Malor and/or Benoit have refused to return or reimburse plaintiffs said sum.

COUNT ONE

(Violation of the New Jersey Consumer Fraud Act)

10. The UCBOE incorporates the foregoing allegations as if fully set forth herein.

11. The New Jersey Consumer Fraud Act ("CFA") protects consumers against "any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment suppression or omission, in connection with the sale or advertisement of any merchandise..." N.J.S.A. 56:8-2.

12. Defendants engaged in unlawful conduct in violation of the CFA by making knowing and intentional omissions about their qualifications and ability to fulfill the terms of its contract with the UCBOE.
13. Defendants engaged in unlawful conduct in violation of the CFA because they did not fully and truthfully disclose to the UCBOE their qualifications and ability to fulfill the terms of the contract with the UCBOE.
14. Defendants knowingly misled the UCBOE, and intended that the UCBOE would rely on the misrepresentations, omissions, and acts of concealment so that it would enter into the contract to provide classroom technology.
15. Defendants conduct caused the UCBOE to suffer an ascertainable loss. In addition to direct monetary losses, the UCBOE has suffered an ascertainable loss by receiving less than what was promised.
16. A casual relationship exists between defendants' unlawful conduct and the ascertainable losses suffered by the UCBOE. Had the true information concerning the defendants' qualifications and abilities been disclosed, the UCBOE would not have entered into the contract.
17. The UCBOE seeks an order requiring defendants to: (1) make full restitution of all funds wrongfully obtained; (2) pay actual damages; (3) pay treble damages; and (4) pay interest, attorneys' fees, and costs pursuant to N.J.S.A. 56:8-19.

COUNT TWO

(Violations of the Truth-In-Consumer Contract, Warranty and Notice Act)

18. The UCBOE incorporates the foregoing allegations as if fully set forth herein.
19. The Borough is a "consumer" as defined by the Truth-in-Consumer Warranty and Notice Act ("TCCWNA") at N.J.S.A. 56:12-15.
20. Defendants' transactions with the UCBOE for the classroom technology constitutes a "consumer contract," "warranty" and/or "notice" within the meaning of TCCWNA.
21. The warranty information used by defendants in the transactions with the UCBOE is a "consumer contract," "warranty" and/or "notice" within the meaning of TCCWNA.
22. Defendants were sellers within the meaning of TCCWNA with respect to the UCBOE and offered and entered into contracts that contained provisions contrary to the NJCFA.
23. Defendants offered and/or entered into a written consumer contract and/or gave or displayed a written notice which included misrepresentations and omissions that violated a clearly established right of the UCBOE as established by New Jersey law at the time the offer was made, the contract was signed, or the notice was given.
24. Defendants offered and/or entered into a written consumer contract and/or gave or displayed a written notice which included - - or failed to include - - a provision that violated defendants' clearly established responsibilities as

established by the New Jersey law at the time the offer was made, the contract was signed, or the notice was given.

25. Defendants are directly liable to the UCBOE for damages pursuant to TCCWNA.

26. Defendants are liable to the UCBOE for a statutory civil penalty and reasonable attorney's fees and costs pursuant to N.J.S.A. 56:12-17.

27. The UCBOE demands judgment against defendants for damages, the statutory penalty, attorney's fees and costs and declaratory relief.

COUNT THREE

(Breach of Contract)

28. The Borough incorporates the foregoing allegations as if fully set forth herein.

29. Defendants entered into contracts with the Borough in which they agreed to, inter alia, to provide certain technological items to be used in the classroom.

30. Defendants failed to fulfill its obligations under the contract, and despite numerous demands failed to return and reimburse the UCBOE the monies expended to purchase same.

31. Defendants have failed to fulfill its obligations as they are required to do by contract.

32. The UCBOE has suffered injury in fact and/or actual damages in an amount to be determined at trial.

33. The UCBOE demands judgment against defendants for damages and declaratory relief.

COUNT FOUR

(Breach of Covenant of Good Faith and Fair Dealing)

34. The UCBOE incorporates the foregoing allegations as if fully set forth herein.

35. Defendants have a duty of good faith and fair dealing with respect to their dealing with the UCBOE.

36. There is an implied duty of good faith and fair dealing in every contract, and defendants had an implied duty to ensure that their marketing materials and other representations regarding its qualifications and ability to provide the items contracted for.

37. Defendants breached the covenant of good faith and fair dealing by engaging in deceptive and misleading representations of their qualifications and abilities.

38. Defendants acted recklessly, maliciously, in bad faith and without good cause, thereby preventing the UCBOE from receiving their reasonably expected benefits of its purchase.

39. The UCBOE relied to their detriment upon misleading assertions and conduct of defendants and such reliance may be presumed based on the defendants' unlawful conduct.

40. As a direct and proximate result of defendants deceptive, fraudulent, and unfair practices, the UCBOE has suffered injury in fact and/or actual damages in an amount to be determined at trial.

41. The UCBOE demands judgment against defendants for damages and declaratory relief.

COUNT FIVE

(Fraud/Fraudulent Concealment/Fraudulent Misrepresentation)

42. The UCBOE incorporates the foregoing allegations as if fully set forth herein.

43. Defendants made material misstatements of fact to the UCBOE was fraudulently induced to purchase classroom technology.

44. These misstatements by defendants were made with knowledge of their falsity, and with the intent that the UCBOE would rely upon them.

45. At the time defendants made these misrepresentations and concealments, and at the time the UCBOE entered into the Contract, the UCBOE was unaware of the falsity of these representations, and reasonably believed them to be true.

46. In making these representations, defendants knew they were false and/o misleading, and intended that the UCBOE would rely upon such misrepresentations.

47. The UCBOE did, in fact, rely upon defendants' misrepresentations.

48. As a direct and proximate result of defendants' deceptive, fraudulent, and unfair practices, the UCBOE has suffered injury in fact and/or actual damages in an amount to be determined at trial.

49. The UCBOE demands judgment against defendants for damages and declaratory relief.

COUNT SIX

(Negligence/Negligent Misrepresentation)

50. The UCBOE incorporates the foregoing allegations as if fully set forth herein.

51. Under the circumstances alleged, defendants owed a duty to the UCBOE to provide them with accurate information regarding their qualifications and abilities.

52. Defendants' representations, as described herein, were false, negligent and material.

53. Defendants negligently made these misrepresentations with the understanding that the UCBOE would rely upon them.

54. The UCBOE did in fact reasonably rely upon these misrepresentations and concealments made by defendants.

55. Defendants negligently failed to provide the items contracted for.

56. Defendants negligently failed to provide accurate information to the UCBOE.

57. As a direct and proximate result of defendants' negligent actions, the UCBOE has suffered injury in fact and/or actual damages in an amount to be determined at trial.

58. The UCBOE demands judgment against defendants for damages and declaratory relief.

COUNT SEVEN

(Unjust Enrichment)

59. The UCBOE incorporates the foregoing allegations as if fully set forth herein.

60. the UCBOE conferred a tangible economic benefit on defendants by purchasing technological items for the classroom in advance. The UCBOE would not have purchased those items had it known the true nature of defendants qualifications and abilities to perform.

61. Because of defendants' wrongful acts and omissions, defendants obtained monies which rightfully belong to the UCBOE.

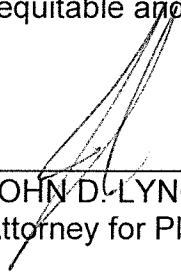
62. Defendants enjoyed the benefit of financial gains, to the detriment of the UCBOE. It would be inequitable and unjust for defendants to retain these wrongfully obtained funds.

63. Therefore, in the alternative to the claims stated above, the Union City Board of Education seeks and order requiring defendants to make restitution and disgorgement to it.

WHEREFORE, the Union City Board of Education demands judgment against defendants as follows:

- A. Declaratory judgment as defendants violated the NJFCA and TCWWNA;
- B. Actual damages;
- C. Treble damages;
- D. Statutory civil penalties payable to the UCBOE;
- E. Reasonable attorney's fees and costs;

- F. Pre-judgment interest and post-judgment interest; and
- G. Such other relief as the Court shall deem equitable and just.



 JOHN D. LYNCH, ESQ.
 Attorney for Plaintiff

CERTIFICATION

Pursuant to the requirements of Rule 4:5-1 (NOTICE OF OTHER ACTIONS), I, the undersigned, do hereby certify to the best of my knowledge, information and belief, that except as hereinafter indicated, the subject matter of the controversy referred to in the within pleading is not the subject of any other Cause of Action, pending in any other Court, or of a pending Arbitration Proceeding, nor is any other Cause of Action or Arbitration Proceeding contemplated;

1. OTHER ACTIONS PENDING?..... YES _____ NO X _____

A. If YES - Parties to other Pending Actions.

B. In my opinion, the following parties should be joined in the within pending Cause of Action.

2. OTHER ACTIONS CONTEMPLATED?..... YES _____ NO X _____

A. If YES - Parties contemplated to be joined, in other Causes of Action.

3. ARBITRATION PROCEEDINGS PENDING?..... .YES _____ NO X _____

A. If YES - Parties to Arbitration Proceedings.

B. In my opinion, the following parties should be joined in the pending Arbitration Proceedings.

4. OTHER ARBITRATION PROCEEDINGS CONTEMPLATED?.....YES _____ NO X _____

A. If YES - Parties contemplated to be joined to Arbitration Proceedings.

In the event that during the pendency of the within Cause of Action, I shall become aware of any change as to any facts stated herein, I shall file an amended certification and serve a copy thereof on all other parties (or their attorneys) who have appeared in said Cause of Action.



JOHN D. LYNCH, ESQ.
Attorney for the Plaintiff