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12  
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14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF ALAMEDA

17 THE PEOPLE OF THE STATE OF CALIFORNIA, )  
18 Plaintiff, )  
19 v. )  
20 LEVITZ FURNITURE CORPORATION, a )  
21 Florida corporation; LEVITZ FURNITURE )  
22 COMPANY OF THE PACIFIC, INC., a Cali- )  
23 fornia corporation; AMERICAN BANKERS )  
24 INSURANCE COMPANY OF FLORIDA, a Florida )  
25 corporation; AMERICAN BANKERS LIFE )  
26 ASSURANCE COMPANY OF FLORIDA, a Florida )  
27 corporation; GENERAL ELECTRIC CAPITAL )  
28 CORPORATION, a New York Corporation, )  
Defendants. )

ENDORSED  
FILED

AUG 18 1997

RONALD G. OVERKOLT, Exec. Off./Clerk  
By Neville Griffith

CASE NO.  
787452-5

COMPLAINT FOR  
INJUNCTION, CIVIL  
PENALTIES AND  
OTHER RELIEF

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15 Attorneys for Plaintiff

16

17 The PEOPLE OF THE STATE OF CALIFORNIA, by and through Thomas  
18 J. Orloff, District Attorney for the County of Alameda, Gil  
19 Garcetti, District Attorney of the County of Los Angeles, Paul J.  
20 Pfingst, District Attorney of the County of San Diego, and James P.  
21 Fox, District Attorney for the County of San Mateo, acting on  
22 information and belief, allege:

23

24

**AUTHORITY/PURPOSE**

25 1. THOMAS J. ORLOFF is the duly elected District  
26 Attorney of the County of Alameda. GILBERT GARCETTI is the duly  
27 elected District Attorney of the County of Los Angeles. PAUL J.  
28 PFINGST is the duly elected District Attorney of the County of San

1 Diego. JAMES P. FOX is the duly elected District Attorney of the  
2 County of San Mateo. District Attorneys Orloff, Garcetti, Pfingst,  
3 and Fox bring this action on behalf of the People of the State of  
4 California and the residents of Alameda, Los Angeles, San Diego,  
5 and San Mateo Counties, for the protection of the public from  
6 anticompetitive, unfair and unlawful practices pursuant to section  
7 17200 et seq. and section 17500 et seq. of the California Business  
8 and Professions Code.

9  
10 **JURISDICTION AND VENUE**

11 2. Defendants at all times mentioned herein have  
12 transacted business within the Counties of Alameda, Los Angeles,  
13 San Diego, San Mateo, and throughout the State of California. The  
14 violations hereinafter described have been carried out in whole or  
15 in part within said Counties, and within the State of California.  
16 The actions of defendants, individually, jointly and severally, as  
17 set out below, are in violation of the laws and public policy of  
18 the State of California.

19  
20 **DEFENDANTS**

21 3. Defendant Levitz Furniture Corporation is a Florida  
22 corporation doing business in the State of California duly  
23 organized and existing under the laws of the State of Florida and  
24 qualified to do business in the State of California. Defendant  
25 Levitz Furniture Company of the Pacific, Inc., is a California  
26 corporation and is a wholly owned subsidiary of the defendant  
27 Levitz Furniture Corporation. Both defendants shall hereinafter be  
28 jointly referred to as "Levitz." Through its retail stores, Levitz

1 does business in the Counties of Alameda, Los Angeles, San Diego,  
2 San Mateo, and in other counties throughout the State of  
3 California. Levitz is in the business of selling furniture and  
4 furniture-related items to the public. Levitz is not licensed by  
5 the California Insurance Commissioner to transact insurance  
6 business in any capacity in the State of California.

7           4. Defendants American Bankers Insurance Company of  
8 Florida and American Bankers Life Assurance Company of Florida are  
9 both Florida Corporations with a principal place of business at  
10 11222 Quail Roost Drive, Miami, Florida (both defendants  
11 hereinafter referred to collectively as "ABIG"). ABIG is a  
12 subsidiary of American Bankers Insurance Group and does business in  
13 the State of California. ABIG underwrites the credit insurance  
14 policies sold by GE Capital and Levitz to Levitz customers and pays  
15 compensation to GE Capital for the sales of these policies.

16           5. Defendant GE Capital Corporation (hereinafter  
17 referred to as "GE Capital") is a New York corporation with its  
18 principal place of business in Connecticut and doing business in  
19 the State of California. As part of GE Capital's business, GE  
20 Capital buys from Levitz all Levitz customer credit accounts at  
21 face value. GE Capital is not licensed by the California Insurance  
22 Commissioner to transact insurance business in any capacity in the  
23 State of California.

24           6. Whenever in this complaint reference is made to any  
25 act of a corporate defendant, such allegation shall be deemed to  
26 mean that said corporate defendant, and its officers, directors,  
27 agents and employees, did or authorized such act while actively  
28 engaged in the management, direction, or control of the officers of

1 said corporate defendant, and each of them, and while acting within  
2 the scope of their employment.

3 7. Whenever in this complaint reference is made to any  
4 act of defendants, such allegations shall be deemed to mean the act  
5 of each defendant acting individually, jointly and severally.

6  
7 NATURE OF TRADE AND COMMERCE

8 8. Levitz is engaged in the business of advertising,  
9 offering for sale, and selling of household furniture to consumers  
10 through a national chain of retail stores. Levitz operates a  
11 number of these stores throughout the State of California and in  
12 each of the Counties above specified. These stores offer a wide  
13 selection of mainly brand-name furniture and accessories for use at  
14 home. Levitz is one of the largest furniture retailers in the  
15 United States, with annual sales that in the recent past have  
16 exceeded \$1 billion.

17 9. In order to encourage consumers to purchase its  
18 furniture items and increase sales, Levitz offers its customers  
19 revolving credit accounts to allow consumers to finance purchases  
20 over a period of time. To further encourage its customers to open  
21 a revolving credit account, Levitz offers promotional inducements  
22 such as grace periods wherein if the account is paid in full no  
23 interest will be charged.

24 10. Levitz and GE Capital, like other retailers offering  
25 in-house credit, have actively marketed credit insurance products  
26 to consumers who choose to avail themselves of the revolving credit  
27 program offered through Levitz. GE Capital arranged and placed  
28 said ABIG credit insurance program for Levitz and provided a

1 financial inducement, described below, to Levitz to sell said ABIG  
2 credit insurance. The above ABIG credit insurance package is called  
3 by defendants the "Chargegard Plus Insurance Program." This  
4 insurance is sold by Levitz employees contemporaneously to and in  
5 conjunction with the credit application process. On the form used  
6 by Levitz known as the "Revolving Charge Credit Application," two  
7 signature blocks appear for consumer signatures. Signing in one of  
8 the locations acknowledges receipt of a copy of the retail  
9 installment credit agreement, while a signature in the other  
10 requests enrollment in ABIG's "Chargegard Plus Insurance Program."  
11 The Chargegard Plus Program packages four credit insurances: life,  
12 disability, involuntary unemployment and property. These  
13 insurances cover the outstanding balance of the account being  
14 financed.

15           11. The Chargegard Plus Insurance Program is a group  
16 coverage arrangement between Levitz, GE Capital, and ABIG  
17 consisting of three separate but connected policies; one relating  
18 to credit life and disability, one to credit property and the third  
19 to involuntary unemployment. GE Capital is the first named insured  
20 under these policies. It receives substantial commissions from  
21 ABIG for the sale of these products. In addition, a subsidiary of  
22 GE Capital serves as the re-insurer to ABIG on these group policies  
23 and thus GE Capital indirectly shares in underwriting profits.  
24 ABIG underwrites all of the above mentioned credit insurance  
25 policies.

26           12. Through contractual agreement, all Levitz revolving  
27 accounts are immediately sold to GE Capital at the time they are  
28 established. Prior to April 1997, charges and fees assessed by GE

1 Capital for servicing Levitz accounts were directly related to  
2 customer participation levels in the Chargegard Plus Insurance  
3 program. Customer participation levels, measured by aggregate  
4 dollars of insured account balances versus total Levitz outstanding  
5 balances and referred to internally as "penetration rates," could  
6 have invoked higher charges to Levitz when insurance sales  
7 penetration fell below 50% for any three month period contrasted  
8 with cash incentives to Levitz stores and employees when  
9 penetration rates exceeded 60%. Until April 1997, Levitz employees  
10 responsible for obtaining customer signatures for insurance  
11 enrollment received a minimum of one dollar for each enrollment.  
12 Until April 1997, Levitz stores received \$1.25 for each insured  
13 credit application processed so long as over 60% of the store's  
14 credit customers elected insurance and received an additional 25  
15 cent per insured application commission if the entire region's  
16 credit insurance penetration rate was also over 60%.

17 13. During and including the time period between January  
18 1993 and February 1997, 411,146 revolving credit accounts were  
19 opened by Levitz California customers. Of that number, 306,354  
20 credit insurance policies underwritten by ABIG were sold to these  
21 same customers. During that time period, the number of claims  
22 filed based upon these policies totaled approximately 11,612, with  
23 payouts of \$2,464,000. Premiums billed during this same period for  
24 these policies amounted to approximately \$20,150,000 of which  
25 approximately \$17,760,000 was actually collected.

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1 FIRST CAUSE OF ACTION

2 Business & Professions Code section 17500

3 14. Plaintiff incorporates paragraphs 1 through 13 above  
4 as though fully set forth herein.

5 15. Beginning on an exact date unknown to plaintiff, but  
6 at least within three years of the discovery by plaintiff of the  
7 facts upon which this cause of action is based, the above named  
8 defendants made or caused to be made untrue or misleading  
9 statements in violation of Business and Professions Code section  
10 17500 with the intent to induce members of the public to enroll in  
11 the "Chargegard Plus Insurance Program," when signing up and  
12 availing themselves of the revolving credit program offered through  
13 Levitz. These violations occurred in the Counties of Alameda, Los  
14 Angeles, San Diego, San Mateo, and in other counties throughout the  
15 State of California. Such untrue or misleading statements include  
16 but are not necessarily limited to the following:

17 A. Consumers upon opening a Levitz revolving  
18 credit accounts were told by the Levitz sales representative to  
19 sign both signature lines on the credit application, as described  
20 in paragraph 8 above, and in many cases were simply told to "sign  
21 here, and sign here," without further explanation. The Levitz  
22 sales representatives failed to disclose to such consumers at the  
23 point of sale that by signing one of the lines on the application,  
24 they were enrolling in the Chargegard Plus Insurance Program. In  
25 fact, many such customers were misled by Levitz sales  
26 representatives into believing they were simply applying for  
27 revolving credit and did not know they were enrolling in a complex  
28 package of insurance products.



1           B. Many Levitz customers when completing the  
2 credit application at the point of sale were told by the Levitz  
3 sales representatives that they were receiving "free insurance,"  
4 which misrepresented and obscured the actual costs for such  
5 insurance, how such costs would be imposed, and when premium  
6 payments would be incurred.

7           C. Many Levitz customers when completing the  
8 credit application at the point of sale and inquiring about any  
9 insurance were told by Levitz sales representatives that such  
10 insurance applied to any damage incurred during delivery and in  
11 case the furniture "fell off the truck," which misrepresented and  
12 failed to disclose to such customers that they were in fact signing  
13 up for credit disability insurance, credit life insurance, credit  
14 unemployment insurance, and credit property insurance.

15           D. Defendants linked the four credit insurances in  
16 a single package on the credit application form to obscure from the  
17 customer that they may be enrolling in an insurance program, and  
18 Levitz sales representatives failed to adequately disclose this  
19 insurance and/or misrepresented the nature, costs, and identity of  
20 such insurance.

21           E. Levitz sales representatives at the point of  
22 sale failed to disclose to customers completing credit applications  
23 that the purchase of insurance was optional and did not affect  
24 whether such customer was eligible for credit.

25           F. Levitz sales representatives at the point of  
26 sale failed to disclose to customers completing credit applications  
27 that all new and subsequent furniture purchases would be  
28 automatically subject to monthly charges for credit insurance

1 premiums under the Chargegard Insurance Program without any  
2 additional notification or disclosure.

3 G. Upon completion of the revolving credit  
4 agreement at the point of sale, Levitz sales representatives failed  
5 to give to customers, who had signed both signature lines as above  
6 described, signed copies of such agreements obscuring from such  
7 customers what they had signed up for and failing to disclose the  
8 enrollment in the above described insurance program.

9 16. The representations and inadequate disclosures set  
10 forth in paragraph 15 above were known, or by the exercise of  
11 reasonable care should have been known, to defendants to be untrue  
12 or misleading when made, for reasons including but not limited to:

13 A. The California Department of Insurance in April  
14 1995 notified ABIG and sought corrective action by ABIG in regard  
15 to deceptive practices in the sale of its credit insurance policies  
16 at California Levitz stores.

17 B. In mid-1995, all defendants were notified by  
18 the California Department of Insurance of concerns regarding  
19 deceptive practices in the sale of its credit insurance policies at  
20 California Levitz stores.

21 C. On October 16, 1996, the California Department  
22 of Insurance initiated formal action against Levitz and GE Capital  
23 seeking relief for insurance packing practices, deceptive sales  
24 practices, and unlicensed sales of insurance.

25 17. The above described deceptive sales practices,  
26 misrepresentations, and failures to properly disclose as described  
27 in paragraph 15 above continued to be carried out by defendants  
28 through February 1997.



1 optional insurance, purchase such insurance believing that it is  
2 required, purchase optional insurance in the belief that such  
3 insurance is included with the credit purchase at no additional  
4 charge, or purchase optional insurance based on misrepresentations  
5 and deceptive statements regarding the nature of such insurance,  
6 its coverage, or costs.

7           F. Defendants in placing the sale of credit  
8 insurance on the same form as the application for credit with the  
9 signature line for insurance just below the signature line for  
10 credit and the packaging or tying of four separate credit insurance  
11 products obtained through a single signature at the point of sale  
12 created an unfair practice and failed to give the consumer a fair  
13 chance to understand what was being offered and at what cost.

14           G. By providing financial inducements and rewards  
15 to sales representatives to sell credit insurance at the same time  
16 consumers signed up for credit, defendants encouraged unfair and  
17 deceptive sales practices in order to achieve the highest possible  
18 "penetration rate."

19           H. By offering Levitz financial benefits to  
20 achieve high "penetration rates," defendants encouraged deceptive  
21 sales practices in the sale of credit insurance products.

22

23

**PRAYER**

24

WHEREFORE, plaintiff prays for judgment as follows:

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1. That, pursuant to Business and Professions Code sections 17203 and 17535, and the Court's inherent equity powers, defendants, and each of them, and their directors, officers, employees, agents, successors, assignees and representatives and

1 all persons, corporations or other entities acting under, by,  
2 through, or on behalf of defendants, or acting in concert or  
3 participation with or for them with actual or constructive notice  
4 of this injunction, be permanently enjoined and restrained from  
5 directly or indirectly engaging in any of the following acts and  
6 practices:

7           A. Making any misrepresentations as defined in  
8 Business and Professions Code section 17500, including, but not  
9 limited to, those misrepresentations in the First Cause of Action  
10 as set forth above.

11           B. Engaging in unfair competition as defined in  
12 Business and Professions Code section 17200, including, but not  
13 limited to, those acts in the Second Cause of Action as set forth  
14 above.

15           2. That this Court order, according to proof at trial,  
16 such other equitable and other relief as is appropriate, and  
17 pursuant to sections 17535 and 17203 of the Business and  
18 Professions Code.

19           3. That, pursuant to Business and Professions Code  
20 section 17206, this Court order a civil penalty of \$2,500 for each  
21 of defendants' violations of Section 17200 of the Business and  
22 Professions Code as proved at trial.

23           4. That, pursuant to Business and Professions Code  
24 section 17536, this Court order a civil penalty of \$2,500 for each  
25 of defendants' violations of Section 17500 of the Business and  
26 Professions Code as proved at trial.

27           5. That defendants be required to take such further  
28 action as the Court may deem necessary to terminate and dissipate

1 4. That, pursuant to Business and Professions Code section  
2 17536, this Court order a civil penalty of \$2,500 for each of  
3 defendants' violations of Section 17500 of the Business and  
4 Professions Code as proved at trial.

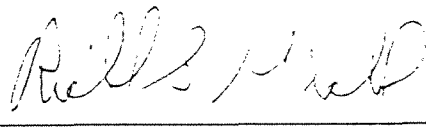
5 5. That defendants be required to take such further action  
6 as the Court may deem necessary to terminate and dissipate the effects  
7 of the unlawful activities hereinabove alleged, pursuant to sections  
8 17535 and 17203 of the Business and Professions Code.

9 6. For such other, further and different relief as the  
10 Court may deem just and proper.

11 7. That plaintiff recover its costs of suit, including,  
12 but not limited to, its costs of investigation.


13  
14 Date: 8/18/99

THOMAS J. ORLOFF  
District Attorney  
County of Alameda

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16  
17 By:   
18 RICHARD S. MICHAELS  
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20 Date: 8/12/99

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