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Jordan & Wainwright Oil Co et al - Assurance

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STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

December 23, 2011

Michele Lumbert, Clerk
Kennebec County Superior Court
95 State Street
Augusta, ME 04330

Re: *In re: Jordan & Wainwright Oil Co., Inc. and Nicholas Wainwright*

Dear Michele:

Enclosed for filing in the above-referenced matter, please find a summary sheet and an Assurance of Discontinuance pursuant to 5 M.R.S.A. § 210.

If you have any questions, my direct line is 626-8591. Thank you for your assistance.

Sincerely,


LINDA J. CONTI
Assistant Attorney General

LJC/gac
Enclosures
cc: David Johnson, Esq.

SUMMARY SHEET

This summary sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the Maine Rules of Court or by law. This form is required for the use of the Clerk of Court for the purpose of initiating or updating the civil docket. (SEE INSTRUCTIONS ON REVERSE)

I. County of Filing or District Court Jurisdiction: KENNEBEC		
II. CAUSE OF ACTION (Cite the primary civil statutes under which you are filing, if any.) <i>Pro se</i> plaintiffs: If unsure, leave blank. 5 M.R.S.A. § 210		
III. NATURE OF FILING <input checked="" type="checkbox"/> Initial Complaint <input type="checkbox"/> Third-Party Complaint <input type="checkbox"/> Cross-Claim or Counterclaim <input type="checkbox"/> If Reinstated or Reopened case, give original Docket Number _____ (If filing a second or subsequent Money Judgment Disclosure, give docket number of first disclosure)		
IV. <input type="checkbox"/> TITLE TO REAL ESTATE IS INVOLVED		
V. MOST DEFINITIVE NATURE OF ACTION. (Place an X in one box only) <i>Pro se</i> plaintiffs: If unsure, leave blank.		
<u>GENERAL CIVIL (CV)</u>		
Personal Injury Tort <input type="checkbox"/> Property Negligence <input type="checkbox"/> Auto Negligence <input type="checkbox"/> Medical Malpractice <input type="checkbox"/> Product Liability <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Domestic Torts <input type="checkbox"/> Other Negligence <input type="checkbox"/> Other Personal Injury Tort	Contract <input type="checkbox"/> Contract Declaratory/Equitable Relief <input type="checkbox"/> General Injunctive Relief <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Other Equitable Relief Constitutional/Civil Rights <input type="checkbox"/> Constitutional/Civil Rights Statutory Actions <input checked="" type="checkbox"/> Unfair Trade Practices <input type="checkbox"/> Freedom of Access <input type="checkbox"/> Other Statutory Actions Miscellaneous Civil <input type="checkbox"/> Drug Forfeitures	<input type="checkbox"/> Other Forfeitures/Property Labels <input type="checkbox"/> Land Use Enforcement (80K) <input type="checkbox"/> Administrative Warrant <input type="checkbox"/> HIV Testing <input type="checkbox"/> Arbitration Awards <input type="checkbox"/> Appointment of Receiver <input type="checkbox"/> Shareholders' Derivative Actions <input type="checkbox"/> Foreign Deposition <input type="checkbox"/> Pre-action Discovery <input type="checkbox"/> Common Law Habeas Corpus <input type="checkbox"/> Prisoner Transfers <input type="checkbox"/> Foreign Judgments <input type="checkbox"/> Minor Settlements <input type="checkbox"/> Other Civil
CHILD PROTECTIVE CUSTODY (PC) <input type="checkbox"/> Non-DHS Protective Custody		SPECIAL ACTIONS (SA) Money Judgment <input type="checkbox"/> Money Judgment Request Disclosure
<u>REAL ESTATE (RE)</u>		
Title Actions <input type="checkbox"/> Quiet Title <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Easements <input type="checkbox"/> Boundaries	Foreclosure <input type="checkbox"/> Foreclosure (ADR exempt) <input type="checkbox"/> Foreclosure (Diversion eligible) <input type="checkbox"/> Foreclosure - Other	Misc. Real Estate <input type="checkbox"/> Equitable Remedies <input type="checkbox"/> Mechanics Lien <input type="checkbox"/> Partition <input type="checkbox"/> Adverse Possession <input type="checkbox"/> Nuisance <input type="checkbox"/> Abandoned Roads <input type="checkbox"/> Trespass <input type="checkbox"/> Other Real Estate
<u>APPEALS (AP) (To be filed in Superior Court) (ADR exempt)</u>		
<input type="checkbox"/> Governmental Body (80B)	<input type="checkbox"/> Administrative Agency (80C)	<input type="checkbox"/> Other Appeals
VI. M.R.Civ.P. 16B Alternative Dispute Resolution (ADR):		
<input type="checkbox"/> I certify that pursuant to M.R.Civ.P. 16B(b), this case is exempt from a required ADR process because:		
<input type="checkbox"/> It falls within an exemption listed above (i.e., an appeal or an action for non-payment of a note in a secured transaction).		
<input type="checkbox"/> The plaintiff or defendant is incarcerated in a local, state or federal facility.		
<input type="checkbox"/> The parties have participated in a statutory prelitigation screening process with _____		
<input type="checkbox"/> The parties have participated in a formal ADR process with _____ (name of neutral) on _____ (date).		
<input type="checkbox"/> This is a Personal Injury action in which the plaintiff's likely damages will not exceed \$30,000, and the plaintiff requests an exemption from ADR.		

VII. (a) PLAINTIFFS (Name & Address including county)
or Third-Party, Counterclaim or Cross-Claim Plaintiffs
 The plaintiff is a prisoner in a local, state or federal facility.

State of Maine

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number) **If all counsel listed do NOT represent all plaintiffs, specify who the listed attorney(s) represent.**
(If *pro se* plaintiff, leave blank)

Linda J. Conti - Maine Bar # 3638
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8591

VIII. (a) DEFENDANTS (Name & Address including county)
and/or Third-Party, Counterclaim or Cross-Claim Defendants
 The defendant is a prisoner in a local, state or federal facility.

Nicholas Wainwright
P.O. Box 88
88 Bethel Road
West Paris, Maine 04289

Jordan & Wainwright Oil Co., Inc.
P.O. Box 88
88 Bethel Road
West Paris, Maine 04289

Oxford County

Oxford County

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number)
(If known)

If all counsel listed do NOT represent all defendants, specify who the listed attorney(s)

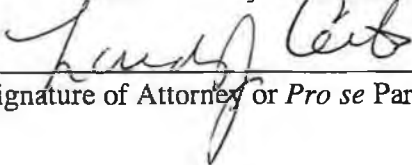
David C. Johnson, Esq.
Marcus, Clegg & Mistretta, P.A.
One Canal Plaza, Suite 600
Portland, Maine 04101

IX. RELATED CASE(S) IF ANY _____
Assigned Judge/Justice _____ Docket Number _____

Date: 12/23/11

Linda J. Conti, Assistant Attorney General
Name of Lead Attorney of Record or *Pro se* Party

David C. Johnson, Esq.


Signature of Attorney or *Pro se* Party

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL

In re:

JORDAN & WAINWRIGHT
OIL COMPANY, INC. and
NICHOLAS WAINWRIGHT

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ASSURANCE OF DISCONTINUANCE
(5 M.R.S. § 210)

This Assurance of Discontinuance (“Assurance”) is entered into by the Attorney General of the State of Maine (“Attorney General”) acting pursuant to 5 M.R.S. § 210, Jordan & Wainwright Oil Company, Inc. and Nicholas Wainwright (collectively, “J&W Oil”).

BACKGROUND

1. J&W Oil is a retail seller of heating oil products located in West Paris, Maine.
2. In 2010 the Attorney General’s Office received two complaints from consumers alleging that J&W Oil would not deliver all of the oil that they had paid for pursuant to a prepaid contract or budget plan. J&W Oil resolved both complaints to the consumers’ satisfaction.
3. In 2011, the Attorney General’s Office received complaints from consumers alleging that they ran out of oil and generally had difficulty getting deliveries of heating fuel that they had paid J &W Oil for pursuant to a prepaid contract. Many of these complaints were resolved informally to the consumers’ satisfaction. Twelve consumers who purchased prepaid oil from J&W retain

credit balances on their accounts in an aggregate amount of approximately \$5,927.05.

4. On or about August 23, 2011 the Attorney General issued a Civil Investigative Demand pursuant to 5 M.R.S. § 211 requesting documents that showed that J&W Oil was in compliance with 10 M.R.S. § § 1110 et seq. which requires security for prepaid oil contracts as well as the contracts it had entered into with consumers.

5. J & W Oil provided copies of its prepaid and budget contracts with consumers for 2010 and 2011 in response to the Civil Investigative Demand but did not provide any evidence of compliance with the requirements of 10 M.R.S. §§ 1110 et seq.

J&W OIL 'S POSITION

6. J&W Oil neither admits nor denies that their actions as described above constitute unfair and/or deceptive trade practices in violation of 5 M.R.S. § 207, but acknowledges that it has had financial problems related to its heating fuel business. J&W Oil denies any intentional wrongdoing.

AGREEMENT AND ASSURANCE

The parties hereby agree to the following provisions to resolve, without resort to litigation, the concerns of the Attorney General:

1. This Assurance shall remain in effect for 3 years from the date that it is fully executed by the parties (the "Assurance Period"). During the time that it is in effect, J & W Oil agrees to comply with the provisions set forth below.

2. For purposes of this agreement "consumer" means a person living in a single family residence or an owner of an apartment building with four or fewer units.

3. J & W Oil shall not advertise that it sells prepaid heating fuel or budget payment plans to consumers during the Assurance Period.

4. J & W Oil shall not accept any payments in advance of delivering heating fuel to consumers during the Assurance Period.

5. For the twelve consumers who are currently owed an approximate aggregate amount of \$5,927.05, J & W Oil will contact each consumer and arrange for the delivery of the remaining oil owed (in one or more deliveries, at the mutual convenience of J&W and the consumer), no later than March 31, 2012.

6. After the Assurance Period has expired, if J & W Oil wants to sell prepaid heating fuel contracts to consumers again, it shall notify the Attorney General by letter to Assistant Attorney General Linda J. Conti, Consumer Protection Division, 6 State House Station, Augusta, ME 04333-0006. Upon request, it shall provide a business plan which must satisfy the Attorney General that the company is in compliance with 10 M.R.S. §§ 1110 et seq. and is in fact able to fulfill its prepaid contracts pursuant to the terms of that statute.

7. J & W Oil shall not represent, directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of its past, or any

future, business operation. It is agreed and understood that the contents of the Assurance are, and shall be, public information.

8. In exchange for J & W Oil's agreement to the provisions herein, the Attorney General waives any claims that he has, or may have had, against J&W Oil arising from possible violations of 5 M.R.S. § 207 relating to the conduct of the heating fuel business prior to August 31, 2011 including, but not limited to, claims for civil penalties and injunctive relief, other than that which is set forth in this Assurance.

9. It is further agreed and understood that, while the parties to this Assurance presently intend to cooperate in securing and obtaining compliance with the terms of the Assurance, the matters settled by the filing of this agreement may be reopened at any time by the Attorney General of Maine for further proceedings in the public interest, including such actions as may be necessary to monitor and enforce compliance with this Assurance during the Assurance Period.

J&W OIL, INC.

Date: 11-14-11

By: Nicholas T Wainwright

President
Title

Date: 11-14-11

Nicholas T Wainwright
NICHOLAS WAINWRIGHT, INDIVIDUALLY

Date: 12/23/11


LINDA J. CONTI
ASSISTANT ATTORNEY GENERAL

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