

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-95-419

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 MOUNTAIN SPRINGS)
 WATER TREATMENT)
 COMPANY, INC. and)
 IRVING C. MINOTT, III)
)
 Defendants)
)

MOTION TO VACATE DISMISSAL
M.R. Civ. P. 60(b)(1)

Pursuant to M.R. Civ. P. 60(b)(1), the State of Maine, by and through counsel, hereby moves this court to vacate its Order dated May 15, 1996 in which the Court dismissed the above-captioned action.

In its Order, the Court stated that the matter was dismissed "appearing that the parties have settled the case, or are not respecting the obligation to mediate." In fact, the case has been effectively settled between the named parties for a number of months and a Consent Decree has been agreed to. However, the parties have not filed the Consent Decree to date so that the case can remain open while the State negotiates with the finance companies that financed the consumer transactions at issue. The parties have elected to allow the case to remain active in the event it becomes necessary to join the finance companies as parties. It is anticipated that it will take another couple of months to complete the ongoing process with the

finance companies as informal parties to this action.

With respect to mediation, counsel for both parties inadvertently failed to attend the last scheduled mediation session. An apology was tendered to the neutral when our error was realized. Counsel for the State spoke with the neutral several weeks prior to the Court's dismissal.

For the aforesated reasons, the State respectfully requests that the Court's Order dated May 15, 1996 be vacated and this case be reinstated on the docket. Counsel for the defendants does not object to this motion.

Dated at Augusta, Maine this 28th day of May, 1996.



Amy M. Homans
Assistant Attorney General
Public Protection Division
Six State House Station
Augusta, Maine 04333-0006
(207) 626-8867

State of Maine

KENNEBEC

ss.

SUPERIOR COURT

CV-

55-419

STATE OF MAINE

Plaintiff

vs.

Defendant

ORDER

MOUNTAIN SPRINGS WATER TREATMENT

CO,

~~This cause came on for hearing, and was argued by counsel, upon the motion of the~~
Motion the latter from the assigned
neutral, filed 4-14-94, and
it appearing that the parties have
settled the case, or are not respecting
the obligation to mediate

IT IS ORDERED that:

Case dismissed

Dated:

5-15, 1994

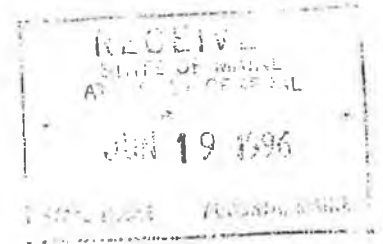
Justice, Superior Court

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-95- 419

STATE OF MAINE,)
)
Plaintiff)
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v.)
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MOUNTAIN SPRINGS)
WATER TREATMENT)
COMPANY, INC. and)
IRVING C. MINOTT, III)
)
Defendants)
)

CONSENT DECREE
(Irving C. Minott, III)



Plaintiff, State of Maine, having filed its Complaint in the above-captioned matter on October 10, 1995 and Plaintiff and Defendants Mountain Springs Water Treatment Company, Inc. and Irving C. Minott, III having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein and for purposes of settlement only and without this Decree constituting any evidence against, or an admission by, any party with respect to such issues and with Defendants denying the allegations in the Complaint, it is hereby ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction over the subject matter of this action and has jurisdiction over the parties consenting to this Decree. The Complaint states claims upon which relief may be granted against the Defendants under the Unfair Trade Practices Act, 5 M.R.S.A. § § 206-216 (1980 and Supp. 1995), the Consumer

Solicitations Sales Act, 32 M.R.S.A. § § 4661-4671 (1988 and Supp. 1995), the Consumer Credit Code, 9-A M.R.S.A. § § 3-501-3-507 (1980 and Supp. 1995), and the Uniform Commercial Code, 11 M.R.S.A. § 2-315.

2. This decree shall apply to Mountain Springs Water Treatment Company, Inc., Irving C. Minott, III , their officers, agents, servants, employees and attorneys and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. For purposes of this Decree, the term "Defendants" shall apply to all of the aforementioned persons.

3. Paragraphs 4, 5, 7, 8(k), 9 and 11 shall apply solely to solicitations and sales of water treatment systems to consumers in connection with a salesman's direct contact accomplished by means of and including, but not limited to, a personal visit or telephone call upon the consumer, at a place other than the Defendants' place of business and without the consumer soliciting the initial contact.

4. Pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. § § 206-216 (1980 and Supp. 1995) and the Consumer Solicitations Sales Act, 32 M.R.S.A. § § 4661-4671 (1988 and Supp. 1995), and the Consumer Credit Code, 9-A M.R.S.A. § § 3-501-3-507 (1980 and Supp. 1995), that Defendants are permanently enjoined and restrained from engaging in any of the following acts or practices in the State of Maine:

a. installing water treatment systems in consumers' homes within three business days of the date on which the consumer signed the contract and the contract requires Defendants to physically affix the water treatment system to the

consumer's real estate;

b. failing to disclose orally to consumers at the time of sale that they have three days in which to cancel the contract; the date on which the three day right to cancel expires; that cancellation must be made by mailing, on or before midnight of the third business day from the date on which the consumer signed the contract, the Notice of Right to Cancel form [attached to this Consent Decree as Exhibit A], any other written notice or by sending a telegram to Defendant Mountain Springs;

c. failing to allow cancellation of any contract prior to expiration of the three day right to cancel provided by 32 M.R.S.A. § 4664; and;

d. failing to include the following notice on the face of the sales contract provided to consumers: If this agreement requires the seller to affix goods to real estate, then the seller may not begin the work until [*insert date on which three day right to cancel lapses*].

5. Pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. § § 206-216 (1980 and Supp. 1995), in the State of Maine, Defendants shall provide to consumers a written disclosure stating that the consumer understands that the sales representative will be conducting a sales presentation, lasting approximately one and one half to two hours, the purpose of which is to sell the consumer a water softener or other water treatment system ranging in price from [*insert range of price of systems sold by Defendants*]. The notice shall also state that the sales presentation will include a test of the consumer's water for the purpose of measuring the

concentration of *[insert name of substances]* in the consumer's water. The notice shall be provided to the consumer and signed by the consumer and the sales representative prior to conducting a water test or making a sales presentation in the consumer's home.

6. Pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. § 206-216 (1980 and Supp. 1995), Defendants are permanently enjoined and restrained from engaging in any of the following acts or practices in the State of Maine:

a. offering a consumer, contacted by Defendants by telephone without the consumer initiating the telephone call, a water test without also disclosing orally during the same solicitation that the water test will be performed in conjunction with a sales presentation, lasting approximately one and one half to two hours, directed towards selling the consumer a water softening or other water treatment system ranging in price from *[insert range of price of systems sold by Defendants]*;

b. conducting a test of a consumer's water without first removing the aerator from the faucet from which the water sample is taken and running the water from that faucet for a minimum of three minutes prior to drawing the water sample for the test;

c. misrepresenting or creating the misimpression to consumers that, unless a water softener is installed, scaling and build-up will occur in their pipes and their appliances will have a shortened useful life;

d. representing to consumers the concentration of hardness in water in a manner that conflicts with the following classification table:

| Grains per Gallon | Milligrams per Liter | Description |
|-------------------|----------------------|-----------------|
| 1 - 4.3 | 0 - 75 | soft |
| 4.3 - 8.7 | 75 - 150 | moderately hard |
| 8.7 - 17.5 | 150 - 300 | hard |
| 17.5 and up | 300 and up | very hard |

e. representing that water tests performed in consumer's home are more accurate than water tests performed by state certified laboratories;

f. misrepresenting to consumers the results of water tests performed in consumers' homes;

g. representing to consumers that their water contains bacteria or any other potential health risk without first sending a sample of the consumers' water to a state certified testing laboratory for analysis;

h. representing an amount or percentage of money consumers who purchase a water softening system will save on household expenses, including, but not limited to, electricity and cleaning supplies;

i. failing to disclose orally to consumers the approximate number of gallons of water the recommended water treatment system will use on a weekly basis;

j. representing in the sales contract that the water test was conducted solely for the purpose of correctly sizing water treatment equipment; and

k. failing to disclose orally to consumers that it is the consumer's

responsibility to obtain a plumbing permit if the municipality in which the consumer resides requires a plumbing permit;

l. installing a water treatment system prior to issuance of a permit in a municipality which requires a plumbing permit for installation of the system;

m. failing to disclose orally, prior to the consumer signing the sales contract, whether the financing application provided to the consumer by

Defendants is for closed or open ended credit, whether the consumer is applying for a credit card, the applicable interest rate, the total financed cost of the purchase, and the name of the finance company;

n. providing consumers with applications for third party financing which do not contain the following disclosure in bold face type of a minimum size of ten points:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

o. providing consumers with applications for third party financing by finance companies which are not registered to do business in the State of Maine;

p. failing to allow cancellation of any contract within the time period represented by Defendants, including making a full refund within 10 days and removing the water treatment system within 20 days of the date of notification of cancellation; and

q. making any other false, misleading or deceptive representations to consumers.

7. Pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. § § 206-216 (1980 and Supp. 1995), at the time of sale, Defendants shall provide to each purchaser a fully and accurately executed copy of the Notice of Right to Cancel form attached to this Consent Decree as Exhibit A. Defendants shall retain the original of the fully executed copy of the document and provide the consumer with a copy of the fully executed document by attaching the Notice of Right to Cancel to the consumer's copy of the fully executed sale contract.

8. Pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. § § 206-216 (1980 and Supp. 1995), prior to entering into a contract for the sale of a water treatment system in the State of Maine, Defendants shall disclose in writing to each consumer, in a form to be submitted to and approved as to form and content by the Attorney General, the following information with respect to the system being sold. The written disclosure statement shall be provided in addition to any other disclosures required pursuant to state or federal law.

a. the number of grains per gallon of hardness measured in the consumer's water accompanied by a conversion of that number into the equivalent number of milligrams per liter using a conversion formula of number of grains x 17.1;

b. the following classification of hardness table:

| Grains per Gallon | Milligrams per Liter | Description |
|-------------------|----------------------|-------------|
|-------------------|----------------------|-------------|

| | | |
|-------------|------------|-----------------|
| 1 - 4.3 | 0 - 75 | soft |
| 4.3 - 8.7 | 75 - 150 | moderately hard |
| 8.7 - 17.5 | 150 - 300 | hard |
| 17.5 and up | 300 and up | very hard |

c. the identity and concentration of each substance measured in the consumer's water by the sales representative;

d. the tests conducted by the sales representative did not include tests for any health related substances and that tests for health related substances must be conducted by an independent laboratory certified by the State of Maine;

e. the average amount of water that the recommended system will use on a weekly basis;

f. the estimated annual cost of operating the recommended water treatment system, including the cost of electricity, salt, and other necessary supplies;

g. the rate charged by Defendants' for service calls;

h. it is the consumer's responsibility to obtain a plumbing permit prior to installation if the municipality in which the consumer resides requires a permit and that Defendants cannot install the system without a plumbing permit if one is required by the municipality;

i. the nature of the financing offered in the financing application provided to the consumer by Defendants and whether the credit offered is closed or open ended , whether the consumer is applying for a credit card, the applicable interest rate, the total financed cost of the purchase, and the name of the finance company;

j. Defendants may not begin work to install the system until

[insert date] when the consumer's three day right to cancel lapses if the sales contract requires Defendants to physically affix the water treatment system to the consumer's real estate.

9. Pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. § § 206-216 (1980 and Supp. 1995), Defendants shall disclose orally to each consumer in the State of Maine that the written disclosures referenced in paragraph 8 contain important information and should be read prior to making a decision to purchase, and shall afford the consumer a reasonable uninterrupted period to read said disclosures. The written disclosures required pursuant to paragraph 8 shall be signed by both the sales representative and consumer to acknowledge receipt and a copy shall be given to the consumer prior to acceptance of a deposit, agreement or commitment of any kind. Defendants shall make no oral or written statement to the consumer which in any manner contradicts or modifies any statement contained in the disclosure form.

10. Defendants are permanently enjoined and restrained in the State of Maine from violating any provision of the Unfair Trade Practices Act, 5 M.R.S.A. § § 206-216 (1980 and Supp. 1995).

9. Defendants are permanently enjoined and restrained in the State of Maine from violating any provision of the Consumer Solicitation Sales Act, 32 M.R.S.A. § § 4661-4671 (1988 and Supp. 1995).


10. Defendants are permanently enjoined and restrained in the State of Maine from violating the implied warranty of fitness for a particular purpose provision of the Uniform Commercial Code, 11 M.R.S.A. § 2-315 including, but not

limited to, failing to allow a consumer to cancel the transaction and to obtain a full refund when the consumer purchased a water treatment system from Defendants upon Defendants' recommendation that the system would solve a particular problem with the consumer's water and the system in fact did not solve the problem.

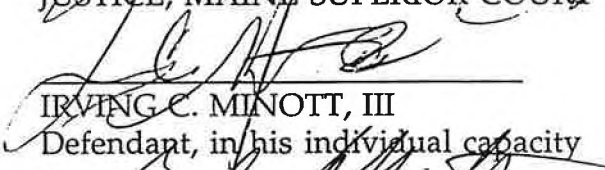
11. Defendants are permanently enjoined and restrained in the State of Maine from violating any provision of the Maine Consumer Credit Code provisions governing Home Solicitation Sales, 9-A M.R.S.A. § § 3-501-3-507 (1980 and Supp. 1995).

12. Jurisdiction is retained by this Court for the purpose of enabling any party to this Consent Decree to apply to this Court at any time for such further orders as may be necessary for the construction, modification, or enforcement of any other provision of this Decree, and for punishment pursuant to 5 M.R.S.A. § 209 for any violation of the provisions of this Decree.

Dated: 6-17-96


JUSTICE, MAINE SUPERIOR COURT

Dated:


IRVING C. MINOTT, III
Defendant, in his individual capacity

Dated:


GORDON H. SCOTT, ESQ.
Counsel for Defendant

Date: 6/11/96


AMY M. HOMANS, AAG
Counsel for Plaintiff

EXHIBIT A
NOTICE OF RIGHT TO CANCEL

(date of transaction)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO:

MOUNTAIN SPRINGS WATER TREATMENT COMPANY
54 WILSON STREET
BREWER, MAINE 04412

NOT LATER THAN MIDNIGHT OF _____.

I HEREBY CANCEL THIS TRANSACTION.

DATE: _____

BUYER'S SIGNATURE : _____

BUYER'S SIGNATURE: _____

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
)
 MOUNTAIN SPRINGS)
 WATER TREATMENT)
 COMPANY, a Maine)
 corporation, and)
 IRVING C. MINOTT III,)
 President,)
 Defendants)

COMPLAINT
(Injunctive Relief)

I. INTRODUCTION

1. This action is brought by the State of Maine pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-216 (1979 and Supp. 1995), the Consumer Solicitation Sales Act, 32 M.R.S.A. §§ 4661-4671 (1988 and Supp. 1995), the Maine Consumer Credit Code 9-A M.R.S.A. §§ 3-503(B) (1980 and Supp. 1995), and the Uniform Commercial Code, 11 M.R.S.A. §§ 2-101- 2-725 (1995) , to permanently enjoin Defendant Mountain Springs Water Treatment Company, (hereinafter referred to as Defendant Mountain Springs) and Irving C. Minott III (hereinafter referred to as Defendant Minott), from engaging in unfair and deceptive practices in the sale of water treatment systems, and to compel Defendants to pay restitution, civil penalties, costs of investigation and suit and attorney's fees.

II. PARTIES

2. Plaintiff State of Maine is a sovereign state and brings this action by and through the Attorney General pursuant to 5 M.R.S.A. § 209 (1979 and Supp. 1995), and the powers vested in him under the common law.

3. Defendant Mountain Springs Water Treatment Company is a Maine corporation with a principal place of business in Brewer, Maine. It is engaged in the business of selling, installing, and maintaining RainSoft water treatment systems and supplies.

4. Defendant Irving C. Minott III is president of Mountain Springs Water Treatment Company. Defendant Minott has at all relevant times resided in the State of Maine.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 M.R.S.A. § 209, 4 M.R.S.A. § 105, and 14 M.R.S.A. § 6051 (13).

6. Venue is properly laid in Kennebec County pursuant to 5 M.R.S.A. § 209.

IV. FACTS

A. Method of Conducting Sales

7. Defendant Mountain Springs and Defendant Minott are engaged in the business of selling and installing RainSoft water treatment and water softening systems (hereinafter referred to collectively as water treatment systems).

8. Defendant Minott actively supervises and controls the conduct of Defendant Mountain Springs' employees, including sales representatives and

telephone solicitors.

9. Defendant Mountain Springs facilitates sales of water treatment systems by making unsolicited telephone calls to potential customers at their residences and offering a "free" water test. In conjunction with the offer, Defendant Mountain Springs frequently states that it is doing a survey of the water in the consumer's area.

10. Defendant Mountain Springs schedules an appointment with willing consumers and arranges for one of its sales representatives to go to the consumer's residence. During the home visit, Defendant Mountain Spring's sales representative conducts tests on the consumer's tap water, obtains immediate results from the tests, and engages in an often extremely prolonged sales pitch directed at convincing the consumer that he or she needs to purchase a RainSoft water treatment system from Defendant Mountain Springs.

11. Many consumers who purchase Defendant Mountain Spring's water treatment systems enter into a contract that is executed and signed at the time of the sales representative's initial solicitation.

12. Many consumers finance their purchase of a water treatment system. Defendant Mountain Springs offers third party financing to consumers.

13. Defendant Mountain Spring's service technicians routinely install water treatment systems in consumers' homes within three business days of the date of the signing of the contract. Installation of the systems routinely takes several hours and must be performed by a licensed plumber.

B. Misrepresentations

14. Defendant Mountain Springs routinely makes numerous material misrepresentations in order to sell water treatment systems.

15. Defendant Mountain Springs intentionally creates the impression that the purpose of the "free water test" is to test the quality and condition of the consumer's water when in fact Defendant Mountain Springs conducts the test for the purpose of selling expensive (\$2500-\$6,000) water treatment systems

16. Defendant Mountain Springs routinely misrepresents the quality and condition of consumers' water and recommends that a water treatment system will correct the problems identified by Defendant Mountain Springs.

17. Defendant Mountain Springs misrepresents the risks presented by the quality and condition of the consumer's water and the benefits consumers' will enjoy as a result of installation of a water treatment system.

18. Defendant Mountain Springs fails to disclose to consumers the amount of water used by the recommended water treatment system.

19. Defendant Mountain Springs misrepresents or fails to disclose terms of financing offered to consumers and misrepresents the total financed cost to the consumer of purchasing the water treatment system.

20. Consumers rely on Defendant Mountain Springs' misrepresentations in the course of making the decision to purchase a water treatment system. As a result of their reliance on Defendant Mountain Springs' misrepresentations, many consumers purchase expensive water treatment systems that they do not need and/

or that do not perform as represented.

21. Defendant Mountain Springs' misrepresentations are made with the knowledge and consent of Defendant Minott.

C. 3 Day Right to Cancel

22. Defendant Mountain Spring's sale contract states that the consumer may have the right to cancel the agreement within three days. The contract does not state the date on which the right to cancel lapses.

23. The contract also fails to state the date prior to which Defendant Mountain Springs may not begin work.

24. The contract refers consumers to an "attached notice of cancellation form" for an explanation of the consumer's right to cancel. The contract also states that "Purchaser hereby acknowledges receipt of a Notice of Right to Cancel form."

25. Defendant Mountain Springs does not attach a notice of cancellation form to the consumer's contract. Defendant Mountain Springs routinely fails to provide a Notice of Right to Cancel form to consumers.

26. Defendant Mountain Springs' failure to provide consumers with adequate notice of their three day right to cancel and failure to wait three days from the date of the signed contract to install water treatment systems sold in the course of a home solicitation occur with the knowledge and consent of Defendant Minott.

D. 30 Day Satisfaction Award

27. Defendant Mountain Springs provides consumers, at the time of sale, with a document entitled "30 Day Satisfaction Award". The 30 Day Satisfaction

Award states that the consumer will be satisfied with the purchase within 30 days of installation.

28. Defendant Mountain Springs represents to consumers that the 30 Day Satisfaction Award is a 30 day trial period during which the consumer has the right to cancel the contract and return the equipment. Defendant Mountain Springs routinely fails to honor that right to cancel when exercised by dissatisfied consumers.

29. Defendant Mountain Springs' failure to honor the 30 day cancellation period occurs with the knowledge and consent of Defendant Minott.

E. Financing

30. Defendant Mountain Springs provides consumers with applications for financing by Household Retail Services, Inc. and American General Financial Center. American General Financial Center is not registered with the State of Maine as a foreign corporation and its contracts do not contain the following notice required by the FTC Rule Concerning Preservation of Consumers' Claims and Defenses (the "FTC Holder Rule):

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

V. VIOLATIONS

COUNT ONE

(Consumer Solicitation Sales Act\ Unfair Trade Practices)

31. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 6-30 of this Complaint.

32. Defendants' practice of misrepresenting facts material to a consumer's decision to purchase a water treatment system constitutes a pattern or practice of unfair and deceptive conduct in violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

33. Defendants' conduct also constitutes a violation of the Consumer Solicitation Sales Act, 32 M.R.S.A. § 4671(1)-(3) (Supp. 1995).

34. Defendants' conduct as described herein is intentional.

COUNT TWO
(Unfair Trade Practices Act)

35. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 6-30 of this Complaint.

36. Defendants' practice, with respect to sales made in connection with a salesman's direct contact accomplished by means of a personal visit or telephone call upon the consumer, at a place other than the Defendants's place of business and without the consumer soliciting the initial contact, of a) failing to orally inform consumers of their right to cancel, b) misrepresenting consumers' right to cancel, c) failing to attach the Notice of Right to Cancel form to the consumer's copy of the contract, and/or d) failing to furnish consumers with copies of the Notice of Right to Cancel form constitutes a pattern or practice of unfair and deceptive conduct in violation of the FTC Rule Concerning Cooling-Off Period For Door -to-Door Sales,

37. Defendants' conduct also constitutes a violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

38. Defendants' conduct as described herein is intentional.

COUNT THREE
(Uniform Commercial Code)

39. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 6-30 of this Complaint.

40. Defendants' practice of recommending and selling water treatment systems which Defendants represent will solve the problems with consumers' water but which, in fact, do not solve those problems, constitutes a violation of consumers' implied warranty of fitness for a particular purpose in violation of the Uniform Commercial Code, 11 M.R.S.A. § 2-315.

41. Defendants' conduct also constitutes a pattern or practice of unfair and deceptive conduct in violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

42. Defendants' conduct as described herein is intentional.

COUNT FOUR
(Consumer Solicitation Sales Act/Unfair Trade Practices Act)

43. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 6-30 of this Complaint.

44. Installation of Defendant Mountain Spring's water treatment systems in consumers' homes requires that the systems be permanently affixed to the real estate.

45. Defendants' practice of failing to wait three business days prior to installation of water treatment systems sold in connection with a salesman's direct contact accomplished by means of a personal visit or telephone call upon the consumer, at a place other than the Defendants's place of business and without the consumer soliciting the initial contact constitutes a violation of the Consumer Solicitation Sales Act, 32 M.R.S.A. § 4664-A.

46. Pursuant to 32 M.R.S.A. § 4670, Defendants' conduct also constitutes a violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

47. Defendants' conduct as described herein is intentional.

COUNT FIVE
(Unfair Trade Practices Act)

48. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 6-30 of this Complaint.

49. Defendants' practice of failing to wait three business days from the date on which the consumer signed the contract prior to installation of water treatment systems sold or in connection with a salesman's direct contact accomplished by means of a personal visit or telephone call upon the consumer, at a place other than the Defendants's place of business and without the consumer soliciting the initial contact constitutes a pattern or practice of unfair and deceptive conduct in violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

50. Defendants' conduct as described herein is intentional.

COUNT SIX
(Consumer Credit Code/Unfair Trade Practices Act)

51. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 6-30 of this Complaint.

52. Installation of Defendant Mountain Springs' water treatment systems in consumers' homes requires that the systems be permanently affixed to the real estate.

53. Defendants' failure to state in credit sales contracts provided to consumers who purchased a water treatment system in connection with a salesman's direct contact accomplished by means of a personal visit or telephone call upon the consumer, at a place other than the Defendants's place of business and without the consumer soliciting the initial contact, the date prior to which Defendant Mountain Springs may not install the water treatment system and the date on which the three day right to cancel lapses constitutes violations of the Maine Consumer Credit Code, 9-A M.R.S.A. § § 3-503(B) (1980 and Supp. 1995).

54. Pursuant to 9-A M.R.S.A. §3-507, Defendants' conduct as described also constitutes a violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

55. Defendants' conduct as described herein is intentional.

COUNT SEVEN
(Unfair Trade Practices Act)

56. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 6-30 of this Complaint.

57. Defendants' provision to consumers of applications for financing

which do not comply with the FTC Rule Concerning Preservation of Consumers' Claims and Defenses, 16 C.F.R. 433, constitutes an unfair and deceptive act or practice in violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207.

VI. RELIEF REQUESTED

Plaintiff requests this court to enter the following relief:

1. Enter a permanent injunction enjoining Defendants, their officers, agents, servants, employees and attorneys and persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise from:

A. Violating any provision of the Unfair Trade Practices Act, 5 M.R.S.A. § 206-216, including, but not limited, to:

1) Making false, misleading or deceptive representations in the course of selling any merchandise, including water treatment systems and supplies;

2) Failing to wait three business days from the date on which the consumer signed the contract before installing water treatment systems sold to consumers in connection with a salesman's direct contact accomplished by means of a personal visit or telephone call upon the consumer, at a place other than the Defendants's place of business and without the consumer soliciting the initial contact;

3) Failing to disclose to consumers, prior to signing the sales contract, the nature and terms of the financing agreement, including the applicable interest rate;

4) Failing to accurately disclose to consumers, prior to signing the sales contract, the total cost, including the total financed cost, of the sales contract;

5) Failing to fully comply with the provisions of the FTC Rule Concerning Cooling-Off Period For Door -to-Door Sales;

6) Failing to allow the cancellation of any contract within the time period represented by Defendants, including making a full refund within 10 days and removing the water treatment system within 20 days of the date of notification of cancellation; and

7) Failing to fully comply with the FTC Rule Concerning Preservation of Consumers' Claims and Defenses.

B. Violating any provision of the Consumer Solicitation Sales Act, 32 M.R.S.A. § §4661-4671 (1988 and Supp. 1995), including, but not limited to, failing to wait three business days from the date of the contract before installing water treatment systems sold to consumers in connection with a salesman's direct contact accomplished by means of a personal visit or telephone call upon the consumer, at a place other than the Defendants's place of business and without the consumer soliciting the initial contact;

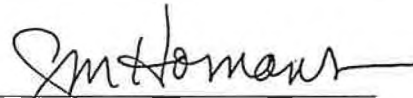
C. Violating the implied warranty of fitness for a particular purpose provision of the Uniform Commercial Code, 11 M.R.S.A. § 2-314.

D. Violating any provision of the Maine Consumer Credit Code provisions governing Home Solicitation Sales, 9-A M.R.S.A. § § 3-501-3-507 (1980 and Supp. 1995).

2. Order Defendants to pay restitution to all purchasers of water treatment systems who were subjected by Defendants to any of the unlawful practices described in this Complaint;
3. Order Defendants to pay to the Department of the Attorney General the costs of its investigation, suit and attorney fees;
4. Order Defendants to pay to the Department of Attorney General, pursuant to 5 M.R.S.A. § 209, civil penalties in an amount not to exceed \$10,000 for each intentional violation of the Unfair Trade Practices Act, 5 M.R.S.A. § 207; and
5. Order such other relief as may be necessary to ameliorate the effects of Defendants' unfair and deceptive practices.

Dated: 10/11/95

ANDREW KETTERER
Attorney General



AMY M. HOMANS
Assistant Attorney General
Public Protection Unit
State House Station 6
Augusta, Maine 04333
207 626-8867

EXHIBIT A
NOTICE OF RIGHT TO CANCEL

(date of transaction)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO:

MOUNTAIN SPRINGS WATER TREATMENT COMPANY
54 WILSON STREET
BREWER, MAINE 04412

NOT LATER THAN MIDNIGHT OF _____.

I HEREBY CANCEL THIS TRANSACTION.

DATE: _____

BUYER'S SIGNATURE : _____

BUYER'S SIGNATURE: _____