

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-15-33

STATE OF MAINE,

Plaintiff,

v.

CONSENT JUDGMENT

NATIONAL BATH SYSTEMS, LLC,

d/b/a

BATH FITTER,

Defendant.

Plaintiff, State of Maine, has filed a complaint against National Bath Systems, LLC, d/b/a Bath Fitter ("Bath Fitter"), alleging violations of the Maine Unfair Trade Practices Act, 5 M.R.S. § 205, *et seq.*, including but not limited to: violations of the Uniform Commercial Code, 11 M.R.S. §§ 2-314 and 2-315; violations of the Home Construction Contracts Act ("HCCA"), 10 M.R.S. § 1487; commencing plumbing installations without an internal plumbing permit having first issued in violation of Chapter 1 Section 4 of the Maine State Internal Plumbing Code; engaging in plumbing installations that violate the Maine State Internal Plumbing Code; and violating the prohibition against unlicensed activities pursuant to 10 M.R.S. § 8003-C.

All parties having consented to the entry of this Consent Judgment that resolves all of the State's claims alleged in the Complaint filed in this matter on March 2, 2015, including but not limited to injunctive relief, civil penalties, costs, and attorney fees, without constituting evidence against, or admission by, any party as to any issue of fact or law other than jurisdiction, it is hereby ORDERED and ADJUDGED as follows:

RECEIVED
STATE OF MAINE
ATTORNEY GENERAL

MAR 16 2015

STATE HOUSE AUGUSTA MAINE

I. JURISDICTION

1. The Court has personal jurisdiction over the parties and subject matter jurisdiction over this action. The Complaint states claims for relief pursuant to 5 M.R.S. § 209 of the Unfair Trade Practices Act (5 M.R.S. §§ 205-A, *et. seq.*)

II. INJUNCTION

2. Pursuant to 5 M.R.S. § 209 and M. R. Civ. P. 65, Defendant, its agents, servants, employees, assigns, and those persons in active concert or participation with them, who receive actual notice of the injunction are permanently enjoined from:

- A. Engaging in plumbing installations in Maine unless licensed to do so in accordance with applicable Maine law;
- B. Commencing plumbing installations in Maine without an internal plumbing permit having first issued;
- C. Engaging in plumbing installations in Maine unless those installations are in full compliance with the Maine State Internal Plumbing Code;
- D. Excluding or diminishing the mandatory implied warranties for home construction in Maine;
- E. Misrepresenting the license status of their employees in Maine; and
- F. Furnishing to residential consumers non-conforming written agreements, under the HCCA to perform construction work in Maine.

III. CIVIL PENALTY

3. Bath Fitter shall pay the Attorney General a civil penalty of \$750,000, with all but \$500,000 suspended. Accordingly, Bath Fitter shall pay \$250,000 of such penalty to the Maine Attorney General within 30 days of the effective date of this Consent Agreement. Bath Fitter shall make an additional installment payment of \$250,000 to the Maine Attorney General within one year of the effective date of this Consent Judgment. The suspension of the remaining

\$250,000 of this penalty shall be subject to Bath Fitter's material compliance with the injunctions listed above for a period of five (5) years (the "probationary period"), and with the terms and conditions listed below.¹

IV. CONSUMER REDRESS

4. Bath Fitter agrees to provide a free plumbing inspection to any and all homeowners of Maine properties at which Bath Fitter performed plumbing services or an installation, without regard to whether the current homeowner owned the property at the time the services or installation were performed ("the Consumers"), provided that the Consumer makes a timely request during the inspection period as set forth below. If Bath Fitter and a current homeowner disagree as to whether or not Bath Fitter performed plumbing services at a particular address, the Maine Attorney General or her designee, shall make the determination as to whether or not Bath Fitter performed plumbing service at the address in question, after reviewing the applicable Bath Fitter estimate/invoice and change order(s).

A. The Consumers shall have until September 1, 2015 (hereinafter "the Response Deadline") to request an inspection by calling a toll free number provided in the Press Release and the Notice Letter (as that document is defined below). The toll free number shall be manned between the hours of 8 am to 5 pm, Mondays through Friday, and include the ability for recording inspection requests during non-business hours.

¹ Payment shall be made by electronic funds transfer within thirty (30) calendar days of receiving written payment processing instructions from the State of Maine, Office of the Attorney General. The payment to the State of Maine, Office of the Attorney General, shall be used in the sole discretion of the Attorney General for reimbursement of costs and attorneys' fees, consumer protection purposes, and other law enforcement purposes.

There shall be no further obligation of Bath Fitter under these Consumer Redress provisions with respect to Consumers whose request for inspection has not been received by Bath Fitter by 5:00 pm of the Response Deadline set forth above.

B. With respect to any Consumer whose request is received by Bath Fitter on or before 5:00 pm of the Response Deadline and who grants Bath Fitter reasonable access to the home at a time between Mondays and Fridays, during normal business hours, Bath Fitter shall ensure that a Maine-licensed plumber chosen and paid for by Bath Fitter (the "Inspector") inspects the fittings and piping installed by Bath Fitter (the "Fittings and Piping"), for material compliance with the Maine Plumbers' Examining Board Rules, the Maine State Internal Plumbing Code, and municipal codes, where applicable at the time of installation (the "Applicable Rules") and reports in writing to the Consumer, Bath Fitter, and the Maine Attorney General, of the findings of the inspection. Each proposed plumbing inspector shall be approved by the Maine Office of the Attorney General. Notwithstanding any stipulation herein, no inspection shall be required in instances where the Fittings and Piping cannot be easily accessed, and inspected, without causing any damage or disturbance to any wall, sheetrock, wall covering, bathtub, shower, shower base or other surface (the "Inaccessible Fittings and Piping"), unless access is otherwise timely provided by the Consumer. Bath Fitter shall ensure that upon discovering Inaccessible Fittings and Piping, the Inspector promptly notifies both Bath Fitter and the Consumer in writing of the existence of "Inaccessible Fittings and Piping." If upon receiving notice of "Inaccessible Fittings and Piping" the Consumer does not promptly provide access, the Consumer will not be entitled to any further redress by Bath Fitter under these Consumer Redress provisions. If the Consumer elects to make

Inaccessible Fittings and Piping accessible to the inspector, such access shall be provided at the Consumer's cost and expense including any wall demolition and subsequent cost of repair. Should any Consumer fail to grant the Inspector reasonable access to the home and the inaccessible Fittings and Piping at a time between Mondays and Fridays during normal business hours within 60 days of the first inspection access request made by Bath Fitter then there shall be no further obligation of Bath Fitter under these Consumer Redress provisions in connection with such Consumer.

C. If the Inspector concludes, after his/her inspection, that a Consumer's Fittings and Piping, installed by Bath Fitter, do not comply with the Applicable Rules, Bath Fitter shall cause any such deficiencies to be promptly addressed and corrected, at no cost to the Consumer, subject to the above in the case of Inaccessible Fittings and Piping, provided Consumer grants Bath Fitter reasonable access to his Customer Home between Mondays and Fridays during normal business hours, within 60 days of the first repair access request made by Bath Fitter. Bath Fitter shall obtain all necessary permits prior to undertaking the corrective work, at no cost to the Consumer.

D. Bath Fitter shall maintain and provide to the Office of the Attorney General, a monthly phone log which includes the date and identity of each consumer for the inspection calls received. Bath Fitter shall also provide the dates of inspections performed (and identity of the consumer), and copies of all inspection letters to the Office of the Attorney General.

5. Bath Fitter agrees to send a letter to all Bath Fitter Consumers for whom Bath Fitter has provided services that may involve plumbing, between the dates of June 1, 2011 and June 1, 2014 ("the Recent Consumers"), which Recent Consumers and their addresses are

listed in Exhibit A attached hereto. All letters to Recent Consumers will be addressed with the Recent Consumers' names plus the phrase "... or Homeowner" at the address of the home where the work was performed by Bath Fitter as set forth in the attached Exhibit A. The text of the letter shall read as set forth in the form attached hereto as Exhibit B (the "Notice Letter"). The Notice Letter shall be sent by Bath Fitter no later than 15 days after the effective date of this Consent Judgment.

6. The suspended civil penalty of \$250,000 shall become payable in its entirety immediately upon a determination by this Court that Bath Fitter has, within the probationary period, violated any injunction herein or has not substantially complied with the other terms and conditions set forth above. If there has been no Court determination of violation(s) and no Maine Attorney General complaint alleging a violation of this Consent Judgment is pending in Court against Bath Fitter within the probationary period, Bath Fitter shall have no further liability with regard to the suspended civil penalty.

V. RELEASE

7. In exchange for Bath Fitter's agreement to the provisions set forth herein, the State of Maine Attorney General releases and forever discharges any claims that she may have, or may have had, against Bath Fitter, any affiliate or any of their shareholders, directors, officers, agents, servants, employees or assigns pursuant to that Complaint, filed in this matter on March 2, 2015, arising from possible or actual violations of Maine laws, rules or regulations (collectively, the "Rules") (including, without limitation, any laws, rules or regulations relating to plumbing) relating in any way to (i) the business of engaging in the sale and installation of, or (ii) any installation of, *inter alia*, bathtubs, showers, bathtub liners, shower floors, shower bases, shower base liners, bath walls, shower walls, other walls, domed ceilings and other bathroom

acrylic accessories and products for residential use, prior to the date this Consent Judgment becomes effective.

8. Nothing in this Consent Judgment shall affect the rights any Bath Fitter consumer might otherwise hold.

VI. RETENTION OF JURISDICTION

9. Jurisdiction is retained by this Court for the purpose of enabling any party to apply to the Court at any time for further order and directions as may be necessary or appropriate for the modification, construction, enforcement, or execution of this Consent Judgment. Each and every violation of this Consent Judgment shall be treated as a separate contempt thereof.

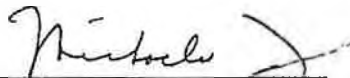
VII. EFFECTIVE DATE

IT IS HEREBY ORDERED that this Consent Judgment shall be effective immediately upon entry.

This Consent Judgment may be incorporated by reference on the court docket.


Dated:

3/12/15


Justice, Maine Superior Court


Dated:

8/2/15


Christopher L. Mann, AAG, #7283

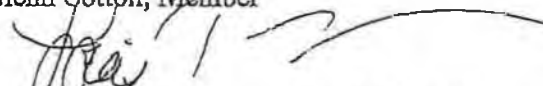
Dated:

February 23, 2015


National Bath Systems, LLC, by
Glenn Cotton, Member

Dated:

February 23, 2015


ATTEST: LOUIS TASCHEREAU

AGREEMENT

This Agreement is made this 15th day of July, 2015, by and between the Office of the Maine Attorney General ("Attorney General") and the Maine Career & Technical Education ("CTE") programs at the Foster CTE Center, in Farmington, Maine, the Oxford Hills Technical School, in Norway, Maine, and the Lewiston Regional Technical Center, in Lewiston, Maine ("the Schools").

For and in consideration of the grant payments and agreements herein, the Attorney General and the Schools agree to the terms, conditions and expectations set forth in this Agreement.

WHEREAS, the Attorney General reached a 2015 settlement by consent judgment with Bath Systems, LLC, d/b/a Bath Fitter, concerning alleged violations of the Maine Unfair Trade Practices Act, including unlicensed plumbing, attempts to modify the implied warranty, misrepresentation of license status, violations of the Internal Plumbing Code, including unpermitted and uninspected plumbing installations, and violations of the Maine Home Construction Contracts Act.

WHEREAS, in accordance with the court order, the Attorney General desires that the Bath Fitter settlement funds be used for consumer protection and education, including training in compliance with Maine plumbing laws, rules and codes. The Attorney General believes that Maine consumers benefit from knowledgeable plumbers and that such knowledge begins with the education of students seeking to sit for a Maine plumbing examination.

WHEREAS, the above named Schools offer no plumbing instruction programs, but are state certified to do so and wish to commence such programs, but require initial funding for the first two years of a new programs such as these.

WHEREAS, the Schools have dedicated classroom and lab space for plumbing instruction, and the willingness to hire instructors and develop the administration necessary to teach these programs.

THEREFORE, the Attorney General agrees to furnish each School \$60,000.00 per school year, for two school years, subject to the following terms and conditions.

1. The programs must be approved by the respective state and local educational authorities, including School Boards and Committees.
2. The programs must be established according to state standards, must use Maine licensed master plumbers as instructors, and must be populated with students according to the terms, conditions and expectations set forth herein.

3. All programs will be designed to prepare the students to sit for the Maine journeyman's examination.
4. The Schools shall make all reasonable efforts to seek reimbursement from the state and local authorities to continue the programs after the grant funds from the Attorney General terminate.
5. Payments to the Schools shall be made annually upon invoice submitted to the Attorney General. The Schools should allow 60 days for payment after submission of the invoice.
6. The Schools agree that the funds shall be used only for plumbing education, and related expenditures, including the cost of instructors (including benefits if applicable), equipment, supplies, and written materials. The schools further agree that if the plumbing programs are not established for the school years as set forth herein, for any reason whatsoever, the funds shall be returned to the Attorney General upon demand.
7. The Schools agree that the students will receive comprehensive instruction in the use and compliance with Maine law, including the relevant plumbing statutes, the Plumbers' Examining Board Rules, and the Maine State Internal Plumbing Code.
8. The second annual payments to the Schools are subject to Bath Fitter's continued compliance with the consent judgment with regard to the completion of the settlement payment.
9. The Director of each School shall be the administrator for this Agreement. Each Director shall submit a progress/status report to the Attorney General, describing the current program, a general accounting of expenditures and the number of students completing each year of the program, no later than sixty (60) days after the completion of each school year.

A summary of the programs.¹

Foster CTE Center/Mt. Blue Campus/RSU 9: This will be a ½ time program beginning September 2015, and a full time program beginning September 2016. The approximate cost for 2015 is \$60,000 (part-time instructor plus facilities and equipment) and 2017 is \$60,000 (full time instructor). An estimated 8 students are expected to attend the first year and 18 students the second year.

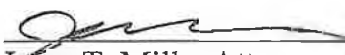
¹ Attachments 1, 2, and 3 more fully outline the programs and are incorporated herein.

Oxford Hills Technical School/MSAD #17: This full time program will begin September 2016-2017 and continue through the 2017-2018 semesters. The approximate cost for each year is \$60,000.00. An estimated 16 students are expected to attend the first school year and 28 students the second school year.


Lewiston Regional Technical Center/RSU-11: This full time program will begin September 2016, and continue through the 2017-2018 school years. The approximate cost for each year is \$60,000.00. An estimated 16 students are expected to attend for the 2016-2017 year and 32 students for the 2017-2018 school year.

ATTORNEY GENERAL

Dated: 7/16/15


Janet T. Mills, Attorney General

Dated: 7/15/15


Christopher L. Mann, AAG

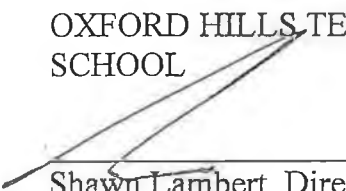
FOSTER CTE/MT. BLUE

Dated: 7/15/15


Glenn Kapiloff, Director

OXFORD HILLS TECHNICAL
SCHOOL

Dated: 7/16/15


Shawn Lambert, Director

LEWISTON REGIONAL TECHNICAL
CENTER

Dated: 07/15/2015


Rob Callahan, Director

Foster CTE Center

Glenn Kapiloff, Director
Mt. Blue Campus/RSU #9
Farmington, Maine
04938

Estimated Start Date

September 1, 2015 for one class (half time instructor).
September 1, 2016 for full programming (two classes-full time instructor).

Facilities

This School has a program incubator space that is designed for new program start-up. It is currently empty and being used for storage. The School will also have access to a classroom adjacent to the space. It has 220 wiring and compressed air, but additional equipment will need to be installed.

Instructor

Several local residents have expressed an interest in teaching the program. The School will need to complete interviews and verify certification requirements.

Cost of Instructor

\$30,000 including benefits for 1/2 time instructor first year.
\$60,000 including benefits for full time instructor for second year.

Anticipated number of students

2015-16: 8 students
2016-17: 18 students

Classroom/Hands-On

Students will divide time between classroom and lab for hands-on. The ratio varies but would be on average 30% classroom and 70% lab. To be an approved program, students need at least 350 hours of instruction each year. This translates to 105 hours of classwork and 245 hours of lab work. All work would use and meet applicable laws, rules and codes.

Approval

A Plumbing and HVAC program was approved by the Superintendent Advisory Board earlier this year. It was also presented (but not voted on) at the Mt Blue RSU 9 School Board. Once the pilot program begins, the program will need to be approved by the Maine Department of Education.

Curriculum and Assessment

The School will likely use the NCCER Plumbing standards and accompanying texts. Students would take the NCCER or NOCTI pre- and post-assessment. The goal would be for students to take the journeyman exam but this will likely take the cooperation of the Maine Department of Labor since the DOL maintains the trade registries.

Funds

The sequence of the use of funds will depend on how they are disbursed. Generally, the School would accept them into the CTE account of the Mt Blue RSU 9 School District account and then be earmarked for this particular program. This School is audited annually and has been found to have adequate internal controls. Of the \$60,000 per year, the School will use \$30,000 for a part time instructor and \$30,000 for facilities and equipment the first year. The second year the School will use \$60,000 for a full time instructor and purchase supplies with district funds.

Equipment and Tools

Tools and equipment would be purchased in the first year in accordance with Maine State DOE program approval process. This would be done in collaboration with Program Advisory Committee recommendations and current industry trends.

Oxford Hills Technical School

Shawn Lambert, Director
P.O. Box 313
Norway, ME 04268

Estimated Start Date

September 1, 2016 for full programing.

Facilities

This School has a classroom and lab that were built for a plumbing and heating program in 1999. The room is plumbed and piped and includes installed furnace flues. Some renovations may be needed.

Instructor

Hiring will need to be accomplished.

Cost of Instructor

\$60,000 including benefits for full time instructor.

Anticipated number of students

2016-17: 16 Plumbing 1 students
2017-18: 16 Plumbing 1 and 12 Plumbing 2 students.

Classroom/Hands-On

Students will divide time between classroom and lab for hands-on. The ratio varies but would be on average 30% classroom and 70% lab. To be an approved program, students need at least 350 hours of instruction each year. This translates to 105 hours of classwork and 245 hours of lab work. All work would use and meet codes.

Approval

This School will first need program approval by the Maine Vocational Region 11 School Board. It will also need to be approved by the Maine Department of Education.

Curriculum and Assessment

This program will likely use the NCCER Plumbing standards and accompanying texts. Students would take the NCCER or NOCTI pre- and post-assessment. The goal would be for students to take the journeyman exam but this will likely take the cooperation of the Maine Department of Labor since the DOL maintains the trade registries.

Funds

The sequence of the use of funds would depend on how they are disbursed. Generally, the School would accept them into the general fund and then be earmarked for this program. This School is audited annually and has been found to have adequate internal controls.

Equipment and Tools

Additional tools and equipment for the program will need to be purchased.

Lewiston Regional Technical Center

Rob Callahan, Director
Lewiston Regional Technical Center
156 East Avenue
Lewiston Maine 04240
(207)795-4144

Estimated Start Date

September 1, 2016 for full programming

Facilities

This School has a classroom and adjoining shop space that was built for a plumbing program when the School was originally built. The room/shop is plumbed and piped but will require some updating to bring the plumbing, electrical and ventilation up to current code and be made suitable for instruction.

Instructor

This School is currently in a search mode for an instructor.

Cost of Instructor

\$60,000, including benefits for full time instructor.

Anticipated number of students

2016-17: 16 Plumbing 1 students
2017-18: 16 Plumbing 1, and 16 Plumbing 2 students

Classroom/Hands-On

This program will utilize experiential learning as the instructional basis. All students will receive substantial exposure to "live work" both in shop settings as on supervised build sites (i.e. Seeds for Peace cabins to be built, wired and plumbed by our trades programs). In addition, this School will work closely with local employers to better understand local employment conditions and working environments.

Approval

This School requires approval from the Lewiston School Committee (they are aware that the request is pending), and approval from the Maine Department of Education. This School has begun some of the preliminary work (student survey's, local employment data review) in anticipation of our application to these bodies.

Curriculum and Assessment

This program will likely use the NCCER Plumbing standards and accompanying texts. Students would take the NCCER or NOCTI pre- and post-assessment. The goal would be for students to take the journeyman exam but this will likely take the cooperation of the Maine Department of Labor since the DOL maintains the trade registries.

Funds

Funds would be distributed to LRTC through the Lewiston School Department Business Office in compliance with any and all terms of this agreement. The Business Office is audited annually by a public firm.

State Reimbursement

LRTC operates on an expenditure-driven system in which it is reimbursed for approved expenses by the state for funds two years after they are expended. Consequently, this program will need state approval for the program, start and fund the program for two years, and then be eligible for reimbursement for those expenses two years later. As a result, if the School can support a new program for two years, the state will support the program beginning in the third year.

Equipment and Tools

The School will require updated equipment and tools for this program and will work in conjunction with local business to see what they might be able to donate to the program. Beyond that the School will need to identify other funding sources for this critical aspect of the program.

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,

Plaintiff,

v.

COMPLAINT
(Injunctive relief, damages
and civil penalties sought)

NATIONAL BATH SYSTEMS, LLC,

d/b/a

BATH FITTER,

Defendant.

I. INTRODUCTION

1. The Attorney General brings this action against National Bath Systems, LLC, d/b/a Bath Fitter ("Bath Fitter"), in the name of the State of Maine, pursuant to the Maine Unfair Trade Practices Act, 5 M.R.S. § 205-A, *et seq.*, the Uniform Commercial Code, 11 M.R.S. §§ 2-314 *et seq.*, the Home Construction Contracts Act, 10 M.R.S. § 1487, and the prohibition against unlicensed activities pursuant to 10 M.R.S. § 8003-C, seeking permanent injunctive relief, civil penalties, damages, costs and attorney fees.

II. PARTIES

2. Plaintiff, State of Maine ("State"), is a sovereign state that brings this action by and through its Attorney General pursuant to 5 M.R.S. §§ 191 and 209 and the powers vested in her by common law. The Attorney General believes this action to be in the public interest.

3. Defendant is a Vermont limited liability company, with the Maine branch located at 460 Riverside St., Unit 2, Portland, Maine 04103. At all times relevant to this complaint, Defendant was engaged in trade and commerce, supplying plumbing and bath fixtures and building and renovating residential and commercial bathrooms.

III. JURISDICTION

4. This Court has jurisdiction over this action, pursuant to 4 M.R.S. § 105, 5 M.R.S. § 209 and 10 M.R.S. § 8003-C(5).

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

IV. STATUTORY BACKGROUND

6. Pursuant to 5 M.R.S. § 207, the Maine Unfair Trade Practices Act ("UTPA") unfair or deceptive acts or practices in the conduct of any trade or commerce are ... unlawful."

7. Pursuant to 5 M.R.S. § 209:

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public interest, [s]he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice

8. Pursuant to 5 M.R.S. § 209, each intentional violation of 5 M.R.S. § 207 that results from unfair or deceptive conduct, is a civil violation for which a penalty of up to \$10,000 may be imposed. A trade practice may be unfair or deceptive even if the business had no intent to deceive.

9. Pursuant to 14 M.R.S. § 1522(1)(A), if the State prevails in an action to enforce 5 M.R.S. § 207, brought by the Attorney General, the Court shall award litigation costs, including court costs, reasonable attorney fees, and reasonable expert witness fees.

10. Pursuant to the Home Construction Contracts Act ("HCCA"), 10 M.R.S. §§ 1486-1490, a home construction contract for more than \$3,000 in materials or labor must be in writing, and must contain the provisions that are set forth in the statute. A "home construction contract is a contract to build, remodel or repair a residence, including not only structural work, but also ... plumbing" 10 M.R.S. § 1486(4).

11. Pursuant to 10 M.R.S. § 1487(7), a home construction contractor warrants that "the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use." The rights, obligations and warranties, set forth in the Maine Uniform Commercial Code ("UCC") apply to a home construction contract.

12. Pursuant to 10 M.R.S. § 1490, any violation of the HCCA constitutes prima-facie evidence of a violation of the UTPA.

13. Pursuant to 11 M.R.S. §§ 2-314 and 2-315 respectively, of the Uniform Commercial Code, consumer goods and services are subject to the implied warranties of

merchantability and fitness for a particular use if they are provided by a seller in the business of providing such goods and services.

14. Pursuant to 11 M.R.S. § 2-316, implied warranties for merchantability and fitness for purpose cannot be excluded, modified or waived for consumer goods, which are used or bought primarily for personal, family or household purposes.

15. Pursuant to 32 M.R.S. § 3302, a license is required for any person, corporation, partnership or other entity who is engaged in plumbing or performing plumbing installations.

16. Pursuant to 10 M.R.S. § 8003-C(4), a person who practices or represents to the public that the person is authorized to practice a profession or trade without first obtaining a license as required by this title, commits a civil violation punishable by a fine of not less than \$1000, but not more than \$5000 for each violation.

17. Pursuant to CMR 02-395 Chapter 4(1)(B), Chapter 1 Section 103.1 of the Maine Internal Plumbing Code, and municipal codes and ordinances, an entity who engages in the installation of plumbing cannot commence the installation until a plumbing permit has issued.

V. FACTS

18. Since 1999, Bath Fitter has performed in excess of 13,000 bathroom installations, improvements or renovations in the State.

19. Bath Fitter advertises by print and television media announcing "[w]ith Bath Fitter®, style and safety are easily affordable. Call us for a free in-home estimate."

20. Bath Fitter sales representatives respond to consumer inquiries with a visit to the consumer's home. Consumers can select the type of tub or shower, acrylic wall systems (surrounds), on-off valves, drains, traps, vents, toilets, sinks and other fixtures and accessories for the bath. Existing bathtubs can be removed and showers installed and vice-versa. Shower heads and on-off valves can be relocated, valve functions can be modified, waste drains can be converted from tub overflow to a straight shower drains, and can be relocated. Finally, Bath Fitter will install whatever plumbing is required for the new configuration, including new supply and waste lines, drains, solder copper fittings, plumb fixtures and all other related installations.

21. For example, the contract for one 2011 installation (BF_MECID000048), makes no mention of a plumbing installation. However, an inspection revealed that an unlicensed Bath Fitter employee converted an existing tub to a shower. To do so, he removed the existing tub plumbing, installed copper fittings, extended the copper water supply lines, installed a new PVC shower drain, p-trap and trap arm (and used an illegal Fernco fitting in doing so), installed a new tub and shower valve and installed a new shower head. These activities constitute the practice of plumbing as defined by code. In this example, the Bath Fitter employee performed the installation without a permit, a licensed plumber, or an inspection by the authority having jurisdiction and, the installation did not comply with the Maine Internal Plumbing Code.

22. A review of 1788 Bath Fitter contracts, for jobs performed from approximately January 1, 2010 through July 2013, and produced pursuant to a civil investigative demand

("CID"), clearly specified work that involved plumbing installations, for which a plumbing license is required, in 23.5% of the contracts reviewed. This percentage, extrapolated to 13,000 installations, represents 3,055 violations.

23. Upon information and belief, a certain percentage of the 13,000 plus installations, the contracts for which have not been reviewed, also contain violations of the Maine State Internal Plumbing Code and Maine Plumbing Board rules.

24. Upon information and belief, future inspections to be made pursuant to this complaint, are expected to increase the total number of unlicensed plumbing installations, permit violations and code violations.

25. All of the above described plumbing installations were performed by Bath Fitter employees, without the consumer or Defendant first securing permits from the authority having jurisdiction.

26. The failure to secure permits (or the failure to advise consumers that the work to be performed required permits), for those jobs where plumbing was performed, has exposed the consumer (or subsequent purchaser or assigns) to permit fees, late penalties, costs of correction (in the event of plumbing violations), costs of inspection and diminution in home value.

27. Defendant, pursuant to the CID, furnished a list of eight "installers" none of whom are licensed to perform plumbing installations in the State of Maine.

28. Each individual unlicensed plumbing installation is a separate violation under the UTPA.

29. Pursuant to the CID document review, permits should have been secured for at least 23.5% of the 13,000 installations, prior to beginning the installation. This failure to secure permits represents 3,055 potential violations of the plumbing code.

30. Because no plumbing permits were secured, the plumbing installations were not inspected for safety and compliance with the Maine Internal Plumbing Code.

31. Each failure to secure a plumbing permit is a violation of the authority having jurisdiction's municipal code, the Plumbing Examiner's Board Rules and the UTPA.

32. The Bath Fitter sales representative provided a two page estimate of costs and disclaimers to the consumer, which if approved, became the contract for the installation. If accepted the same day the estimate is written, a 10% discount is generally given to the consumer.

33. The Bath Fitter contract lists the total cost; a general scope of the work; including the fixtures selected for installation, and is dated and signed by both the consumer and the sales representative.

34. However, the standard Bath Fitter contract lacks the following provisions as mandated by the HCCA:

- A. The warranty statement, pursuant to 10 M.R.S. § 1487(7);
- B. The estimated date of commencement and the date when the work will be substantially completed, pursuant to 10 M.R.S. § 1487(3);
- C. The dispute resolution language, pursuant to 10 M.R.S. § 1487(8);
- D. The change order statement, pursuant to 10 M.R.S. § 1487(9);
- E. The consumer protection information, pursuant to 10 M.R.S. § 1487(13); and
- F. The notice to consumers regarding enforcement of their rights, pursuant to 10 M.R.S. § 1487(14).

35. Each violation of the HCCA constitutes prima-facie evidence of a separate unfair trade practice under the UTPA.

36. A review of the 1788 contracts produced pursuant to the CID, indicated a violation rate of 100% (adjusted to 90% to conform with the restrictions of the HCCA).

37. Bath Fitter used the same standard contract with its customers for these 13,000 plus installations, and upon information and belief, continued to use that same contract until June 1, 2014.

38. After the installation was completed, Bath Fitter distributed to each of its customers a document entitled "Limited Lifetime Quality Assurance Product Warranty."

39. The Limited Lifetime Quality Assurance Product Warranty, on its face, improperly attempts to exclude, disclaim, or modify Maine's implied warranty provisions for goods and services, in violation of the Uniform Commercial Code, 11 M.R.S. § 2-316.

40. Upon information and belief, each of the 13,000 plus Quality Assurance Product Warranties given consumers, contain identical warranty language.

41. Each violation of section 2-316, arising from the retail sale of consumer goods and services, constitutes a separate violation of the UTPA.

42. One 2013 contract reviewed (BF_CID-003751), was for converting a fiberglass tub to a shower. The contract noted "convert tub drain and overflow to shower," with the language "no warranty on plumbing." Attempting to disclaim Maine's implied warranties violates the UTPA, the HCCA, and the UCC.

43. In November 2013, Bath Fitter sent a mass mailing to Maine residents with the caption "REINVENT YOUR BATHROOM." That mailing states "Count on our *licensed*, insured and bonded employees," which misrepresents the license status of Bath Fitter employees and implies that they are licensed plumbers. (Emphasis added).

44. Upon information and belief, Defendant mailed in excess of 10,000 of these mailings to Maine residents.

45. Each separate misrepresentation mailed is a violation of the UTPA and Title 10 § 8003-C(4) (representing to the public that a person is authorized to practice a trade without first obtaining a license). Under section 8003-C(4), such conduct is punishable by a fine of not less than \$1000 but not more than \$5000 for each violation.

46. On November 12, 2013, a 10-day notice pursuant to 5 M.R.S. § 209 (offering an opportunity to meet with this office prior to filing suit), was mailed first class, postage paid to Defendant, who responded timely.

47. Upon information and belief, Defendant continued to engage in unfair trade practices, including but not limited to unlicensed and un-permitted plumbing in the State of Maine until June 1, 2014.

COUNT I

(Unlicensed plumbing, breach of 10 M.R.S. § 8003-C(4) and the UTPA.)

48. The State repeats and realleges paragraphs 1 through 47 of the complaint as though fully set forth herein.

49. Since 1999, Defendant engaged in at least 3055 separate instances of unlicensed plumbing, in violation of 10 M.R.S. § 8003-C(4).

50. Each instance of unlicensed practice is a violation of the UTPA and of 10 § 8003-C(4).

51. Defendant's conduct as described herein is intentional, ongoing, and has harmed consumers.

COUNT II

(Installation of plumbing without permit issuance, breach of the plumbing code and the UTPA.)

52. The State repeats and realleges paragraphs 1 through 51 of the complaint as though fully set forth herein.

53. Since 1999, Defendant has performed or participated in roughly 3055 un-permitted plumbing installations, in violation of the Maine Internal Plumbing Code.

54. Each installation of plumbing without the issuance of a plumbing permit is a separate violation of the UTPA and the Internal Plumbing Code.

55. Each failure to obtain a plumbing permit or each failure to advise their customers that a permit is required, has exposed those customers to increased permit fees, costs to correct plumbing violations (where present) and costs for inspections.

55. Defendant's conduct as described herein is intentional, ongoing, and has harmed its consumers.

COUNT III

(Misrepresentation as to licensed status, violation of the UTPA.)

56. The State repeats and realleges paragraphs 1 through 55 of the complaint as though fully set forth herein.

57. Defendant's mass mailing represented that Bath Fitter employees are licensed. It is not unreasonable for the general public to conclude the employees are licensed Maine plumbers.

58. As such, Defendant represented to the public that their employees are authorized to perform plumbing installations, when they were not so licensed.

59. This misrepresentation induced consumers to enter into contracts with Defendant.

60. Each separate misrepresentation is a violation of 10 M.R.S. § 8000-C(4) and the UTPA.

61. Defendant's conduct as described herein is intentional and has harmed consumers.

COUNT IV

(Violation of the HCCA and of the UTPA.)

62. The State repeats and realleges paragraphs 1 through 61 of the complaint, as though fully set forth herein.

63. Defendants' home construction contracts for the 13,000 plus installations failed to comply with the HCCA.

64. An estimated 90% of the 13,000 plus installations involved residences with a contract cost in excess of \$3,000.

65. Each individual use of a non-conforming contract is a separate violation of both the HCCA and the UTPA.

66. Defendant's use of non-conforming construction contracts is intentional and has harmed consumers.

COUNT V

(Breach of the Maine Internal Plumbing Code-code violations.)

67. The State repeats and realleges paragraphs 1 through 66 of the complaint.

68. Defendant has performed plumbing installations that fail to conform to the Maine Internal Plumbing Code, in violation of the Plumbers' Examining Board Rules.

69. Each individual code violation is a separate violation of both the Plumbers' Examining Board Rules and the UTPA.

70. Defendant's plumbing code violations are intentional and have harmed consumers.

RELIEF REQUESTED

71. WHEREFORE, Plaintiff requests the following relief:

A. Find that Defendant intentionally engaged in unlicensed plumbing, in violation of both the UTPA and 32 M.R.S. § 3302.

B. Find that Defendant intentionally represented to the public that their employees were authorized to practice plumbing, when in fact they were not, in violation of both 10 M.R.S. § 8003-C(4) and the UTPA.

C. Find that Defendant intentionally engaged in the installation of plumbing without an internal plumbing permit having first issued for each installation, in violation of both CMR 02-395 Chapter 4(1)(B), Chapter 1 Section 4 of the Maine Internal Plumbing Code, and the UTPA.

D. Find that Defendant intentionally engaged in plumbing installations with violations of the Maine Internal Plumbing Code.

E. Find that Defendant intentionally violated the UTPA by making false representations to consumers, including those made to induce customers to enter into contracts for bath installations and renovations, by representing to consumers that their installers are licensed plumbers.

F. Find that Defendant intentionally violated the UTPA and the HCCA by failing to include the required provisions in their home construction contracts.

G. Find that Defendant intentionally violated the UCC, HCCA and the UTPA by attempting to exclude, waive or modify the implied warranties of habitability and fitness.

H. Find that Defendant's intentional actions exposed consumers and their assigns, to damages, including but not limited to: penalties for failing to secure plumbing permits, increased costs to correct plumbing violations, inspection fees and diminution in home value.

72. Pursuant to 5 M.R.S. § 209 and M. R. Civ. P. 65, permanently enjoin Defendant, their agents, servants, employees and those persons in active concert or participation with them, who receive actual notice of the injunction from:

- A. Engaging in unlicensed plumbing installations in Maine.
- B. Engaging in plumbing installations without an internal plumbing permit having first been issued.
- C. Engaging in plumbing installations that violate the Maine Internal Plumbing Code.
- D. Attempting to exclude, waive, or modify the implied warranties in home construction contracts.
- E. Misrepresenting the license status of their employees.
- F. Furnishing non-conforming written agreements to consumers to perform construction work in Maine.
- G. Failing to inform consumers that a permit must be secured prior to commencing a plumbing installation.

73. Pursuant to 5 M.R.S. § 209, assess a civil penalty against Defendant of up to \$10,000 per violation for each intentional and non-intentional violation of the UTPA.

74. Pursuant to 10 § 8003-C, assess civil violations against Defendant of not less than \$1000, but not more than \$5000 for each violation of unlicensed practice.

75. Pursuant to 5 M.R.S. § 209 and 14 M.R.S. § 1522(1)(A), order Defendant to pay the Attorney General her costs of suit and investigation (including inspections), and her attorney fees.


76. Order that Defendant provide their consumers and assigns the opportunity to have all jobs involving plumbing installations inspected by the authority having jurisdiction, or a licensed plumber or third party inspector, for compliance with the Maine Internal Plumbing Code.

77. Order that Defendant reimburse their consumers and assigns for any costs paid for internal plumbing code permits, penalties, corrective plumbing work and inspections.

78. Order such other and further equitable relief as the Court may deem necessary to remedy the effects of Defendant's unfair and deceptive business practices.

JANET T. MILLS
ATTORNEY GENERAL

Dated 3/2/15



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