

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. CV-01-181 &

CV-99-131

MARY ELLEN NELSON,  
d/b/a TIMBERLAND  
ASSOCIATES,

Plaintiff

v.

**JUDGMENT**

STATE OF MAINE,

Defendant

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STATE OF MAINE,

Plaintiff

v.

GERALD NELSON, JR.,

Defendant

These matters came on for hearing before the court on plaintiff Mary Ellen Nelson's complaint for declaratory judgment and injunctive relief, including a declaration that she is not subject to the judgment in the matter of *State v. Gerald Nelson, Jr.* (CV-99-131). Hearing on plaintiff Mary Nelson's request for a temporary restraining order was held on October 18, 2001, at which time the request was denied. Evidence elicited at this hearing has been considered by the court in its decision on the merits. Hearing on the merits was conducted on January 14, 2002.

## Background

In setting forth the background of this controversy, the court will paint with a broad brush. The genesis of the present action lies with the 17-page detailed Decision and Order of the court dated January 18, 2001, in the matter of *State v. Gerald Nelson, Jr.* (CV-99-131). That order found wholesale violations by Gerald Nelson of the Unfair Trade Practices Act (5 M.R.S.A. § 207) and the Consumer Solicitations Sales Act (32 M.R.S.A. § 4661-4670). That order included restitution to 11 woodlot owners and a civil penalty of \$110,000. In addition, that order included permanent injunctive relief prohibiting "Gerald Nelson, Jr., his agents, servants, officers, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of [the] Order" from a number of activities involving the solicitation of woodlot owners, entry into contracts for the harvesting of wood and performance of those contracts. The order is quite detailed and specific as to what is being forbidden and what must be done if Gerald Nelson, Jr. was to continue in the wood harvesting business.

The plaintiff in this matter, Mary Nelson, is or was Gerald Nelson's spouse and the mother of their children. Ms. Nelson's complaint arises from the fact that at or about the time that her husband was effectively forced out of the wood harvesting business by the order of January 8, 2001, she decided to set up her own logging business, a business which she learned through experience with her husband and his father and which she claims is her only skill.

The business of Mary Nelson and her husband before her involves the

solicitation of small woodlot owners, many of them out-of-state, to harvest their property and sell the pulpwood and other timber to a variety of wood users. Ms. Nelson's complaint comes from the fact that several of the timber users have refused to purchase her product in light of the order against her husband and from the cancellation of some contracts by woodlot owners. Plaintiff Nelson seeks an order of the court that she is not subject to the order directed at her husband and injunctive relief barring the State from interfering with her business interests.

Additional background reveals that Gerald Nelson, Jr., though ostensibly out of the business of soliciting his own harvesting contracts, hauled timber under Mary's contracts, using his truck newly emblazoned with a sign that said "Timberland Associates" and he did some of the actual cutting on the properties. Based on these facts, the State has brought a counterclaim against Mary Nelson alleging that she had violated the order of June 18, 2001, by acting in active concert or participation with Gerald in the wood harvesting business.

Mary Nelson has testified that her use of Gerald's labor and truck were merely a matter of necessity and that she was not acting as his agent in her wood harvesting business. In her testimony of January 14, 2002, Mr. Nelson reiterated that she is divorcing Gerald, is attempting to obtain possession of his truck, and that she was never an agent for Gerald. She further testified that as soon as she found out that there was a problem with using Gerald and his truck, she fired Gerald and another prior employee, and will not use his services again.

### **Discussion**

Mary Nelson is complaining that the State has actively interfered with her new business and is depriving her of the opportunity to obtain new contracts with woodlot owners and the opportunity to sell the harvested wood. However, given the sequence of events including the sweeping order with regard to her husband, her entry into the same business and her use of husband at least to do some harvesting and hauling, it is not unreasonable for the State regulators to view her actions with caution, if not outright skepticism. If Ms. Nelson had skills to seek employment elsewhere or enter a different type of business, this case would not be before the court. The fact that she chose to enter the same business in which her husband had been strongly reprimanded, and in which she however briefly employed her husband, must leave the State regulators and this court with great pause. There is no evidence that the State regulators have attempted to "run her out of the business." Rather, the regulators appear to have responded to questions from both landowners and purchasers by reciting the order. There is no evidence that the State conducted any activities to deprive Mary Nelson of her business other than what one would expect them to do in fulfilling their own obligations. For this reason, judgment on the complaint will be for the defendant.

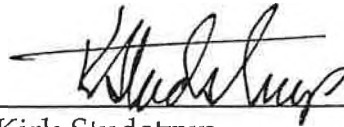
With regard to the defendant's counterclaim, plaintiff Nelson made a motion to dismiss the counterclaim on procedural grounds pursuant to 5 M.R.S.A. § 209. The reliance on the statute is misplaced since the State did not commence this action, but brought it pursuant to a counterclaim. Although the court does not grant the motion to dismiss, it also finds that the defendant's evidence falls short of

proving a violation of the order against Gerald Nelson in CV-99-131. As noted previously, there is abundant evidence from which the State regulators would be entitled to view Mary Nelson's business activities with extreme skepticism. Yet, that evidence falls short of proving that she was in violation of the order as an agent of her estranged husband. This does not mean that other activities by Ms. Nelson will be immune from enforcement under the order, nor does it give Ms. Nelson or any with which she wishes to do business reason to believe that she is somehow immune from enforcement under the order or under the statutes in her own regard for any future business dealings.

In light of the foregoing, the entry will be:

Judgment for the defendant on the complaint and judgment for the plaintiff on the counterclaim.

Dated: February 14, 2002



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S. Kirk Studstrup  
Justice, Superior Court

STATE OF MAINE  
KENNEBEC, ss

SUPERIOR COURT  
CIVIL ACTION  
DOCKET CV

MARY ELLEN NELSON  
dba TIMBERLAND ASSOCIATES  
Box 45 Smithton Maine  
Plaintiff

v.

**COMPLAINT FOR  
DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

STATE OF MAINE,  
Defendant

**NOW COMES** the Plaintiff MARY ELLEN NELSON dba TIMBERLAND ASSOCIATES, through counsel, Andrews B. Campbell, and represents as follows:

**FACTUAL AVERMENTS**

1. Plaintiff is a logger and the sole owner of a logging business commenced on approximately July 1, 2001 by which she purchases wood lots and subcontracts the logging out. She does not act as a broker.
2. Plaintiff operates her business from her home, is legally separated from her husband, has a separate address and is not associated with the former address or business of Gerald Nelson, her husband, and/or "Nelson logging," his former dba.
3. Plaintiff presently employs John McKenna and Robert Green as independent contractors. She has written contracts with them and is modifying them with any conditions as may be necessary to meet the pleasure of the State.
4. On January 8, 2001, a Decision and Order were entered by the State of Maine against Gerald Nelson on a complaint alleging violations of the Unfair Trade Practices Act, 5 M.R.S.A. § 207 and the Consumer Solicitation Sales Act, 32

M.R.S.A. §§ 4661 et seq, in which injunctive relief, civil penalties, and restitution was granted against Gerald Nelson, **Exhibit A** hereto, which is attached and incorporated herein as if fully stated. Said Order was entered on findings of fact after a trial in which Nelson did not appear and to which this Plaintiff Mary Ellen Nelson was not a party.

5. Plaintiff Mary Ellen Nelson has leased a truck from Gerald Nelson and had him drive truck, and offered to employ Nelson as independent contractor or employee at the pleasure of the State of Maine. She has a verbal lease with Gerald Nelson which is being reduced to writing with conditions at whatever pleasure the State may have. This arrangement is limited in duration until she can find another trucker.
6. Plaintiff Mary Ellen Nelson has neither authorized, enabled, assisted, aided or abetted Gerald Nelson to violate any term of the Decision and Order against him, including but not limited to provisions prohibiting Gerald Nelson from making direct contact with customers or potential customers, and in this case she has also prohibited him from making direct contact with customers or potential customers of Plaintiff Mary Ellen Nelson; and including the use of any business name whatsoever; and including the entering into any agreements to provide any wood harvesting services whatsoever; and including making any oral or written representations to woodlot owners whatsoever; and including the beginning of performance of any contract on his own behalf whatsoever, and/or making any representations concerning any contract of Plaintiff Mary Ellen Nelson
7. Plaintiff Mary Ellen Nelson has solicited business through mail but does not

believe she is a home solicitation business subject to the provisions of law respecting such businesses but has voluntarily included language in her contracts as if she were. See 32 M.R.S.A. §§ 4661-4670. See **Exhibit A** hereto, page 15, incorporated herein by reference.

8. Plaintiff operates under contract with landowners who do business with her under contracts that, among other provisions, voluntarily provide Notice to potential customers in her contract that Licensed foresters are available to assess wood lots for harvesting by contacting the Maine Forest Service at State House Station # 22. See **Exhibit A** hereto, page 15, incorporated herein by reference.
9. Plaintiff has a broker, Chip Bessey, who purchases her wood and who takes the stumpage out of the wood that she causes to be brought to the Mills, and sends the stumpage checks to the landowners himself and pays the Plaintiff, who then pays the trucker and cutters.
10. Pursuant to Investigative Demand, Plaintiff on August 8, 2001 provided all the above information and more to the State of Maine.
11. At all times material to this Complaint, Plaintiff has done her best to comply with, and has complied with all applicable State, local and federal regulations or laws applicable to her logging business, obtaining all necessary and appropriate permits and making all necessary disclosures to her best ability when required.
12. Plaintiff Mary Ellen Nelson has not, and has never been found to have, set contract prices for any woodlot harvesting service at a value below prices



contained in the Maine Forest Service stumpage price guide for the area in which any landowner's wood lot lies.

13. Plaintiff Mary Ellen Nelson has not, and has never been found to have, failed to provided or caused to be provided customers with accountings of all wood harvested from their respective wood lots, or to have made available on request stumpage price guides for the area and type of wood harvested.
14. Plaintiff Mary Ellen Nelson has at all times material hereto retained copies of written contracts and all written disclosures made to wood lot owners with whom she has contracted to harvest wood and has further made such records available to the Office of the Attorney General upon request.
15. On information and belief, Plaintiff Mary Ellen Nelson is the only female owned and operated logging business in the State of Maine.
16. As a proximate result of communications from Forest Agents, including Scott Maddox, and other agents of the State, on information and belief, several Mills Plaintiff does business with have refused to do business with her, she cannot fulfil her contracts, and pulp is rotting on the ground, and she is being driven out of business.
17. These communications include communications immediately after Plaintiff files a Notice of Intent to Harvest and immediate provision to the potential customer of a copy of the Decision and Order in State of Maine v. Gerald Nelson, Jr. dated January 18, 2001.
18. These communications include direct and indirect but foreseeable and intended pressures upon Plaintiff's broker not to allow Plaintiff to have an open market

card to the above mills and other mills.

19. These communications include direct and indirect but foreseeable and intended pressures upon truckers and potential truckers who do not wish to be turned away from Mills or tarred with the brush applicable to Gerald Nelson and prevent Plaintiff from obtaining truckers and transporting her product.

20. Mills that, on information and belief, as a direct and proximate result of communications from the State forestry agents, are refusing to deal with he Plaintiff include:

Richardson's Mill,  
Ellsworth, Maine

Mead Products  
Dave Middlestat  
35 Hartford Street  
Rumford, Maine 04276

Irving Forest Products  
c/o Frank T. McGuire, Esq.  
Rudman & Winchell, Inc.  
P.O. Box 1401  
64 Harlow Street  
Bangor, Maine 04401

Timber Resource Group  
Att Tim Abbott  
Log Concentration  
Turner ME

21. As a result of such communications from Forest Agents, including but not limited to communications from Scott Maddox on information and belief, existing customers, including one Barnes and one Colarusso, as a direct result, have requested to be relieved of contractual obligations with Plaintiff and new customers who otherwise would have done business with Plaintiff have chosen

not to do business with her, including Nancy White Romley of Belfast, Maine.

22. Said communications by the State foresters and/or other agents of the State of Maine, have been outside the scope of employment, discretion, or business of the State, have been unnecessary, unprivileged, intended, and have constituted a concerted effort to drive Plaintiff out of business both by creating individual and collusive refusals to deal with the Plaintiff by both suppliers and customers.

**DECLARATORY JUDGMENT (M.R.Civ.P. 57, 14 M.R.S.A. §§ 5951-5963)**

**and EQUITABLE RELIEF PURSUANT TO M.R.Civ.P. 65**

23. Plaintiff Mary Ellen Nelson restates every above averment.
24. There is a definite, concrete, and actual controversy between the parties affecting the parties' adverse legal interests, arising out of the Decision and Order in State of Maine v. Gerald Nelson, Jr., Kennebec County Superior Court Docket CV 99-131 dated January 18, 2001, with sufficient immediacy to justify relief.
25. Although Plaintiff Mary Ellen Nelson is not and was not a party to the proceedings against Gerald Nelson, the State of Maine without finding of guilt or violation of law is treating her as a party to the judgment and in such a manner as to defame her and in such a manner that her legitimate and civil right to earn a living is being undermined and subverted.
26. Plaintiff Mary Ellen Nelson, her agents and employees, are not acting in active concert or participation with Gerald Nelson.
27. Unless the Court clarifies the meaning of the Judgment entered against Gerald

Nelson, the legal relations in dispute, and applicability of the judgment against Gerald Nelson, if any, and restrictions in said judgment, if any, applicable to Plaintiff Mary Ellen Nelson, there is a substantial likelihood that either the dispute will recur in the future or the Plaintiff Mary Ellen Nelson will be unable to market her lumber and will be driven out of business.

28. Unless the Court clarifies the meaning of the Judgment entered against Gerald Nelson, the legal relations in dispute, and applicability of the judgment against Gerald Nelson, if any, and restrictions in said judgment, if any, applicable to Plaintiff Mary Ellen Nelson, there is a substantial likelihood that substantial harm will be done to the natural environment as the action of State agents is preventing her from removing pulp and marketing it to the only mills that will accept pulp engendered in the cutting and sale of logs.
29. Plaintiff Mary Ellen Nelson has no adequate remedy at law.
30. Immediate, continuing irreparable injury, loss and damage is being caused to Plaintiff Mary Ellen Nelson by the continuing activities of the State pursuant to the Order against Gerald Nelson.
31. There is a likelihood that Plaintiff Mary Ellen Nelson will succeed in the underlying action and attempt to gain clarification of the Order against Gerald Nelson as not applicable to her.

**WHEREFORE** Plaintiff Mary Ellen Nelson seeks a declaration that:

- (1) Mary Ellen Nelson is not a party to the Decision and Order in State of Maine v. Gerald Nelson, Jr., Kennebec County Superior Court Docket CV 99-131.
- (2) Mary Ellen Nelson, or her agents, are not a person who has been found to have

- been acting as an agent, servant, officer, employee or attorney of Gerald Nelson,
- (3) Mary Nelson is in fact not a person in concert with or participation with Gerald Nelson.
  - (4) The Decision and Order above violate Mary Nelson's right to consult with and have counsel guaranteed under the 6<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.

Plaintiff further seeks a Preliminary Injunction and Injunctive Relief, and Order including provisions applicable to the State of Maine and its agents, that:

- (1) The State of Maine by the Forestry Service or any other agency of the State of Maine, shall cease and desist from contacting or providing customers, contractors such as or potential truckers, landowners who sell or potentially sell wood to Mary Ellen Nelson with the Decision and Order against Gerald Nelson, absent determination by the Attorney General and reasonable advance notification in writing to Mary Ellen Nelson that:
  - (a) reasonable cause exists to believe that Mary Ellen Nelson has herself violated the Unfair Trade Practices Act, Home Solicitation Sales Act, or other State of Maine statute or regulation;
  - (b) reasonable cause exists to believe that Mary Ellen Nelson has acted or is acting in active concert with, or has participated, or is participating with, Gerald Nelson in a violation of the Order and Decision against Gerald Nelson;
- (2) No Mill Owner or landowner shall be held liable to be acting in concert with or participating with Gerald Nelson simply by reason of the fact that such person or entity purchases wood or pulp from or sells wood or pulp to Mary Ellen Nelson

and her agents or employees.

(3) Such other relief as may be just and equitable.

Date: 8-27-01

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Andrews B. Campbell".

Andrews B. Campbell #1344  
Attorney for Plaintiff Mary Ellen Nelson

ANDREWS BRUCE CAMPBELL, P.A.  
18 Water Street, Thomaston, ME 04861  
207-354-0606; fax 207-354-6399

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-

MARY ELLEN NELSON )  
D/B/A TIMBERLAND ASSOCIATES, )

Plaintiff )

V. )

STATE OF MAINE, )

Defendant )

DEFENDANT'S ANSWER  
AND COUNTERCLAIM

The State of Maine answers the Complaint as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of Plaintiff's Complaint, and therefore denies the allegations.

2. Defendant denies the allegations contained in paragraph 2 of Plaintiff's Complaint.

3. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of Plaintiff's Complaint, and therefore denies the same.

4. The Defendant admits the allegations in paragraph 4 except that the Decision and Order is dated June 18, 2001, not January 8, 2001.

5. The Defendant admits that the Plaintiff Mary Ellen Nelson works with Gerald Nelson, Jr. The Defendant denies the remaining allegations set forth in paragraph 5 of the Plaintiff's Complaint.

6. The Defendant denies the allegations contained in paragraph 6 of the Plaintiff's Complaint.

7. Paragraph 7 of the Plaintiff's Complaint sets forth a legal conclusion to which no response is required.

8. The Defendant admits that the Plaintiff enters into contracts with landowners. The Defendant denies the remaining allegations in paragraph 8.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Plaintiff's Complaint, and therefore denies same.

10. Defendant admits the allegations contained in paragraph 10 of the Plaintiff's Complaint.

11. The Defendant denies the allegations contained in paragraph 11 of the Plaintiff's Complaint.

12. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Plaintiff's Complaint, and therefore denies the same.

13. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the Plaintiff's Complaint, and therefore denies the same.



14. The Defendant admits that Mary Ellen Nelson has made two contracts available to the office of the Attorney General upon request. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 14 of the Plaintiff's Complaint, and therefore denies the same.

15. Defendant denies the allegations contained in paragraph 15 of the Plaintiff's Complaint.

16. The Defendant denies the allegations contained in paragraph 16 of the Plaintiff's Complaint.

17. The Defendant denies the allegations contained in paragraph 17 of the Plaintiff's Complaint.

18. The Defendant denies the allegations contained in paragraph 18 of the Plaintiff's Complaint.

19. The Defendant denies the allegations contained in paragraph 19 of the Plaintiff's Complaint.

20. The Defendant denies the allegations contained in paragraph 20 of the Plaintiff's Complaint.

21. The Defendant denies the allegations contained in paragraph 21 of the Plaintiff's Complaint.

22. The Defendant denies the allegations contained in paragraph 22 of the Plaintiff's Complaint.

23. The Defendant repeats and restates its answers to paragraphs 1 through 22, inclusive, above, of Plaintiff's Complaint with the same force and effect as if more fully set forth herein.

24. The Defendant admits the allegations set forth in paragraph 24 of the Plaintiff's Complaint except for the date of the Order.

25. The Defendant denies the allegations contained in paragraph 25 of the Plaintiff's Complaint.

26. The Defendant denies the allegations contained in paragraph 26 of the Complaint.

27. The Defendant denies the allegations contained in paragraph 27 of the Plaintiff's Complaint.

28. The Defendant denies the allegations contained in paragraph 28 of the Plaintiff's Complaint.

29. Paragraph 29 of the Plaintiff's Complaint sets forth a legal conclusion to which no response is required.

30. The Defendant denies the allegations contained in paragraph 30 of the Plaintiff's Complaint.

31. The Defendant denies the allegations contained in paragraph 31 of the Plaintiff's Complaint.

WHEREFORE, the Defendant prays that the Complaint be dismissed with prejudice or, in the alternative, that the Court declare that Mary Ellen Nelson is acting as an agent of Gerald Nelson, Jr., declare that Mary Ellen Nelson is in active concert or participation with Gerald Nelson, Jr., and declare that Mary Ellen Nelson has actual notice of the Court's Order dated June 18, 2001 in the matter of State of Maine v. Gerald Nelson, Jr., CV-99-131 (Me. Super. Ct., Ken. Cty., June 18, 2001)(Marden J.) and order such other and further relief as it deems just and equitable.

## AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

## COUNTERCLAIM

The Defendant/Counterclaim Plaintiff State of Maine, by and through the Attorney General, and for its counterclaim against Plaintiff/Counterclaim Defendant Mary Ellen Nelson, states as follows:

## FACTS

1. From at least 1996 to the present Mary Ellen Nelson has worked with Gerald Nelson, Jr. in the logging business.
2. On June 18, 2001, Gerald Nelson, his agents and those persons in active concert or participation with him who receive actual notice of the injunction issued in State of Maine v. Gerald Nelson, Jr., CV-99-131 (Me. Super. Ct., Ken. Cty., June 18, 2001)(Marden J.), a copy of which is attached hereto and incorporated herein by reference, were enjoined from engaging in various unfair and deceptive business practices.
3. The Order of June 18, 2001 also required Nelson, his agents and those in active concert or participation with him who have actual notice of the Order to make specific disclosures to Maine woodlot owners they solicit for woodlot harvesting.
4. On June 24, 2001 the Court's Order dated June 18, 2001 was served on Gerald Nelson, Jr. by the Maine Forest Service.
5. On July 25, 2001 the Court's Order dated June 18, 2001 was served on Mary Ellen Nelson by the Waldo County Sheriff's Office.
6. After June 18, 2001 the Nelsons changed the name of their logging business from Nelson Logging to Timberland Associates.

7. After June 18, 2001 the Nelsons changed their business address from 145 Smithton Road in Freedom to a post office box in Albion.
8. Beginning in 1996 and continuing to the present, Mary Ellen and Gerald Nelson, Jr. compiled and maintained a list of woodlot owners.
9. After June 18, 2001 Mary Ellen Nelson sent solicitation letters to persons on the list of woodlot owners that was compiled and maintained by Mary Ellen and Gerald Nelson, Jr. d/b/a Nelson Logging.
10. The letters that Mary Ellen sent after June 18, 2001 are substantially similar to the letters that were sent by Nelson Logging prior to June 18, 2001.
11. Mary Ellen Nelson does not have any employees.
12. Mary Ellen Nelson does not own any logging equipment.
13. In her solicitation letters, Mary Ellen Nelson claims to offer professional logging services.
14. In fact, no one that Mary Ellen claims to work with is a certified professional logger or licensed forester.
15. Mary Ellen and Gerald Nelson continue to work together in the logging business since issuance of the Court's Order dated June 18, 2001.
16. By way of example and without limitation, a resident of Rhode Island entered into a contract with Mary Ellen Nelson for the harvest of his woodlot in Palermo, Maine on July 19, 2001.
17. Prior to entering into a contract with Mary Ellen Nelson for the harvesting of his woodlot, the landowner met with Gerald Nelson, Jr. on his woodlot.

18. The contract that Mary Ellen entered into with the Palermo woodlot owner did not meet the requirements of the Order dated June 18, 2001.

19. Also, by way of example and without limitation, on or about August 31, 2001 Mary Ellen Nelson entered into a contract with a resident of Massachusetts for the harvesting of a woodlot in Skowhegan, Maine.

20. This Skowhegan woodlot owner believed that Gerald Nelson, Jr. was to harvest the woodlot.

21. The contract entered into by the Skowhegan woodlot owner does not comply with the Court's Order of June 18, 2001.

22. Mary Ellen Nelson, Timberland Associates, Gerald Nelson, Jr. and Nelson Logging are all the same logging operation.

**COUNT I**  
**(Violation of Court Order)**

23. Plaintiff repeats and realleges the preceding paragraphs of the counterclaim.

24. Mary Ellen Nelson d/b/a Timberland Associates has actual notice of the injunction dated June 18, 2001.

25. Mary Ellen Nelson d/b/a Timberland Associates is engaged in logging in active concert and participation with Gerald Nelson, Jr. in violation of the Court's Order dated June 18, 2001.

**COUNT II**  
**(Misrepresentations/ Unfair Trade Practice)**

26. Plaintiff repeats and realleges the preceding paragraphs of this Counterclaim.

27. Defendant Mary Ellen Nelson, in conjunction with her conduct set forth above, has engaged in a course of trade or commerce which constitutes unfair and deceptive conduct

declared unlawful under 5 M.R.S.A. § 207, by falsely representing to persons who own woodlots in Maine that she offers “professional” logging services and by failing to disclose to woodlot owners that she has a business relationship to Gerald Nelson, Jr. and that he is subject to the Court’s Order dated June 18, 2001.

28. Mary Ellen Nelson’s conduct described in this count is intentional.

**PRAYER FOR RELIEF**

WHEREFORE, the Defendant/Counterclaim Plaintiff requests that this Court enter an Order:

- (a) Finding that Mary Ellen Nelson has acted and continues to act in concert and participation with Gerald Nelson, Jr.;
- (b) Finding that Mary Ellen Nelson is subject to the Order dated June 18, 2001 in State of Maine v. Gerald Nelson, Jr., CV-99-131 (Me. Super. Ct., Ken. Cty., June 18, 2001 (Marden J.);
- (c) Finding that Mary Ellen Nelson has actual notice of the Order dated June 18, 2001;
- (d) Finding that Mary Ellen Nelson is in violation of the Order dated June 18, 2001;
- (e) Finding that Mary Ellen Nelson has violated 5 M.R.S.A. § 207, the Unfair Trade Practices Act by making material misrepresentations to consumers regarding her employment of logging professionals and by failing to disclose to woodlot owners that she has a business relationship with Gerald Nelson, Jr. and that he is subject to the Court’s Order of June 18, 2001;
- (f) Permanently enjoining Mary Ellen Nelson from engaging in the business of logging, including, but not limited to, soliciting woodlot owners;

(g) Declaring all contracts entered into between Maine woodlot owners and Mary Ellen Nelson are unlawful and rescinded;

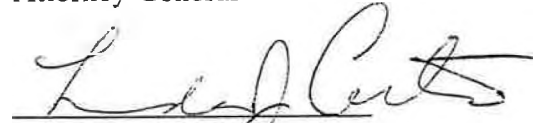
(h) Assessing a civil penalty in the amount of \$10,000 against Mary Ellen Nelson for intentionally violating the Unfair Trade Practices Act;

(i) Requiring Mary Ellen Nelson to pay the costs and attorney's fees for the prosecution and investigation of this counterclaim, as provided by 5 M.R.S.A. § 209 of the Unfair Trade Practices Act; and

(j) Providing such other and further equitable relief as justice and equity may require, including an accounting of all moneys collected and expended by Mary Ellen Nelson in her logging business from June 18, 2001 to the present.

Dated: September 21, 2001

G. STEVEN ROWE  
Attorney General



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