

1 Thomas C. Horne
2 Attorney General
3 Firm Bar No. 14000
4 Noreen R. Matts
5 Assistant Attorney General
6 State Bar No. #10363
7 noreen.matts@azag.gov
8 Office of the Attorney General
9 Consumer Protection & Advocacy Section
10 400 W. Congress, South Bldg., Suite 315
11 Tucson, Arizona 85701-1367
12 Telephone: (520) 628-6504
13 Facsimile: (520) 628-6532
14 Pima County Computer No. 36732
15 Attorneys for Plaintiff



16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
17 **IN AND FOR THE COUNTY OF PIMA**

18 STATE OF ARIZONA, *ex rel.* THOMAS C.
19 HORNE, Attorney General,

20 Plaintiff

21 vs.

22 American Residential Services, L.L.C., a
23 Delaware limited liability company, doing
24 business in Arizona as American
25 Residential Services L.L.C.; American
26 Residential Services; Goettl Air
27 Conditioning; ARS; ARS Rescue Rooter;
28 Russett Services/ARS Rescue Rooter;
and American Residential Services
Management Corp.,

Defendants.

No. **C20116630**

**COMPLAINT FOR INJUNCTIVE AND
OTHER RELIEF**

Unclassified Civil

KENNETH LEE

24 The State of Arizona brings this action pursuant to the Arizona Consumer Fraud
25 Act, A.R.S. § 44-1521, *et seq.*, to obtain injunctive relief, civil penalties, attorneys' fees
26 and costs, investigative expenses and other relief to prevent the unlawful acts and
27 practices alleged in the Complaint and to remedy the consequences of such unlawful
28 practices.

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1 6. When reference is made to "ARS" or one of its dbas in this complaint, the
2 reference applies to the actions of both Defendants and to their parents, owners,
3 officers, managers, employees, agents, and independent contractors.

4 **THE CONSUMER FRAUD ACT**

5 The Consumer Fraud Act at A.R.S. § 44-1522 (A) states the following:

6 The act, use, or employment by any person of any deception, deceptive
7 act or practice, fraud, false pretense, false promise, misrepresentation,
8 or concealment, suppression or omission of any material fact with intent
9 that others rely upon such concealment, suppression or omission, in
10 connection with the sale or advertisement of any merchandise whether
11 or not any person has in fact been misled, deceived, or damaged
12 thereby, is declared to be an unlawful practice.

11 **COUNT I**

12 **SUMMARY OF VIOLATIONS OF THE CONSUMER FRAUD ACT**

13 7. American Residential Services, L.L.C. (hereafter, "ARS") is a group of
14 approximately 100 companies nationwide that operate in more than 35 states as a
15 home improvement service company specializing, in Arizona, in HVAC and plumbing.
16 ARS bought several Arizona companies including Goettl Air Conditioning, Yes! Air
17 Conditioning and Russett Services. The only company to keep its name is Goettl Air
18 Conditioning because of its reputation as an air conditioning company that began in
19 Phoenix in 1937. The other companies ARS operates in Arizona are American
20 Residential Services; ARS; ARS Rescue Rooter; and Russett Services/ARS Rescue
21 Rooter. The companies operate mainly in Cochise, Maricopa, Pima and Yavapai
22 Counties. American Residential Services Management Corp. assists ARS in Arizona.

23 8. ARS mass mails false, misleading and deceptive solicitations to
24 thousands of Arizonans throughout the year including the following:

- 25 a. False safety notices to frighten consumers into buying
26 unnecessary systems and repairs;
27
28

- 1 b. Official-looking solicitations that appear to be mandatory
- 2 notices/alerts from a government agency;
- 3 c. Official-looking notices that mislead consumers about rebates and
- 4 tax credits;
- 5 d. False and misleading buy-back notices and rebate notices.

6 9. ARS engages in false misleading and deceptive sales tactics to ensure
7 that consumers do not exercise their three-day cancellation rights, including scare
8 tactics.

9 10. ARS engages in false, misleading and deceptive "package" pricing.

10 11. ARS offers misleading and useless warranties and guarantees.

11 12. ARS installs solar hot water heaters even though it is not duly licensed to
12 do so and deceives consumers into believing otherwise.

13 13. ARS takes advantage of elderly consumers, very often by using scare
14 tactics, to sell them HVAC systems and plumbing repairs and replacements they do
15 not need and cannot afford.

16 **A. False, Misleading, and Deceptive Advertising Solicitations**

17 ARS mails false, misleading and deceptive solicitations to thousands of Arizona
18 consumers throughout the year. Among other matters, ARS uses the following false,
19 misleading and deceptive tactics in its solicitations:

20 14. SAFETY NOTICES: ARS mails false Safety Notices to consumers to
21 convince consumers that they need yearly HVAC and plumbing safety inspections.
22 ARS uses these solicitations to convince consumers to call ARS to schedule an
23 appointment. Once ARS is in a consumer's home, the company will often find a
24 dangerous system condition or a need for immediate repairs. Failing that tactic, ARS
25 will "inspect" the consumer's HVAC and plumbing system, finding that the systems are
26 so old or inefficient or in need of repair that the systems must be immediately replaced
27 or repaired.

28 15. The following is a postcard ARS sent out in 2008 and 2009:

<u>WATER HEATER SAFETY NOTICE</u> Public records indicate your home was built prior to x year [sic] and therefore your water heater may be due for its safety inspection & sediment flush. Your property has a rebate credit for this service as shown here → Water heater manufacturer's [sic] require these inspections be completed yearly, to insure the safe and proper function of your water heater. To schedule service contact our office at (520) 468-6591. G. Boehler ARS/Rescue Rooter 1780 East Benson Hwy Tucson, AZ 85640 ROC184045, ROC162560, ROC162559	<table border="1"> <tr> <td>Date:</td> <td>11MAY09</td> </tr> <tr> <td>Service Request No.</td> <td>0409-1a</td> </tr> <tr> <td>Property Address:</td> <td>7541 E. ST</td> </tr> <tr> <td>Rebate Credit:</td> <td>\$50.00</td> </tr> <tr> <td>Year Built:</td> <td>1970</td> </tr> <tr> <td>Parcel Number:</td> <td>B2416</td> </tr> <tr> <td colspan="2">7541 E. ST</td> </tr> <tr> <td colspan="2">Tucson, AZ 85710-6001</td> </tr> </table>	Date:	11MAY09	Service Request No.	0409-1a	Property Address:	7541 E. ST	Rebate Credit:	\$50.00	Year Built:	1970	Parcel Number:	B2416	7541 E. ST		Tucson, AZ 85710-6001	
Date:	11MAY09																
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Rebate Credit:	\$50.00																
Year Built:	1970																
Parcel Number:	B2416																
7541 E. ST																	
Tucson, AZ 85710-6001																	

(The original size of the postcard is 4 by 6 inches.)

16. ARS sent these postcards to thousands of potential consumers.

17. The postcard is a fake safety notice. ARS is unable to substantiate its claim that manufacturers require yearly safety inspections to "insure" safe and proper function of hot water heaters.

18. When the Attorney General's Office asked ARS to substantiate its claim about "required" yearly safety inspections, ARS stated that they accidentally mailed the postcards before they were ready for publication.

19. ARS subsequently added language, but did not change the misleading statement about annual inspections. As late as March, 2011, ARS's **WATER HEATER NOTICES** stated that because a consumer's home was built in a certain year, the consumer might be due for a flush and water heater inspection, and, "Water heater manufacturer's [sic] recommend these inspections be completed annually."

20. SAFETY NOTICES COMBINED WITH SCARE TACTICS: In order to convince consumers to invite ARS into their homes for safety inspections, ARS sends "scare-tactic" solicitations, an example of which follows in pertinent part:

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IMPORTANT NOTICE FOR [Name]

...

...

...

1. WHAT IS AN AIR CONDITIONING TUNE-UP? ...

2. WHY DO YOU NEED AN AIR CONDITIONING SAFETY INSPECTION?
SAFETY INSPECTIONS HELP TROUBLE PROBLEMS SUCH AS
POTENTIALLY DANGEROUS GAS AND CARBON MONOXIDE
LEAKS IN THE HOME...

3. HOW LONG WILL THIS INPECTION TAKE?
...ABOUT AN HOUR....WE ASK THAT THE HOMEOWNER BE PRESENT SO
THAT WE CAN REPORT AND ASSESS ANY FINDINGS.

THE FOLLOWING A/C ISSUES HAVE BEEN REPORTED IN YOUR AREA:

☐ FAULTY FAN BLADES

☒ ELECTRICAL CONNECTION ISSUES

☒ CONDENSER COIL ISSUES

☒ COMPRESSOR REPAIR/INSTALL

☒ CARBON MONOXIDE LEAKS

☐ SERVICE VALVE MALFUNCTIONS

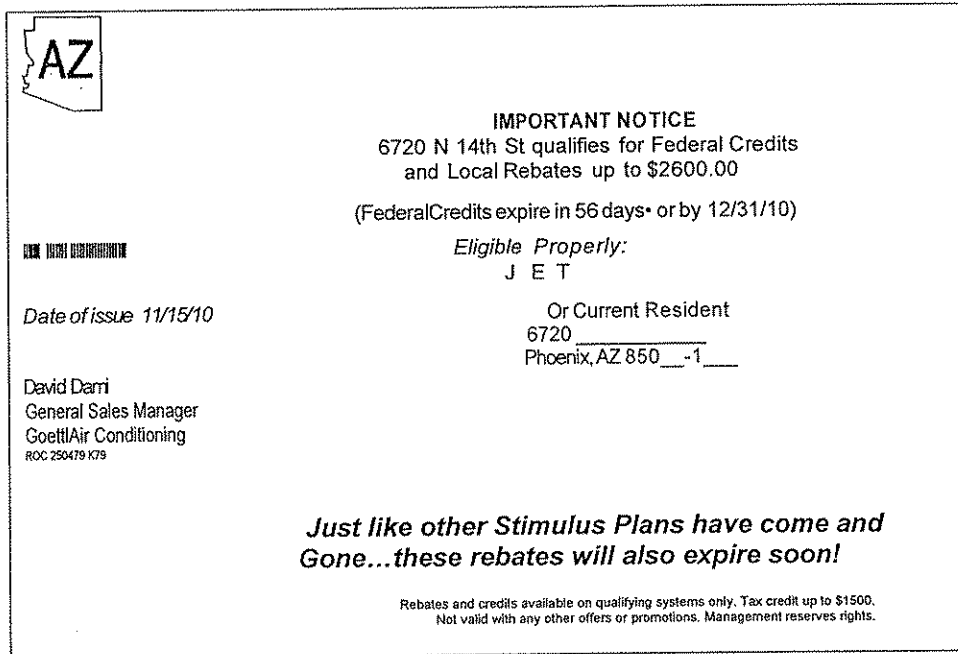
☒ ENERGY LOSS VIA DUCTWORK

(The original size of the entire solicitation is 8½ by 11 inches.)

21. These solicitations state, with no basis in fact, that thousands of consumers' homes may have poisonous gas and carbon monoxide leaks and that carbon monoxide leaks have been reported in the consumers' areas.

22. OFFICIAL-LOOKING NOTICES – SAFETY ALERTS: ARS creates the false impression in its safety notices that the notices themselves are official alerts or alerts from a government agency.

23. For example, ARS sent the following notice in 2010:



(The original size of the entire solicitation is 6 by 8 inches.)

24. Consumers, especially older consumers, believe these solicitations to be official notices upon which they must act.

25. OFFICIAL-LOOKING NOTICES OF REBATES AND TAX CREDITS:

Another of the "official notices" ARS mails to consumers involves rebates and tax credits.

26. Again, ARS makes the solicitations appear as if they are from a government agency.

27. For example, and in pertinent part, the following is a sample mailer ARS produced to the Attorney General's Office:

SENDER'S name, address, zip code Goettl Air Conditioning 1845 West 1st Street Tempe, AZ 85281	Official Notification: No. 972618 Rebate Amount \$1200	2009	FIRST STANDARD U.S. POSTAGE PAID LAS VEGAS, NV PERMIT 1052
OFFICIAL DOCUMENT	Tax Credit \$500.00		POSTMASTER:
RECIPIENT'S name, address and zip 2009 John Smith 349 Cypress Street Anywhere, USA 8222		Void after 15APR09	Attention: Recipient SEE TLT 18 SEC. 1702-US CODE Obstruction of U.S. mail is punishable by fines of up to \$2000 or 5 years in prison or both.
This is not a government document.			

REBATE AND TAX CREDIT NOTICE

YOUR HOME QUALIFIES FOR A REBATE OF \$1200.00 TOWARDS A NEW HEATING AND AIR CONDITIONING SYSTEM, PLUS A FEDERAL TAX CREDIT OF \$500.00 BEFORE APRIL 15, 2009.

IN ADDITION, YOU MAY QUALIFY FOR AN APS REBATE OF \$500.00...

...
...
...

(The original size of the entire solicitation is 8½ by 11 inches.)

28. BUY-BACK NOTICES AND REBATES: ARS mass mails solicitations that mislead consumers into believing that ARS will trade consumers' old systems for new ones.

29. Often, ARS combines the buy-back notice with a misleading description of rebates consumers are purportedly entitled to. The rebates are supposed to pay for the new HVAC systems consumers order from ARS.

30. The following are examples in pertinent part of the types of solicitations
ARS mails to consumers:

Goettl	Notice Date: November 5, 2010 Customer Number: AZ-254123-10 BuyBack Hotline: 602-236-0886															
Re: Rebate Information	Year Home Built 1950 Rebate Amount \$2,600.00 Rebate Status: Approved															
Property Information																
WE WANT TO BUY BACK YOUR OLD SYSTEM AND EXCHANGE IT FOR A NEW ONE. <u>AND WE'LL PAY YOU TO DO IT.</u>																
Best Rebates of the Year.																
We can exchange your current model for a new high efficiency system. Current incentives make this the best time for you to exchange your older out-of-date model for a new high efficiency system.																
<table border="1"><tr><td>REFUND/CASH BACK MONEY</td><td>\$500.00</td><td>(expires 12/31/10)</td></tr><tr><td>DEALER REFUND</td><td>\$600.00</td><td>(expires 12/31/10)</td></tr><tr><td>FEDERAL TAX CREDIT</td><td>\$1500.00</td><td>(expires 12/31/10) or 56 days.</td></tr><tr><td colspan="3">+ 'LIFETIME LIMITED WARRANTY' FOR YEARS OF WORRY· FREE COMFORT ' \$2,600.00</td></tr><tr><td colspan="3">Date of Issue 1115110</td></tr></table>		REFUND/CASH BACK MONEY	\$500.00	(expires 12/31/10)	DEALER REFUND	\$600.00	(expires 12/31/10)	FEDERAL TAX CREDIT	\$1500.00	(expires 12/31/10) or 56 days.	+ 'LIFETIME LIMITED WARRANTY' FOR YEARS OF WORRY· FREE COMFORT ' \$2,600.00			Date of Issue 1115110		
REFUND/CASH BACK MONEY	\$500.00	(expires 12/31/10)														
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FEDERAL TAX CREDIT	\$1500.00	(expires 12/31/10) or 56 days.														
+ 'LIFETIME LIMITED WARRANTY' FOR YEARS OF WORRY· FREE COMFORT ' \$2,600.00																
Date of Issue 1115110																
The best news yet.																
Your savings could pay for your new system. Our new high efficiency systems are guaranteed to put" the 'green' back in your pocket with their high efficiency energy savings functionality...and we'll guarantee that in writing...																
...																
...																
...																
Respectfully,	Just like other Stimulus Plans have come and gone ... these rebates will also expire soon!															
David Dami General Sales Manager Goettl Air Conditioning ROC260470 KJO	*Rebates and credits available on qualifying systems only. Tax credit up to \$1500. Not valid with any other offers. Management reserves all rights.															

(The size of the original solicitation when opened is 8 by 10 inches.)

FINAL NOTICE	
OFFER EXPIRES 4-30-09.	
Rebate Amount: \$2600; and Rebate Status: Approved.	
WE WANT TO BUY BACK YOUR OLD SYSTEM FOR A NEW ONE. AND WE'LL PAY YOU TO DO IT.	
Trade-in CASH BACK MONEY.....	\$500.00
Dealer Rebate.....	\$600.00
Federal Tax Credit.....	\$1500
+NO MONEY DOWN	
+ NO PAYMENTS FOR 12 MONTHS	\$2600.00.
Your savings will pay for your new system....and we'll guarantee that in writing. (Emphasis added.)	

31. These solicitations are false:

- 1 a. ARS never buys back a consumer's old HVAC system.
- 2 b. The purported rebates could never pay for an exchange.
- 3 c. ARS provides false tax credit information: consumers are not
- 4 entitled to a federal tax credit unless they owe the amount of
- 5 rebate in taxes.
- 6 d. ARS provides false and misleading utility rebate information.
- 7 e. Even if ARS truthfully described the rebates and federal tax
- 8 credits, the rebates and credits would never pay for a new HVAC
- 9 system.

10 32. UTILITY REBATES ON SOLAR HOT WATER HEATERS: ARS offers

11 "Utility" rebates that are generally false.

12 33. Consumers who purchased solar hot water heaters from ARS could

13 never qualify for utility rebates because ARS is not duly licensed to install solar hot

14 water heaters.

15 34. The following is one of the false examples of a utility rebate solicitation

16 ARS produced to the Attorney General's Office:

18 Let Your Solar Water Heater Pay for Itself

19 If you are in the need of getting rid of that old tank or are nearing the end of the 10 year life expectancy or you just want to go Green, it's time to take advantage of this opportunity! With the federal government's tax credit, the average homeowner will receive as much as a \$2500 tax Credit. Plus, the State of Arizona is offering a state tax credit of up to \$1000 more! And depending on which electric company services your home, you will get another rebatewould receive a rebate from the power company of up to \$1950. Our company will buy back your existing water heater for \$350 and dispose of it with the purchase of a solar water heater.

20 So, if you are a typical home, this can add up to as much as \$5800 of tax credits and rebates to replace ??? energy hog with a state of the art solar water heater.

21 Sincerely,

22 Damon Bromagem

23 GM

24 Rescue Rooter

Federal Tax Rebate	\$2,500
Arizona Tax Rebate	\$1,000
Local Power Company	\$1,950
Buy Back Credit	+ \$350
	\$5,800

25 \$5,800 of Tax Credits and Incentives Available!!!

26 *Rebates in example have been calculated based on an avg. home, avg. cost of installing a new system and using APS Utility Company's rebate program for calculation.

27 Rescue Rooter
4319 University Blvd.
Phoenix, AZ 85034-7317

28 ROC 131215; ROC 185121; ROC 250481

(The size of the original solicitation was 8 1/2 by 11 inches.)

35. Lately, ARS has begun to add tiny disclaimers to its solicitations. These disclaimers do nothing to prevent the solicitations from being false, misleading and deceptive.

a. In a recent solicitation, the following disclaimer appeared in the following font size:

*Rebates and credits available on qualifying systems only. Tax credit up to \$1500. Not valid with any other offers. Management reserves all rights.

b. In another solicitation ARS mailed, the following disclaimer appeared:

Purchase and installation of qualifying 4 or 5 star equipment required. Federal tax credits up to \$500. Customer may also qualify for utility rebates; consult with your utility company for details..... Restrictions apply. Customer responsible for filing for federal tax credit and meeting utility rebate requirements. Consult your tax advisor.

c. The tiny disclaimers are not clear and conspicuous.

d. Even if a consumer could read the disclaimer, ARS does not explain what "qualifying systems" are; what "4 or 5 star" equipment is; that their "4 or 5" star equipment is not necessarily eligible for utility rebates; and what consumers must do in order to be eligible for rebates.

B. False, Misleading and Deceptive Sales Tactics to Ensure that Consumers Do Not Exercise Their Three-Day Cancellation Rights

36. Consumers have a three-day right to cancel sales contracts they sign in their homes under federal¹ and state² law.

¹ Cooling Off Period for Sales Made at Homes, 16 CFR Part 429. The FTC explanation of the Cooling-Off Rule: When and How to Cancel a Sale: The Cooling-Off Rule applies to sales at the buyer's home, The Cooling-Off Rule applies even when you invite the salesperson to make a presentation in your home. Under theRule, the salesperson must tell you about your cancellation rights at the time of sale. The salesperson also must give you two copies of a cancellation form and a copy of your contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain your right to cancel.....

Some Exceptions: Some types of sales cannot be canceled even if they do occur in locations normally covered by the Rule. The Cooling-Off Rule does not cover sales that..... are needed to meet an emergencyor.....are made as part of your request for the seller to do repairs or maintenance on your personal property (purchases made beyond the maintenance or repair request are covered [by the Rule]).

1 37. ARS uses false, misleading and deceptive tactics to deprive consumers
2 of their right to cancel by convincing consumers that there is an imminent threat to the
3 their safety if they do not permit ARS to immediately install new HVAC systems or hot
4 water heaters.

5 38. The Director of Sales and Marketing for American Residential Services
6 L.L.C.'s U.S. Southwestern Division, Mark Atherstone, drafted a manual for ARS, part
7 of which trains salespeople and technicians what to do in order to convince consumers
8 to replace their HVAC systems and hot water tanks with extremely expensive systems
9 or to make expensive repairs.

10 39. The Comfort Care/Comfort Advisor Guide³ is a scripted presentation for
11 Arizona salespeople to follow in their home presentations to consumers in order to
12 convince consumers to sign a contract on ARS's first visit.

13 40. According to the ARS Comfort Advisor manual, ARS clearly suggests
14 that salespeople who "inspect" consumers' systems should find something wrong with
15 the HVAC or hot water tanks that require quick replacement. For example:

- 16 a. Salespeople are to walk around the house with baby wipes to wipe
17 spots inside the return air vents to check for dirt and dust. When the
18 salespeople show the consumer the dirt and dust on the wipe, they
19 ask consumers if that is what they want to keep breathing.

22 ² ARS Section 44-5110 defines a home solicitation sale as the sale of goods and services in which the seller...
23 personally solicits the sale and the buyer's agreement...at a home other than that of the person soliciting.... and
24 that agreement is there given to the seller and all of any part of the purchase price is payable in installments or a
debt incurred for payment of the purchase price is payable in installments.

25 ³ The Comfort Care/Comfort Advisor Guide is one section of a comprehensive training manual Arizona Residential
26 Services, L.L.C. has written for salespeople. Other sections of the training manual are for the use of technicians,
plumbers and the like. American Residential Services, L.L.C. and American Residential Services Management
27 Corp.' Senior Corporate managers are the only persons with the ability to give written permission to share, use or
28 make copies of the manual.

- 1 b. Salespeople are to go to the actual equipment and turn off the power,
2 remove the access panel and use another baby wipe to scrape the
3 blower fans.
4 c. Salespeople are to continue to collect dirty wipes from the system
5 ducting and equipment and place all dust "samples" in zip lock bags.
6 d. Salespeople are to place the baggies on the table to serve as later
7 reminders for ARS's recommendations.

8 41. The ARS Comfort Advisor manual has salespersons falsely promise the
9 consumers that they have two years to decide whether they want to purchase a new
10 system:

11 You see at ARS, we give you two full years to 'think it over.' Put it in –
12 test drive it – if it is not exactly what you wanted then we'll make it right –
13 or give you 100% of your money back.

14 42. In fact, the ARS Comfort Advisor manual requires salespeople to ask for
15 the consumer's order the very first day:

16 Since we have reviewed everything and have shown you how additional
17 ductwork and system modifications will keep you comfortable, which day
18 will work best for you – tomorrow or Tuesday.

19 43. If the consumer is not ready to make a decision, the ARS Comfort
20 Advisor Manual reminds ARS salespeople:

21 If you were to believe every delay that every client gives you, you would
22 be missing out on inevitable opportunities on a daily basis.

23 44. The ARS Comfort Advisor expects its sales force to "gently and without
24 annoying the client" employ eight steps to handle delays.

25 45. The ARS Comfort Advisor states that **"At the end of the day [sic] is not**
26 **whether the client can afford the system, [sic] is whether they want to repair or**
27 **replace it.** (Emphasis added.)
28

1 46. The ARS Comfort Advisor states, "You can always use a specific method
2 for closing the sale no matter what the client says... *Choose the correct close at the*
3 *right time.* (Emphasis original.)

4 47. Without limitation, ARS suggests the following closes:

5 a. "Would you like to pay by check or use the financing we talked
6 about?"

7 b. "To get started, we just need to OK the paperwork right here."

8 c. "I'll just need to get your okay on the paperwork. By the way,
9 would you like for us to start in the morning or afternoon?"

10 d. "Ok, it looks like we have reviewed all of your benefits and you are
11 not going to have to worry about the **dangers of the old**
12 **furnace**... By the way, did you want the programmable of digital
13 thermostat?" (Emphasis added.)

14 48. For example, when a couple asked Goettl Air to let them think about a
15 potential purchase for several days, the technician pushed for an immediate, same
16 day sale. The husband stated, ".... it made it more difficult for me to change my mind
17 about spending \$19,393.60 on credit cards."

18 49. On the rare occasion that consumers try to cancel their contracts during
19 the three-day-right-to-cancellation, ARS pays the consumers so that they do not ask to
20 take advantage of ARS's false 100% money-back guarantee. For example, Rudy and
21 Roseann T signed a contract and had their system installed on March 5, 2010. On
22 March 8, 2010, the Ts received an ARS buyback letter with \$1,100 in rebate and tax
23 credit offers.

24 a. Mrs. T asked for the \$1,100 and told ARS that if they did not give
25 her the money, she would ask for ARS to remove the system
26 because, "We have three days to cancel."

1 b. Because ARS does not really offer a 100% money-back
2 guarantee, it was cheaper to pay the Ts the advertised rebate
3 amount than to honor their right to cancel.

4 c. A representative of ARS stated:

5 I can't think of any other way to deal with this one other
6 than to give them \$1100 ... please make it a day when we
7 have more than 1 unit in the morning report so it won't
8 show as a negative.

9 50. At times, ARS threatens consumers who attempt to cancel their
10 contracts within three days. For example, in September, 2009, Goettl Air went to
11 Richard A's home after his air conditioning failed. Goettl quoted Mr. A a replacement
12 cost of \$12,010.00. Mr. A states:

13 It was 110 degrees in Phoenix at that time and getting help to come out
14 was nearly impossible....I took Goettl at their word and signed some
15 forms. I started double-checking things online after they left.

16 a. Mr. A called another company that would do the work for \$3,138.

17 b. Mr. A cancelled the Goettl contract within four hours of signing it.

18 c. Goettl threatened to charge Mr. A a 20% restocking fee.

19 d. In response to Mr. A's complaint to the Attorney General, Goettl
20 said they would not charge Mr. A a restocking fee and that "the
21 quote given to him was on high efficient equipment, when he was
22 actually looking for basic equipment."

23 **C. False, Misleading and Deceptive "Package – Pricing"**

24 51. In its estimates, invoices and contracts, ARS provides consumers with
25 only a "package price" that includes the parts, new system, labor, and taxes.
26 Consumers have no reference to use to determine what the package price includes.

27 52. When ARS succeeds in convincing consumers that their HVAC systems
28 or hot water tanks are dangerous, consumers do not take the time to get a second

1 opinion. Consumers are at ARS's mercy because they cannot find out until after the
2 installation (1) whether they needed repairs/replacements and (2) how much they
3 overpaid ARS compared to what they might have paid had they gotten a second
4 opinion.

5 53. ARS will not provide a breakdown of costs of the contract unless
6 consumers persist in asking. ARS knows that if they give consumers a cost
7 breakdown, consumers will realize how extraordinarily high ARS' prices are. For
8 example:

- 9 a. On March 18, 2010, ARS Customer Service ("ACS") took a
10 message:

11 Mrs. R called requesting a copy of an invoice for the
12 installation of a fan condenser on 9/19/2008. She said she
requested a copy of this last week. (Emphasis added.)

- 13 b. On April, 19, 2010, ACS noted the following:

14 I called the customer to schedule the plumbing
15 inspection... She will not schedule anything with us until she
16 receives rebate paperwork. We installed water heater
17 8/6/09 and she has never received anything from us.
(Emphasis added.)

- 18 c. On June 4, 2010, ACS e-mail took the following message:

19 Cust daughter ...called and advised we did an install
20 6/3/10. There was some damage done... Also wants
21 something in writing showing the breakdown of the cost of
the install.

22 The ARS manager answered:

23 **Sandy, this is the beginning of a complaint...get ready.**
24 **Somehow they always start with asking for a**
25 **breakdown of the price...**(Emphasis added.)

- 26 d. On July 13, 2010, ACS sent an e-mail to an ARS manager:
27
28

Customer has been waiting for his paperwork on a repipe we did on 12/2009. Has called several times... (Underlining added.)

54. Package pricing also allows ARS to sell consumers warranties they do not need. ARS does not inform consumers what the manufacturer's warranty is or what it covers. Consequently, ARS often attempts to sell consumers an expensive duplicate warranty.

55. ARS does not provide the written guarantees after installation. If consumers ask for the guarantees, ARS ignores the requests or may take an inordinately long time to issue them to the consumers.

False Guarantees

56. In order to divert consumers' attention so that they do not ask for a price break-down, ARS first offers an incredible 100% Satisfaction Guarantee that "no one else offers: **"What that means is that when we install a new system in your home, if you are not 100% satisfied, you don't pay. Not one red cent. Not one thin dime."**⁴ (Emphasis added.) This guarantee is false. The 100% Satisfaction Guarantee does not exist.

57. In its sale presentations, ARS offers a dizzying group of other worthless, unwritten guarantees that are part of the package-price. ARS does not provide consumers with a copy of these guarantees at the time they sign the contract. Consumers have no time to think about whether these guarantees have any value.

58. Some of the "guarantees" include the following:

- a. The false "Total Comfort Guarantee": ...we guarantee ...the ...temperature that you requested will be maintained within one degree of your electronic thermostat.

⁴ Out of at least one hundred complaints to the BBB, to ARS itself, and to the Attorney General's Office, it appears that perhaps once, ARS refunded the consumer's full cost of a system, but that was only due to the fact that the consumer had not signed a contract or otherwise authorized the work ARS did.

- 1 b. The false "No Lemon Guarantee": If your compressorsfail two
2 times during five years, ...we're going to put in a whole new
3 condensing unit with a new parts warranty.
- 4 c. The false "No Excuses Guarantee": If your system fails to heat or
5 cool your home we'll not only fix if for free... within 24 hours
6 guaranteed or we'll write you a check for \$555....
- 7 d. The false "No Guesswork Guarantee": You are protected against
8 unscrupulous and dishonest contractors.....We guarantee your
9 total investment, up front and to the penny ...No surprises and no
10 nightmares. We're the only company in this entire area that offers
11 this...
- 12 e. The unredeemable "Lifetime Comfort Guarantee": You will be
13 comfortable for as long as you own your home.
- 14 f. The meaningless "Ultimate Protection Guarantee": When people
15 are working in your home, they will pay attention to the details.

16 E. FRAUDULENT INSTALLATION OF SOLAR HOT WATER HEATERS

17 59. Through at least August, 2010, ARS installed solar hot water heaters
18 despite the fact that they were not duly licensed with the Registrar of Contractors to do
19 so.

20 60. On August 4, 2010, the Arizona Registrar of Contractors sent a Warning
21 Letter to American Residential Services L.L.C. dba Goettl Air Conditioning:

22 We have received information that you are operating beyond the scope
23 of your Arizona contractor's license...you have a current class K-79
24 license. However, we have information indicating you are performing or
25 offering to perform work under the scope of a class C-37 license
26 regarding contracting to install a solar hot water heater. (Underlining
27 added.)

28 61. On August 23, 2010, the Arizona Registrar of Contractors sent a
29 Corrective Work Order to ARS American Residential Services L.L.C. dba Rescue
30 Rooter. Of the twelve items that needed correcting, the first is the following:

31 **Contractor is unlicensed to install solar systems and therefore is**
32 **unable to receive incentive from Salt River Project.** (Emphasis
33 added.) The contractor is not properly licensed for solar installation and
34 the homeowner could not receive any SRP, State or Federal incentives

and was not able to pay off the credit card because of this....and [was] charged a \$2,000 penalty and wants to be reimbursed \$4,500....

62. ARS lied to consumers when it set itself out as authorized to install solar hot water heaters. ARS listed other license numbers on the contracts it wrote to install solar hot water heaters, leading consumers to believe that ARS was licensed.

63. In at least Cochise, Maricopa, Pima and Yavapai Counties, ARS applied for city permits and rebates using a license number that did not authorize them to install solar hot water heaters. ARS was unable to finalize the permits it did obtain under the fraudulent license number.

64. Because of their unlicensed installations, ARS caused consumers to face negative legal consequences:

- a. Most importantly, consumers cannot sell their homes until permits are issued.
- b. Unlicensed installations cannot pass county and city inspections.
- c. Inspectors can fine consumers for failing to have inspections completed for the work done on their property.
- d. Consumers cannot collect utility rebates ARS promised.

F. TARGETING CONSUMERS, ESPECIALLY SENIOR CITIZENS AND RETIRED CITIZENS

65. Often, when consumers receive ARS's solicitations, they call ARS to schedule appointments. In some cases, ARS initials consumer calls. Still other consumers purchased ARS's Gold Key Program which provides two maintenance checks a year.

66. ARS's purpose in using these methods of communication with consumers is to "get inside" consumers' homes to convince them to agree to unnecessary and extremely expensive repairs; to discover "emergencies;" to convince consumers to immediately purchase new HVAC systems and hot water tanks; and to

1 sell consumers new, extraordinarily expensive and often unneeded HVAC systems
2 and hot water tanks.

3 67. Often, ARS's HVAC and plumbing technicians work in concert to defraud
4 consumers.

5 68. In September, 2009, ARS repaired Teri and Wayne Rs' air conditioning,
6 and the Rs purchased a Gold Key Maintenance Program. ARS called repeatedly for
7 the next several months to schedule a Gold Key follow-up.

8 a. In December, 2009, ARS inspected and "found" that the heat
9 exchanger on the Rs' roof had cracked. The technician turned off
10 the heat and suggested the Rs purchase a new system for
11 \$9,000-\$16,000.

12 b. The Rs asked ARS to turn the heat on, but the technician
13 explained that **it would be illegal for him to turn the heat on**
14 **because the Rs would die from carbon monoxide.** (Emphasis
15 added.)

16 c. The Rs called another company; that company's technician could
17 not find any crack and turned the heat on.

18 d. The second company's technician offered to meet with his
19 supervisor and ARS so that ARS could show them the crack the
20 second company could not find. ARS did not accept the offer.

21 69. In approximately June, 2010, ARS sent an ARS "WATER HEATER
22 SAFETY NOTICE" to an 83-year-old, legally blind woman who had to use a walker to
23 get around.

24 a. The consumer believed ARS's solicitation was from the
25 government because this index-sized card contained language
26 such as "Public Records" and "Water Heater Safety Inspection."
27 The solicitation also contained her property address; the year her
28 home was built; and her parcel number.

- b. The consumer believed that she was required to call the number on the notice in order to have her hot water heater inspected.
- c. Although the consumer was not having a problem with her hot water heater, she contacted ARS. ARS inspected her hot water heater and told her that it needed to be replaced.
- d. Because the consumer thought she had received a notice from the government, she believed she had to replace her hot water heater.
- e. The consumer told ARS she lived on a fixed income and would soon be selling the house in order to move into an assisted living facility.
- f. ARS nonetheless convinced the elderly consumer to buy a \$6,566.73 hot water heater, and a separate 20-year warranty, when the water heater already came with the manufacturer's 12-year warranty for the unit. ARS also sold her a 5-year warranty for the parts and a 1-year warranty for the labor.
- g. ARS would not provide the consumer with a price quote for the water heater until she agreed to the 20-year warranty.
- h. As the technician installed the water heater, another ARS technician arrived to inspect the elderly consumer's furnace even though she never requested an inspection. This second technician claimed the consumer needed a replacement furnace for \$3,000. She did not agree to the furnace installation and the furnace continues to function well.
- i. ARS told the consumer she would receive \$1,500 "cash back" from the government but did not explain that the \$1,500 figure is a tax credit and that she would have to pay at least \$1,500 in federal taxes in order to receive \$1,500 back.

1 j. ARS also told the consumer that she would receive a warranty,
2 energy certificate and information regarding the tax refund cash
3 in the mail. ARS never sent the consumer this information.

4 70. A 72-year-old had a Gold Key maintenance contract with ARS. In March,
5 2009, ARS found a few problems during its check but did not tell the consumer there
6 was a problem with the hot water heater.

7 a. In October, 2009, ARS performed another maintenance check.
8 The consumer was not having any problems with her hot water
9 heater or drain pipes at the time.

10 b. After inspecting her hot water heater, ARS told the consumer that
11 she was in danger. ARS **said that in its current condition it**
12 **could explode, and that it was likely to vent poisonous gas**
13 **into the home** because of problems with the venting and the
14 absence of three screws. (Emphasis added.)

15 c. ARS also told the consumer that her drain pipes were collapsing,
16 that the subsequent repairs would cost her tens of thousands of
17 dollars, **and that she was in immediate danger of having**
18 **backflow go into her home...** (Emphasis added.)

19 d. [ARS] repeatedly told the consumer that **if she didn't make the**
20 **repairs immediately she was in serious physical danger. The**
21 **consumer was scared and confused and felt pressured to**
22 **make an immediate decision. She did not feel that she could**
23 **take the time to get a second opinion or find out what other**
24 **companies would charge for the same work.** (Emphasis
25 added.)

26 e. Before the consumer even signed a contract, ARS began to
27 replace her hot water heater and sewer lines. She neither held the
28

1 contract nor was she given the time to read it. ARS did not explain
2 the contract but held it in front of her and told her where to sign.

3 f. The next day, the consumer's caretaker daughter told ARS to stop
4 their work. Approximately 10 minutes after they stopped working,
5 however, another different ARS technician appeared. He told the
6 consumer and her daughter that the sewer line was rotten. To
7 prove this, he grabbed a shovel and pierced the sewer line to the
8 home. This left the mother and daughter without water or a toilet
9 to use, so she and her daughter allowed ARS to fix what they had
10 destroyed.

11 g. ARS charged the consumer \$9,484.88 for the work they did; her
12 annual income is \$16,596.

13 71. On May 24, 2010, ARS technicians went to a retired couple's home to
14 perform a Gold Key scheduled check-up. One technician suggested several services
15 the couple should purchase, but they declined.

16 a. The other ARS technician performed a tank flush and told the
17 couple that the walls of the tank were weak and oxidized, the gas
18 line was not up to code, and the pressure release valve was
19 stuck.

20 b. The ARS technician **warned the couple there was an**
21 **immediate risk of fire. He claimed he could not perform the**
22 **tank flush because the water heater was unsafe and could**
23 **blow up. (Emphasis added.)**

24 c. **ARS relayed examples of disasters that occurred in the Mesa**
25 **area to the couple. ARS claimed the disasters happened**
26 **because people did not replace their hot water heaters when**
27 **warned to do so.**
28

- 1 d. **ARS insisted that a new hot water heater needed to be**
2 **installed as soon as possible if the couple did not want to**
3 **endanger their family.** (Emphasis added.)
- 4 e. The wife's experience and training convinced her that ARS was
5 not being honest about the threat to her home from the hot water
6 heater. She called another company whose technician concluded
7 that the six-year-old water heater worked fine and did not need to
8 be replaced. The technician stated if the water heater was going
9 to blow up, it would have done so already.
- 10 f. The couple has had no problems with the hot water heater since
11 ARS performed its inspection and issued its warning (risk of fire
12 and potential for blow-up) on May 24, 2010.
- 13 g. When the couple's AC unit stopped working the next month, the
14 ARS technician told them they needed a new capacitor and other
15 parts. The couple agreed to buy the capacitor but called another
16 company for a second opinion. That technician said the A/C unit
17 was in great condition. He also showed the couple the dirt and
18 scuff marks on the "new" ARS unit and compared it to a new
19 capacitor he had with him. The husband's experience and training
20 allowed him to assess that the capacitor was a used part.

21 72. A landlord over 60-years-old tried to contact Russett Services Southwest
22 in August, 2010, because her tenants' air conditioning did not work. Instead, the
23 landlord reached Russett Services/ARS/Rescue Rooter. She explained that her tenant
24 had a baby, and the air conditioning needed to be repaired immediately.

- 25 a. ARS made repairs and sold the landlord a Gold Key service plan.
26 When the unit was still not functioning, the landlord called ARS.
- 27 b. During ARS's inspection, and without the landlord's knowledge or
28 consent, ARS cut a hole in one of the cover panels of the unit.

1 ARS then advised her that there were serious problems with the
2 unit. The ARS technician called in 'senior technician' Ruben, who
3 had done the previous repairs that failed.

4 c. Ruben told the landlord that she should do one of the following:

5 1. Clean the evaporative coils for a price of \$5,600.

6 2. Replace the system with an Amana unit for \$8,889.

7 3. Replace the system with a Goodman unit for \$6,823.

8 d. ARS contractors made "dire warnings" that if the landlord did not
9 follow one of their recommendations, the unit would fail
10 completely in a short period of time.

11 e. The landlord called another company whose technician added two
12 pounds of freon to the unit; the unit has been operating fine ever
13 since.

14 73. A senior citizen responded to an ARS postcard for a free plumbing
15 inspection in October, 2009. ARS told her she needed a new heater coil. Almost
16 immediately, another ARS truck drove up, and the servicemen took her water heater
17 out to the road and drained it.

18 a. ARS told the senior citizen that she needed a new water heater.
19 Up to this point, the woman had never had a problem with her
20 water heater.

21 b. **The second service man...returned quickly and installed a 50**
22 **gallon hot water heater. At this point, the woman had not**
23 **signed any paperwork or agreed to this size of water heater.**
24 **ARS had not even quoted a price and the woman had not**
25 **agreed to one. (Emphasis added.)**

26 c. ARS then asked if the woman was interested in a "water softener."
27 Even though ARS did not quote her a price, she agreed, believing
28

1 from what ARS told her that the price of the hot water heater and
2 the water softener together would be \$1,000.

3 d. ARS handed the consumer a \$1,436.46 bill for the hot water
4 heater. She was later shocked, but because she did not know the
5 price for this service, she paid.

6 e. When ARS handed the consumer the bill for the "water softener,"
7 she could not read it because she did not have her glasses with
8 her. ARS left and took the bill with them. ARS then installed a
9 whole house filtration system to the side of her house, not a water
10 softener.

11 f. The consumer received a bill due immediately for \$2,348.20. She
12 called ARS and told them she did not want the whole house
13 filtration system and to remove it from her wall. ARS did not call
14 her back.

15 74. Mr. F is over age 60. In February, 2010, ARS did a maintenance check
16 on Mr. F's water heater. Without Mr. F's authorization, ARS replaced a part and
17 cleaned the coils and charged him \$548.90. Mr. F refused to pay the bill, and ARS
18 could not collect on the unauthorized work.

19 75. When Sun City resident Mr. B refused to buy a water filtration system
20 from ARS, ARS told him that the water coming from the street had feces in it. Mr. B
21 contacted his water company which told him the water was filter-processed and well
22 above safe drinking levels.

23 76. On August 14, 2009, Goettl Air installed a new air conditioner for the
24 Robert and Marlene B who are older than 60. Within two days, Goettl's "sister
25 company," ARS, called offering the Bs' a free inspection of their plumbing.

26 a. After some time, the Bs acquiesced. An ARS technician drained
27 their hot water heater, removed the anode rod and told the Bs that
28 **"the water pressure was too high and their plastic supply**

1 lines would blow up. The technician asked, 'Do you want
2 that?'" (Emphasis added.)

3 b. ARS told the Bs that their water was not good to drink, to do
4 dishes in or to wash in. ARS insisted that the hot water heater
5 had to be replaced for \$3,970 before taxes.

6 c. Mr. B suggested that he would just buy the anode rod from
7 Central Arizona Supply and replace it himself. ARS told Mr. B that
8 ARS buys directly from the factory, and a part from CAS would be
9 inferior.

10 d. Mr. B states the following in his complaint against Goettl:

11 After going through all these SCARE-TACTICS, LIES OR HALF-
12 TRUTHS, HIGH PRESSURE etc, [ARS] asked if I really wanted
13 him to re-install this old rod or put in this new one, [sic] he HAD to
14 do either one. At this point, I told him to install the anode rod and
paid for it. (Emphasis original.)

15 e. The next day, Mr. B checked with another plumbing company and
16 with CAS. He discovered he would have saved hundreds of
17 dollars had he not listened to ARS.

18
19 77. In June, 2009, Larry G, who was at least 60 years old, responded to a
20 Goettl Air Conditioning offer for a free air conditioner inspection. Mr. G's
21 air conditioner was operating well.

22 a. When Goettl arrived, and without Mr. G's authorization, Goettl
23 replaced parts on his air conditioner and presented him with an
24 invoice charging hundreds of dollars for each of these two items.

25
26 b. Mr. G states the following in his complaint:

27 When I objected, they removed the large[r] item, and
28 reduced the bill to \$198.09. I pa[id] this bill, but still objected

1 to the charges... I believe that Goettl Air Conditioning's offer
2 of a free inspection is merely a way for them to replace
3 parts which do not need to be replaced and charge clients
outrageous prices for replaced components, all without
gaining the approval of the client.

4 **COUNT II**

5 **VIOLATION OF LICENSING**

6 78. At no time was ARS duly licensed to install solar hot water heaters.

7 79. ARS installed more than one hundred solar hot water heaters.

8 80. A.R.S. § 32-1121(c) states the following:

9 Any person who does not have an exemption from licensure
10 pursuant to Subsection A, paragraph 14, subdivision (c)⁵ of this
11 section is subject to prosecution for a violation of Section 44-1522.
12 The attorney general may investigate the act or practice and take
appropriate action pursuant to title 44, chapter 10, Article 7.

13 81. ARS violated A.R.S. § 32-1121(c) because ARS did not inform
14 consumers in its advertising and other documents that it was "not a licensed
15 contractor."

16 **PRAYER FOR RELIEF**

17 The State of Arizona respectfully requests that this honorable Court enter an
18 order:

19 A. Issuing a permanent injunction prohibiting Defendants, their agents,
20 employees, and all other persons and entities, corporate or otherwise, in active
21 concert or participation with any of them, from violating A.R.S. § 44-1521 *et seq.*

22 B. Issuing a permanent injunction prohibiting Defendants from engaging in
23 the course of conduct set out herein.

24
25
26
27 ⁵ A.R.S. § 32-1121, Subsection A, paragraph 14, subdivision (c) reads: To a person who utilizes any
28 form of advertising to the public in which the person's unlicensed status is not disclosed by adding the
words "not a licensed contractor" in the advertisement.

1 C. Issuing a permanent injunction prohibiting Defendants from operating as
2 HVAC or plumbing entities in Arizona.

3 D. Ordering Defendants to pay to the State of Arizona a civil penalty of up to
4 \$10,000.00 for each violation of the Arizona Consumer Fraud Act pursuant to A.R.S. §
5 44-1531.

6 E. Ordering Defendants to pay to the State of Arizona a civil penalty of up to
7 \$10,000.00 for each violation of A.R.S. § 32-1121 (C).

8 F. Ordering Defendants to reimburse the Arizona Attorney General for costs
9 of investigation and reasonable attorneys' fees pursuant to A.R.S. § 44-1534.

10 G. Granting such other and further relief as the Court deems equitable and
11 proper.

12 Dated this 14th day of September, 2011.

13 THOMAS C. HORNE
14 Attorney General

15 By: Noreen R. Matts
16 Noreen R. Matts
17 Assistant Attorney General
18 Attorneys for Plaintiff
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