

Commonwealth of Pennsylvania
 Office of Attorney General
 Bureau of Consumer Protection
 Saverio P. Mirarchi
 Deputy Attorney General
 Attorney I.D. #88616
 21 S. 12th Street, 2nd Floor
 Philadelphia, PA 19107
 (215) 560-2414
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA	:	COMMONWEALTH OF
By Attorney General	:	PENNSYLVANIA
THOMAS W. CORBETT, JR.	:	COUNTY OF PHILADELPHIA
	:	COURT OF COMMON PLEAS
Plaintiff	:	
	:	
v.	:	
	:	TERM, 2007
KEN POMO GENERAL CONTRACTING	:	
6624 Tackawanna Street	:	No.
Philadelphia, PA 19135	:	
	:	
and	:	
	:	
KENNETH POMO, individually and	:	
doing business as Ken Pomo General	:	
Contracting	:	
6624 Tackawanna Street	:	CIVIL ACTION - EQUITY
Philadelphia, PA 19135	:	
	:	
Defendants	:	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU, AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS

IMPORTANT TO YOU.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE(S) SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Philadelphia Bar Association
Lawyer Referral and Information Service
One Reading Center
Philadelphia, PA 19107
Telephone: (215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defen derse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias, de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Adem as, la corte puede decidir a favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELFIA
SERVICIO DE REFERENCIA INFORMACION LEGAL
One Reading Center
Philadelphia, Pennsylvania 19107
Telefono: (215) 238-1701

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	:	
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COMPLAINT

The Commonwealth of Pennsylvania, acting by its Attorney General, Thomas W. Corbett, Jr., through the Bureau of Consumer Protection (herein referred to as the “Commonwealth” and/or “Plaintiff”), brings this action to obtain injunctive relief, civil penalties, restitution and costs against Defendant, and avers as follows:

1. This Complaint is brought pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (herein referred to as the “Consumer Protection Law”), which authorizes the Attorney General to bring an action in the name of the Commonwealth to restrain by temporary or permanent injunction unfair methods of competition and unfair or

deceptive acts or practices declared unlawful therein.

2. The Commonwealth believes and therefore avers that Defendant is using, and/or has used methods, acts or practices declared unlawful by § 201-3 of the Consumer Protection Law.

3. The Commonwealth believes and therefore avers that the public interest is served by seeking before this Honorable Court an injunction to restrain the methods, acts or practices complained of herein.

4. Further, the Commonwealth requests restitution, civil penalties, costs and other appropriate equitable relief.

5. This Court has jurisdiction of this action pursuant to § 761 of the Judicial Code, 42 P.S. § 761.

THE PARTIES

6. Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection (herein referred to as the “Commonwealth” and/or “Plaintiff”), which has offices located at 21 South 12th Street, 2nd Floor, Philadelphia, Pennsylvania 19107.

7. Defendant, Kenneth Pomo, is an adult individual residing at 6624 Tackawanna Street, Philadelphia, PA 19135 (herein referred to as “Defendant” and/or collectively as one of the “Defendants”).

8. At all times relevant and material hereto, Defendant engaged in trade and commerce within the Commonwealth of Pennsylvania as a general contractor, specializing in cement work services, doing business as Kenneth Pomo General Contracting (herein referred to as “Defendant” and/or collectively as one of the “Defendants”) with a business address at 6624

Tackawanna Street, Philadelphia, PA 19135.

9. The Commonwealth has reason to believe that Defendant is using, has used or is about to use methods, acts or practices declared unlawful by §201-3 of the Consumer Protection Law.

10. The Commonwealth believes that the public interest is served by seeking before this Honorable Court a permanent injunction to restrain the methods, acts and practices of the Defendant as hereinafter set forth. Further, the Commonwealth requests injunctive relief, civil penalties, costs and other appropriate equitable relief as redress for violations of the Consumer Protection Law.

11. At all times relevant and material hereto, the unfair methods, acts and practices complained of herein have been willfully used by Defendant.

12. Citizens of the Commonwealth are suffering and will continue to suffer irreparable harm unless the acts and practices complained of are enjoined.

13. The Bureau of Consumer Protection has received numerous consumer complaints against the Defendant since November, 2000.

14. The Commonwealth believes and therefore avers, that there are also additional consumers that have not filed complaints with the Bureau of Consumer Protection who have also been harmed due to the methods, acts and practices of the Defendant, which include, but are not limited to, those as alleged herein.

COUNT I

FAILURE TO DELIVER SERVICES AS PROMISED, PERFORM SERVICES IN A WORKMANLIKE MANNER AND RESPOND TO CONSUMER COMPLAINTS

15. Plaintiff incorporates herein Paragraphs 1 through 14 as though the same were

more fully set forth herein at length.

16. Defendant advertised “quality work at discount prices” for services on sidewalks, driveways, steps, brickwork, blockwork, stonework, waterproofing, decks, patios, retaining walls, glass block windows, chimney cleaning, chimney relining, rebuilding, carpentry and wet basements made dry. See *Exhibit A* which is attached hereto and incorporated herein by reference.

17. Defendant accepted substantial payments from consumers for various contracting services and thereafter failed to perform the work or failed to perform the work in a workmanlike manner.

18. Defendant uses defective concrete when performing services for consumers.

19. Defendant applies concrete in such a way that it causes cracking, crumbling, separation and, finally, sloughing off of the top layer of the newly applied concrete.

20. Defendant failed to respond to telephone calls, complaints and inquiries from consumers who had suffered harm due to Defendant’s business practices.

21. The aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by Section 3 of the Consumer Protection Law, as defined by Section 2 of said Law, including, but not limited to, the following:

(a). Section 201-2(4)(v), which prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(b). Section 201-2(4)(vii), which prohibits representing that goods or services

are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

- (c). Section 201-2(4)(ix), which prohibits advertising goods or services with intent not to sell them as advertised;
- (d). Section 201-2(4)(xvi), which prohibits making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing; and
- (e). in violation of § 201-2(4)(xxi), engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

22. At all times relevant and material hereto, the unlawful methods, acts and practices complained of have been willfully used by the Defendant.

23. The Commonwealth believes that the public interest is served by seeking before this Court a Permanent Injunction to restrain the methods, acts and practices described herein.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this Honorable Court issue an Order:

- A. Declaring Defendant's conduct as described in the Complaint to be in violation of the Consumer Protection Law.
- B. Directing the Defendant to make full restitution to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the Consumer Protection Law.
- C. Permanently enjoining Defendant and all other persons acting on his behalf, directly or indirectly, from violating the Consumer Protection Law and any

amendments thereto, including, but not limited to, the following:

- (i). Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, in violation of § 201-2(4)(v);
- (ii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, in violation of § 201-2(4)(vii) of the Consumer Protection Law;
- (iii). Advertising goods or services with the intent not to sell them as advertised, in violation of § 201-2(4)(ix) of the Consumer Protection Law;
- (iv). Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing, in violation of § 201-2(4)(xvi) of the Consumer Protection Law;
- (v). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of § 201-2(4)(xxi) of the Consumer Protection Law.

D. Requiring Defendant to pay the Commonwealth a civil penalty in the amount of One Thousand (\$1,000.00) Dollars for each and every violation of the

Consumer Protection Law, and a civil penalty of Three Thousand (\$3,000.00) Dollars for each and every violation of the Consumer Protection Law where the victim is sixty years of age or older;

E. Permanently enjoining Defendant in any capacity, from doing business in the Commonwealth of Pennsylvania and requiring Defendant to forfeit his right to engage in business in the Commonwealth of Pennsylvania until he has paid all restitution, refunds, civil penalties and costs referred to herein;

F. Requiring Defendant to pay the Commonwealth's investigative and litigation costs in this matter;

G. Granting such other general and/or further relief as the Court deems just and proper.

COUNT II

FAILURE TO PROPERLY RESPOND TO REFUND REQUESTS AND HONOR WARRANTIES

24. Plaintiff incorporates herein Paragraphs 1 through 23 as though the same were more fully set forth herein at length.

25. Although the Defendant received monies from consumers for services that were promised but never provided or provided in an unsatisfactory manner, the Defendant failed to properly and timely respond to refund requests when made by those disappointed consumers.

26. Consumers have complained that they have had difficulty contacting the Defendant. The Defendant has failed to return phone messages left by consumers.

27. Defendant's invoices guarantee "Contractor will repair any cracks or crumbling concrete." However, when consumers called Defendant to complain about cracking or crumbling concrete, Defendant failed to respond to consumers complaints, failed to refund

consumers' money, failed to perform the repairs or failed to perform the repairs in a workmanlike manner. See *Exhibit B* which is attached hereto and incorporated herein by reference.

28. The aforesaid methods, acts and practices of Defendant constitute unfair methods of competition and unfair or deceptive acts or practices as prohibited by § 201-3 of the Consumer Protection Law, including but not limited to the following:

- (a). Section 201-2(4)(vii), which prohibits representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (b). Section 201-2(4)(ix), which prohibits advertising goods or services with intent not to sell them as advertised;
- (c). Section 201-2(4)(xiv), which prohibits failing to comply with the terms of any written guarantee or warrantee given to the buyer at, prior to or after a contract for the purchase of goods or services is made;
- (d). Section 201-2(4)(xvi), which prohibits making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing; and
- (e). Section 201-2(4)(xxi), which prohibits engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

29. At all times relevant hereto, the unlawful methods, acts and practices complained of have been willfully used by Defendant.

30. The Commonwealth believes that the public interest is served by seeking before

this Court a Permanent Injunction to restrain the methods, acts, and practices described herein.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this Honorable Court issue an Order:

- A. Declaring Defendant's conduct as described in the Complaint to be in violation of the Consumer Protection Law;
- B. Directing the Defendant to make full restitution to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the Consumer Protection Law.
- C. Permanently enjoining Defendant and all other persons acting on his behalf, directly or indirectly, from violating the Consumer Protection Law and any amendments thereto, including, but not limited to, the following:
 - (i). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another, in violation of § 201-2(4)(vii) of the Consumer Protection Law;
 - (ii). Advertising goods or services with the intent not to sell them as advertised, in violation of § 201-2(4)(ix) of the Consumer Protection Law;
 - (iii). Failing to comply with the terms of any written guarantee or warrantee given to the buyer at, prior to or after a contract for the purchase of goods or services is made, in violation of § 201-2(4)(xiv) of the Consumer Protection Law;
 - (iv). Making repairs, improvements or replacements on tangible, real or

personal property, of a nature or quality inferior to or below the standard of that agreed to in writing, in violation of § 201-2(4)(xvi); and

- (v). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of § 201-2(4)(xxi) of the Consumer Protection Law.

D. Requiring Defendant to pay the Commonwealth a civil penalty in the amount of One Thousand (\$1,000.00) Dollars for each and every violation of the Consumer Protection Law, and a civil penalty of Three Thousand (\$3,000.00) Dollars for each and every violation of the Consumer Protection Law where the victim is sixty years of age or older;

E. Permanently enjoining Defendant in any capacity, from doing business in the Commonwealth of Pennsylvania and requiring Defendant to forfeit his right to engage in business within the Commonwealth of Pennsylvania until he has paid all restitutions, refunds, civil penalties and costs referred to herein;

F. Requiring Defendant to pay the Commonwealth's investigative and litigation costs in this matter;

G. Granting such other general and/or further relief as the Court deems just and proper.

COUNT III

FAILURE TO PROVIDE REQUISITE NOTICE OF CANCELLATION

31. Plaintiff incorporates Paragraphs 1 through 30 as though the same were more

fully set forth herein at length.

32. Defendant sells or contracts to sell to consumers goods and services, having a sale price of Twenty Five Dollars (\$25.00) or more, as a result of, or in connection with, a call on the buyer at his/her residence, in person and otherwise, but does not provide the buyer with a fully completed receipt (or copy of any written contract), containing the written notice to consumers of their three day right to cancel, as required by § 201-7(b)(1) of the Consumer Protection Law. See *Exhibit B* which is attached hereto and incorporated herein by reference.

33. The Defendant does not provide consumers with a proper notice of cancellation form in duplicate, as required by § 201-7(b)(2) of the Consumer Protection Law.

34. The Defendant does not inform the buyer at the time he/she purchases the goods or services (or signs the contract) of his/her three (3) day right to cancel, as required by § 201-7(d) of the Consumer Protection Law.

35. According to § 201-7(e) of the Consumer Protection Law, the cancellation period shall not begin to run until the buyer has been informed of his right to cancel and has been provided with copies of the "Notice of Cancellation."

36. The aforesaid methods, acts and practices of the Defendant constitute unfair methods of competition and unfair or deceptive acts or practices prohibited by Section 3 of the Consumer Protection Law, as defined by §201-2(4)(xxi) and 201-7.

37. At all times relevant and material hereto, the unlawful methods, acts and practices complained of have been willfully used by Defendant.

38. The Commonwealth believes that the public interest is served by seeking before this Court a Permanent Injunction to restrain the methods, acts and practices described herein.

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this

Honorable Court issue an Order:

- A. Declaring Defendant's conduct as described in the Complaint to be in violation of the Consumer Protection Law;
- B. Permanently enjoining Defendant, and his officers, agents, employees and all other persons acting on his behalf, directly or indirectly, from engaging in conduct prohibited by Section 3 of the Consumer Protection Law and any amendments thereto, as defined by § 201-2(4)(xxi) and 201-7.
- C. Prohibiting Defendant from otherwise violating the Consumer Protection Law;
- D. Requiring Defendant to make full restitution to each and every consumer who is entitled to restitution from Defendant under the Consumer Protection Law.
- E. Requiring Defendant to pay the Commonwealth a civil penalty in the amount of One Thousand (\$1,000.00) Dollars for each and every violation of the Consumer Protection Law, and a civil penalty of Three Thousand (\$3,000.00) Dollars for each and every violation of the Consumer Protection Law where the victim is sixty years of age or older;
- F. Permanently enjoining Defendant in any capacity, from doing business in the Commonwealth of Pennsylvania and requiring Defendant to forfeit his right to engage in business within the Commonwealth of Pennsylvania until he has paid all restitution, refunds, civil penalties and costs referred to herein;
- G. Requiring Defendant to pay the Commonwealth's investigative and litigation costs in this matter;
- H. Granting such other general and/or further relief as the Court deems just

and proper.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

Date: _____

BY: _____

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Deputy Attorney General
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