

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

FILED PCL

11/11/14

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

DAWN MILLS, LUANN  
COSGROVE AND MICHAEL  
COSGROVE, individually and on  
behalf of all others similarly  
situated,

Plaintiffs,

vs.

ROTO-ROOTER SERVICES  
COMPANY,

Defendant.

Court File No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1. Plaintiffs Dawn Mills, LuAnn Cosgrove and Michael Cosgrove ("Plaintiffs"), individually and on behalf of all other individuals and entities similarly situated, by and through their attorneys Zimmerman Reed, P.L.L.P., as a complaint against Roto-Rooter Services Company ("Defendant" or "Roto-Rooter"), allege as follows:

### INTRODUCTION

2. This case involves a fake sewer line repair swindle that has commonly been used by Defendant Roto-Rooter. Defendant is a

nationwide provider of plumbing and drain services. Among the services that Defendant offers are: sewer line cleaning or replacement, faucet drain repair or replacement, toilet repair or replacement, bathtub drain repairs, water line and water supply pipe repair or replacement, and repair or replacement of damaged septic tanks.

3. This case arises out of Defendant's common pattern and practice of systematically pressuring homeowners into unnecessary repair jobs by misleading them into thinking they had a much greater plumbing problem than they actually did. Defendant preyed on the desperation and inexperience of consumers seeking emergency plumbing services—often homeowners suffering from the sudden and complete loss of water use in their residence—to charge exorbitant sums.

4. Plaintiffs assert four legal bases for relief on behalf of themselves and all other similarly situated individuals and entities in Minnesota who fell victim to Defendant's unscrupulous practices and purchased unnecessary plumbing or drain-cleaning services from Defendant: (1) violations of the Minnesota Truth in Repairs Act, Minn. Stat. § 325F.59; (2) violations of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69; (3) violations of the Minnesota Unlawful Trade Practices Act, Minn. Stat. § 325D.13; and (4) violations

of the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §  
325D.44.

### **JURISDICTION AND VENUE**

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5. Jurisdiction is proper in this District pursuant to  
Minnesota Statutes Sections 484.01, Subdivision 1(1) and 543.19.

6. Venue is proper in this District pursuant to Minnesota  
Statutes Section 542.09 because Defendant resides in this District and  
the cause of action arose in this District.

### **PARTIES**

7. Plaintiff, Dawn Mills, is a resident of Crystal, Minnesota.

8. Plaintiff, LuAnn Cosgrove, is a resident of Minneapolis,  
Minnesota.

9. Plaintiff, Michael Cosgrove, is a resident of Minneapolis,  
Minnesota.

10. Defendant Roto-Rooter Services Company, is an Iowa  
corporation with its home office located at 300 Ashworth Road, West  
Des Moines, Iowa 50265. Defendant advertises, markets, and sells its  
plumbing and drain services throughout the United States, including  
Minnesota.

11. The term "Defendant" as used in this Complaint means and  
includes all persons and entities listed and named as a Defendant in

the caption of this Complaint, including any agents, servants, and or employees.

## FACTS

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12. Founded in 1935, Roto-Rooter is the largest provider of plumbing and sewer-cleaning services to homeowners, businesses, towns and cities in North America. Cincinnati-based Chemed Corporation is the parent company of Roto-Rooter Group Inc., which is the parent company of Roto-Rooter Services Company.

13. Although Roto-Rooter today is a full-service plumbing company, the Roto-Rooter name became famous as a sewer line cleaning company.

14. In fact, Roto-Rooter built its business by marketing itself as the drain cleaning service that could “completely” clean consumers’ drains and sewer pipes without “muss, fuss or needless digging.” Roto-Rooter has held itself out as the drain and sewer cleaning solution that would allow consumers to avoid digging and excavation to solve their clogged pipes. Roto-Rooter told consumers that they should call Roto-Rooter because “the Roto-Rooter Machine, with exclusive cutting blades, shaves the inside wall of the pipes” and “Razor-Kleens from house to city main.”

15. Sewer and other underground pipe cleaning or replacement continues to be a mainstay of Roto-Rooter's business. The "Roto-Rooter Machine" was specifically developed by Roto-Rooter to clear tree roots and other obstructions from sewer lines. A current version of that machine, which is essentially a heavy-duty plumber's snake with sharp rotatable blades that can be fed through pipes to eliminate clogs, remains a hallmark of Roto-Rooter service today.

16. Roto-Rooter represents that when a sewer line or other underground piping cannot be cleared with the Roto-Rooter machine, Roto-Rooter technicians will use specially made fiber optic cameras that allow for a visual inspection of underground piping. A flexible rod with a high-resolution video camera on its tip is inserted into the pipe for inspection. Video images are then transmitted to the camera operator or onlookers and can be saved onto a DVD for a permanent record. Technicians are supposed to use the cameras to pinpoint the physical location of the clog in the line or pipe so that defects and obstructions can be corrected cost effectively.

17. The Roto-Rooter website promotes the efficiency of its sewer and other pipe cleaning service, and claims that the Roto-Rooter technician will only perform a video inspection if he/she believes there

is a problem with the main sewer line and that sewer line repair will only be recommended if it is “necessary.” Specifically, the website says:

A technician using a Roto-Rooter machine will cut through the clog and clean the main sewer pipe right down to its inner walls. If the technician has any indication there is a problem with the main sewer line, he may perform a video camera inspection to determine if the pipe is damaged or corroded. The technician will share the video with the homeowner and present options for sewer line repair or replacement *if necessary*.

(Emphasis added).

18. In fact, as discussed below, Roto-Rooter mainline technicians, all of whom work on a team whose mandate is to increase the number of camera inspections and full excavations sold, are required to refer a fixed percentage of all jobs to camera and excavation. If the camera and excavator team sell excavation services, the mainline technician receives a referral fee. Because Roto-Rooter’s focus is to increase the excavation business, it sets quotas for mainline technicians to refer lines to excavation teams whether the repairs were necessary or not.

19. Thus, in stark contrast to what Defendant markets on its website, Defendant has pursued a common practice and pattern of deceiving customers into purchasing expensive sewer and other piping repairs or replacement that are unnecessary. Specifically, Defendant

engaged in a pattern and practice of taking minor plumbing problems and exaggerating them to a much greater extent so that Defendant could recommend a more expensive repair or replacement.

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20. It is extremely difficult for the average homeowner to diagnose or fix a problem related to underground sewer lines or other piping. A backed-up sewer can, and often does, leave a homeowner without the use of running water. In that situation, a homeowner is suddenly unable to use the bathroom, shower, wash clothes, run the dishwasher, or cook—basic necessities of plumbing in a modern home. These inconveniences put the homeowner in a desperate and stressful state. As a result, homeowners feel compelled to get these types of plumbing problems fixed immediately.

21. Defendant is well aware of the vulnerable position that customers are put in when their sewer line or other piping is not functioning and the call comes for an emergency cleaning. The Roto-Rooter website acknowledges this fact:

If the main sewer line clogs, toilets and drains throughout your house will begin to backup. This is usually a very stressful situation for homeowners and it can happen at any time of the day or night. That's why Roto-Rooter is your 24 hour plumbing company.

22. However, instead of removing the clog with the Roto-Rooter machine, or otherwise resolving the problem in the most cost efficient manner, as is advertised, Defendant engaged in a common pattern and practice of deceptive conduct by telling consumers that clogged pipes could not be cleared with a routine cleaning. Rather, Defendant systematically pressured consumers into believing that the solution required an expensive repair or replacement. Whereas a sewer line or pipe cleaning averages several hundred dollars to perform, Defendant urged unnecessary repairs or replacement costing in the thousands. In many cases, Defendant's recommendation of an unnecessary repair or replacement also led to major excavation of a customer's yard.

23. If customers challenged Defendant's diagnosis of the sewer or piping problem requiring an expensive repair or replacement, Defendant recommended that the customer have Defendant conduct a camera examination to confirm the extent of the problem. However, the camera examinations, which cost additional hundreds of dollars, were not conducted to reveal the true nature of the problem—usually a garden-variety clog—but instead were manipulated by Defendant to either obfuscate the extent of the problem, or make the problem appear more severe than it really was. In fact, Defendant required mainline technicians to refer a fixed percentage of sewer lines to the camera and



excavation team, whether the blades successfully cleared the line or not.

24. Concurrent with Defendant painting a worst-case scenario of the customer's plumbing problem, Defendant would implore a sense of great urgency and stress its unique capability to resolve the problem quickly, usually within 24 hours. Defendant also arranged for on the spot financing at high interest rates through Wells Fargo Financial National Bank to allay customer concerns about agreeing to an expensive fix. Many customers are now saddled with significant debt at high interest rates.

25. As a direct result of Defendant's deceptive conduct and misrepresentations, Plaintiffs and other members of the Class purchased expensive sewer and other pipe repairs or replacements that were unnecessary. Had consumers known the truth—that a much less expensive option for fixing their plumbing problem existed—they would not have acquiesced to the more expensive repair or replacement.

26. On February 12, 2011, the Star Tribune published an article in its Investigators column entitled "Is there something rotten at Roto-Rooter?" The article unveiled an investigation by Minneapolis officials into the local sales practices of Roto-Rooter, which was prompted by complaints from seven homeowners. After investigating

those complaints, Minneapolis officials accused Roto-Rooter's Twin Cities' branch of "misleading customers and using other unfair tactics to pressure homeowners into big-ticket repair jobs." The article detailed several of the homeowner complaints as follows:

For one Minneapolis homeowner, a rank smell in her basement and a \$239 visit from Roto-Rooter were just the beginning of her problems. The routine drain cleaning escalated into every homeowner's nightmare—a Saturday visit from a plumbing contractor who urged a \$12,000 repair.

Another Minneapolis homeowner was told he needed to spend \$15,000 to replace his sewer line, even though another plumber told him the damage was grossly exaggerated.

In another complaint, a Pillsbury Avenue homeowner said she paid \$15,000 for repairs even though a city inspector later said the work was probably unnecessary.

In one case, Roto-Rooter tried to overcome a homeowner's concerns about shoddy work by falsely claiming that a city inspector had already approved its repairs. In fact, city officials noted, inspectors wouldn't approve the permit until Roto-Rooter corrected the problem.

Roto-Rooter even tried to charge a homeowner \$3,600 to repair a water line its own workers broke.

Notably, the article quoted a spokesman for Root-Rooter who admitted there have been "problems."

27. The Star Tribune published a follow-up article on February 14, 2011, entitled "Roto-Rooter gripes keep on coming," which revealed

that during the two-day period following the publication of its first report on Roto-Rooter, nearly three dozen more similar complaints against Roto-Rooter were registered with Minneapolis officials.

28. On February 17, 2011, KARE 11 TV and KARE11.com ran a story on the City of Minneapolis' investigation into complaints regarding the deceptive sales practices of Roto-Rooter. The broadcast and article explained that Roto-Rooter's practice and pattern of deception is common: "All the stories are similar. What seemed like a routine cleaning, ended up costing thousands for some." Once again, "Company officials acknowledge that some of the complaints are legitimate."

29. On or around December 19, 2010, Plaintiff Mills' sewer backed up, leaving her without the use of water in her Crystal, Minnesota residence. It was the week of Christmas and she was expecting family and friends to be visiting in the coming days. Plaintiff Mills immediately contacted Defendant the same day to diagnose and fix the problem.

30. Defendant came to Plaintiff Mills' residence on or around December 19, 2010, and diagnosed Plaintiff Mills' plumbing problem as a clog in the sewer line. Defendant quoted Plaintiff Mills a price of approximately \$234 to remove the clog with the Rotor-Rooter machine.

Plaintiff Mills agreed to the service. Defendant used the Roto-Rooter machine to remove the clog, but told Plaintiff Mills that the tool could only get partially through the sewer line, meaning that the Roto-Rooter machine could not remove the clog.

31. Defendant advised Plaintiff Mills that she needed to have a camera inspection performed to uncover the full extent of the problem, which would demonstrate the reason why the Rotor-Rooter machine was unable to remove the clog. Defendant quoted Plaintiff Mills a price of approximately \$500 to conduct the camera inspection. Plaintiff Mills agreed to have the camera inspection performed.

32. Defendant came back to Plaintiff Mills' residence on or around December 20, 2010, with a camera and performed the camera inspection. After conducting the inspection, Defendant advised Plaintiff Mills that the problem with the sewer line was that it was "broken," rather than clogged, and that it would cost \$8,750 to repair.

33. Defendant presented the repair costing \$8,750 to Plaintiff Mills as the only sensible option. Defendant implored a sense of great urgency upon Plaintiff Mills while leveraging its unique capability to have the problem fixed immediately.

34. Nevertheless, Plaintiff Mills initially resisted Defendant's recommendation as too expensive. Defendant then showed Plaintiff

Mills a DVD copy of the camera inspection. Based on Defendant's explanation of what was viewable on the DVD, Defendant convinced Plaintiff Mills that her sewer line needed the recommended repair.

35. To further facilitate the expensive fix, Defendant presented Plaintiff Mills with an offer to finance the repair through a Wells Fargo Home Project Visa. Roto Rooter provided all of the financing documents to Plaintiff Mills at her home. It was the week of Christmas and Plaintiff Mills had no toilet – therefore, her boyfriend signed the financing agreement and Defendant then immediately performed the repair. Plaintiff Mills currently owes \$6,414.29 and has been making monthly payments of \$165.00 despite the fact that she never signed the financing agreement to obligate her for this debt.

36. The City of Crystal inspected the repair after it was complete on or around December 27, 2010, as is required by code. The inspector informed Plaintiff Mills that she had overpaid for the work that was performed.

37. The DVD copy of the camera inspection performed by Defendant on Ms. Mills' residence was subsequently reviewed by a professional drain cleaner who could find no indication that the pipe was broken. Thus, not only was the repair costly, but completely unnecessary.

38. On or around February 1, 2011, the drain in the basement of Plaintiffs LuAnn and Michael Cosgrove (“Cosgroves”) started backing up. Plaintiff LuAnn Cosgrove immediately contacted Defendant to fix the problem.

39. Defendant came to the Cosgroves’ residence on or around February 1, 2011, and diagnosed the Cosgroves’ plumbing problem as a clog in the sewer line. Defendant quoted Plaintiff LuAnn Cosgrove a price of approximately \$259 to remove the clog with the Rotor-Rooter machine. Plaintiff LuAnn Cosgrove agreed to the service. Defendant used the Roto-Rooter machine to remove the clog, but told Plaintiff LuAnn Cosgrove that the tool could only get partially through the sewer line, meaning that the Roto-Rooter machine could not remove the clog.

40. Defendant told Plaintiff LuAnn Cosgrove that she needed to have a camera inspection performed to reveal the full extent of the Cosgroves’ plumbing problem. Plaintiff LuAnn Cosgrove questioned whether it was necessary to have the camera inspection, but was told by Defendant that she was behaving like an “ostrich” and “burying her head in the sand about the sewer problem.” As a result of Defendant’s pressure tactics, Plaintiff LuAnn Cosgrove agreed to have the camera inspection performed at an additional cost to her.

41. Defendant performed the camera inspection within an hour, which was recorded onto a DVD. Following the camera inspection, Defendant advised Plaintiff LuAnn Cosgrove that her plumbing problem stemmed from where the four inch and six inch pipes meet, and that it would cost \$5,235 to fix. Defendant further advised Plaintiff LuAnn Cosgrove that excavation of the pipe was required to fix the problem.

42. Defendant presented the repair costing \$5,235 to Plaintiff LuAnn Cosgrove as the only sensible option. Defendant implored a sense of great urgency upon Plaintiff LuAnn Cosgrove to have the repair conducted immediately while leveraging its unique capability to have the problem fixed the following day. Plaintiff LuAnn Cosgrove asked if she could wait until her husband, Plaintiff Michael Cosgrove, got home before making a decision so that she could talk it over with him. Plaintiff LuAnn Cosgrove also asked if she could wait until spring before any digging in her yard because she had planted flower beds above the area Defendant was intent on excavating. Defendant responded by telling Plaintiff LuAnn Cosgrove that the recommended repair could not wait, and that she was in jeopardy of having her basement flooded by sewage. Plaintiff LuAnn Cosgrove then agreed to the recommended repair to be performed by Defendant.

43. The City of Minneapolis inspected the Cosgroves' repair after it was complete in February, 2011. The inspector subsequently informed Plaintiffs LuAnn and Michael Cosgrove that they had overpaid and the DVD copy of the camera inspection confirmed to the inspector that the repair was unnecessary.

44. The Minneapolis Star Tribune reported, "On Oct. 3, 2011, Minneapolis police searched the Plymouth office of Roto-Rooter and seized DVDs of drain lines, customer files, an employee's personnel file and correspondence between the company and subcontractor Pipeline Industries Inc. The next day, police went to Pipeline Industries' office in St. Paul, where the company's CEO said it has since turned over invoices for work performed for Roto-Rooter."

45. That newspaper also reported, "In a search warrant filed in Hennepin County court, Sgt. Patrick King said he interviewed '30 alleged victims of potentially fraudulent business practices to date.'

46. "King wrote that Roto-Rooter's questionable practices followed a pattern: A homeowner would call the company to clear a sewage backup caused by a clogged main line. The Roto-Rooter technician would tell the homeowner that the pipe couldn't be cleared until the problem could be identified with a video camera.



47. “The camera work by a company salesperson . . . would show small tree roots and cracks, which they would say were major problems. Roto-Rooter would arrange for the excavation and repair to be done through Pipeline Industries, which after the excavation would find more problems that needed immediate repair.”

### CLASS ACTION ALLEGATIONS

48. Plaintiffs bring this action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure on behalf of a Class defined as:

All persons and entities located within Minnesota who, since May 17, 2005, purchased a ticketed camera job, a mainline excavation service, or both, from Roto-Rooter.

49. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Minn. R. Civ. P. 23.01 and 23.02(c).

50. Plaintiffs do not know the exact number of Class members, because such information is within the exclusive control of Defendant, but Plaintiffs are informed and reasonably believe that hundreds of residents in Minnesota have been duped by Defendant into purchasing unnecessary sewer and pipe repairs or replacement. Accordingly, the members of the Class are so numerous that joinder of all Class members is impracticable. The Class is composed of a readily

identifiable and self-identifying group of individuals and entities who purchased unnecessary plumbing services from Defendant.

51. Defendant has acted with respect to the Class in a manner generally applicable to each Class member. There is a well-defined community of interest in the questions of law and fact involved in the action that affect all Class members. The questions of law or fact common to the Class predominate over any questions affecting only individual members and include, but are not limited to, the following:

- a. Whether Defendant affirmatively misrepresented facts regarding the nature of the problems consumers were experiencing with their plumbing;
- b. Whether Defendant misrepresented the nature of plumbing problems consumers were experiencing by exaggerating the extent of the problem;
- c. Whether Defendant utilized camera inspections either to obfuscate the extent of the plumbing problem or to make plumbing problems appear more severe than they really were;
- d. Whether Defendant misrepresented its recommendation as the only sound solution, when, in fact, a much less

expensive and equally adequate repair or replacement existed;

- e. Whether Defendant omitted the material fact that the employees who were informing customers of their need for a camera inspection and excavation services were actually required to refer a set percentage of such customers to excavation services, whether or not such further inspection and excavation services were at all warranted or necessary;
- f. Whether Defendant omitted the material fact that such employees were to receive a “referral” fee every time an inspection was “sold” into an excavation job;
- g. Whether statutory damages should be awarded to Plaintiffs and the members of the Class; and
- h. Whether Plaintiffs and the members of the Class are entitled to declaratory relief for Defendant’s statutory violations alleged herein.
- i. Whether Defendant should be enjoined from requiring mainline technicians to refer lines that have been cleaned to camera and excavation teams for any reason other than a bona fide need for excavation;

j. Whether Defendant should be enjoined from using camera and excavation teams to sell excavation services to homeowners who do not need them.

52. Plaintiffs' claims are typical of the claims of the other members of the Class, in that all members of the Class have been harmed in substantially the same way by Defendant's acts.

53. Plaintiffs are adequate representatives of the Class. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Neither Plaintiffs nor their counsel have any interest adverse to those of the Class.

54. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Moreover, litigation on an individual basis could be dispositive of the interests of absent Roto-Rooter customers, and would substantially impair or impede their ability to protect their interests.

55. In view of the complexity of the issues presented and the expense that an individual plaintiff would incur if he or she attempted

to obtain relief from Defendant, proceeding as a class action is the superior way to seek redress for the plaintiffs' losses. Because of the size of the individual Class members' claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of in this Complaint.

56. In addition to a damages Class under Minn. R. Civ. P. 23.02(c), Plaintiff also seeks certification of an injunctive Class pursuant to Minn. R. Civ. P. 23.02(b), because Defendant has acted on grounds generally applicable to members of the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole. Upon information and belief, Defendant continues to defraud consumers by misleading them into thinking they have a much bigger plumbing problem than they actually do. Even if Defendant has temporarily stopped its pattern and practice of deceptive conduct set forth *infra*, consumers have no assurance that Defendant will not re-engage in such conduct in the future unless this Court safeguards consumers by issuing a permanent injunction.

## CLAIMS FOR RELIEF

### COUNT I

#### Violations of the Truth in Repairs Act Minn. Stat. § 325F.59

##### (On Behalf of Plaintiffs and the Minnesota Class)

57. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

58. Minn. Stat. § 325F.59 provides:

No shop shall charge for unauthorized repairs. No shop shall perform repairs it knows or has reason to know are unnecessary to the restoration of a motor vehicle, appliance, or dwelling place unless the customer authorizes the repairs after the shop informs the customer that they are unnecessary.

59. Defendant is a corporation engaged in the business of providing plumbing and drain repairs, which fall within the meaning of “Shop” under Minn. Stat. § 325F.56, Subd. 6.

60. The work performed by Defendant is a “repair” under Minn. Stat. § 325F.56, Subd. 2.

61. Plaintiffs’ sewer lines affixed to their residences falls within the meaning of “Dwelling Place” under Minn. Stat. § 325F.56, Subd. 5.

62. Defendant systematically misled Plaintiffs and consumers into thinking that they had a much bigger plumbing problem than they actually did. Specifically, Defendant engaged in a pattern and practice

of telling consumers that clogs in sewer lines or other pipes could not be removed by the Roto-Rooter machine alone, and that much more expensive repairs and/or replacement was necessary. However, the expensive repairs and/or replacement recommended by Defendant were unnecessary according to subsequent evaluations by city inspectors and other plumbing contractors.

63. Defendant knew or should have known that the expensive repairs Defendant was urging upon consumers were unnecessary. Defendant never informed Plaintiffs or other members of the Class that such repairs were unnecessary, or that a cheaper but adequate solution existed.

64. Had Plaintiffs and members of the Class known that Defendant was pressuring them into unnecessary repairs; they would not have authorized such expensive repairs.

65. Plaintiffs and members of the Class have been injured and damaged by Defendant's violation of the Truth in Repairs Act and they therefore may bring this civil action against Defendant pursuant to Minn. Stat. § 8.31, subd.3a.

**COUNT II**  
**Violations of the Minnesota Prevention of Consumer Fraud Act**  
**Minn. Stat. § 325F.69**

**(On Behalf of Plaintiffs and the Minnesota Class)**

66. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

67. Minn. Stat. § 325F.69, Subdivision 1 (2008) provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

68. Defendant provides complete plumbing and drain services, which fall within the meaning of “merchandise” under Minn. Stat. § 325F.68, Subd. 2.

69. Defendant’s pattern and practice of pressuring Plaintiffs and consumers into unnecessary repair jobs by misleading them into thinking that they had a much bigger plumbing problem than they actually did, and of using camera inspections to obfuscate or misrepresent the true extent of the plumbing problem, constitute the use of fraud, false pretense, false promises, misrepresentations, misleading statements and deceptive practices and, thus, constitute multiple separate violations of Minn. Stat. § 325F.69.



70. In addition, material omissions constitute deceptive conduct that violates Minn. Stat. § 325F.69. Defendant omitted the facts (1) that the employees who were informing customers of their need for a camera inspection and excavation services were actually required to refer a set percentage of such customers to excavation services, whether or not such further inspection and excavation services were at all warranted or necessary *and* (2) that such employees were to receive a referral fee every time an inspection was “sold” into an excavation job. These omitted facts were material, in that a reasonable consumer would have opted to have the line cleared without excavation and then, once the “emergency” had passed, would have been in a better position to evaluate the need for an excavation—particularly by getting a second opinion.

71. Defendant intended that Plaintiffs and consumers rely upon the affirmative statements Defendant made in connection with the sale of its plumbing services in violation of Minn. Stat. § 325F.69.

72. Plaintiffs and members of the Class have been injured and damaged by Defendant’s violation of the Minnesota Consumer Fraud Act and they therefore may bring this civil action against Defendant pursuant to Minn. Stat. § 8.31, subd.3a.

**COUNT III**  
**Violations of the Minnesota Unlawful Trade Practices Act,**  
**Minn. Stat. § 325D.13**

**(On Behalf of Plaintiffs and the Minnesota Class)**

73. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

74. Minnesota Stat. § 325D.13 provides: “No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise.”

75. Defendant is a “person” within the meaning of Minn. Stat. § 325D.10.

76. Defendant knowingly misrepresented directly to Plaintiffs and consumers the true quality of its merchandise, in advertising and selling its merchandise, by telling Plaintiffs and consumers that they had a much bigger plumbing problem than they actually did, and that Defendant’s standard merchandise would be insufficient to solve the problem, constitute multiple separate violations of Minn. Stat. § 325D.13.

77. Defendant also knowingly misrepresented the true quality of camera inspection results performed on Plaintiffs and other consumers’ sewer lines or piping, in that Defendant consistently told

consumers that their sewer lines or piping were clogged and that a Roto-Rooter machine would be unable to remove the clog, even though subsequent evaluations by city inspectors and other plumbing contractors reviewing the same camera inspection believed the clogs were removable with an ordinary cleaning.

78. In addition, material omissions constitute deceptive conduct that violates Minn. Stat. § 325D.13. Defendant omitted the facts (1) that the employees who were informing customers of their need for a camera inspection and excavation services were actually required to refer a set percentage of such customers to excavation services, whether or not such further inspection and excavation services were at all warranted or necessary *and* (2) that such employees were to receive a referral fee every time an inspection was “sold” into an excavation job. These omitted facts were material, in that a reasonable consumer would have opted to have the line cleared without excavation and then, once the “emergency” had passed, would have been in a better position to evaluate the need for an excavation—particularly by getting a second opinion.

79. Plaintiffs and members of the Class have been injured and damaged by Defendant’s violation of the Minnesota Unlawful Trade

Practices Act and they therefore may bring this civil action against Defendant pursuant to Minn. Stat. § 8.31, subd.3a

**COUNT IV**  
**Violations of the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44**

**(On Behalf of Plaintiffs and the Minnesota Class)**

80. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

81. Minn. Stat. § 325D.44, Subd. 1 provides:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(5) represents that goods or services have . . . characteristics, ingredients, uses, benefits . . . they do not have;

(13) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

82. Minn. Stat. § 325D.44 is, by title and on its face, a law of Minnesota respecting “unfair” and “other unlawful practices in business, commerce, or trade” and is a law “against false or fraudulent advertising.” Minn. Stat. § 8.31, subd. 1. By reason of such violations and pursuant to Minn. Stat. § 8.31, subd. 3a and § 325D.44, Plaintiffs demand compensatory damages, reasonable attorneys’ fees and costs, injunctive and equitable relief, and other remedies as determined by the Court pursuant to Minn. Stat. § 8.31, subd. 3a and § 325D.45.

83. In addition, material omissions constitute deceptive conduct that violates Minn. Stat. § 325D.44. Defendant omitted the facts (1) that the employees who were informing customers of their need for a camera inspection and excavation services were actually required to refer a set percentage of such customers to excavation services, whether or not such further inspection and excavation services were at all warranted or necessary *and* (2) that such employees were to receive a referral fee every time an inspection was “sold” into an excavation job. These omitted facts were material, in that a reasonable consumer would have opted to have the line cleared without excavation and then, once the “emergency” had passed, would have been in a better position to evaluate the need for an excavation—particularly by getting a second opinion.

**Causation of Injury  
(Pertaining to All Counts)**

84. Class members need not affirmatively establish individual reliance on Defendant’s affirmative misrepresentations to establish entitlement to damages flowing from a violation of the laws prosecutable under Minn. Stat. § 8.31, subd. 3a. Plaintiffs may demonstrate entitlement to class-wide damages by establishing a causal nexus between any conduct—violative of Minnesota Statutes,

Sections 325F.59, 325F.69, 325D.13, and 325D.44 (collectively “consumer protection statutes”)—and injury through circumstantial evidence not related to any particular Class member. There is a causal nexus between Defendant pressuring customers into unnecessary repairs through false or misleading representations and Class members authorizing such repairs and incurring damages. In addition, causation is presumed as to omissions that are “material.”

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs demand judgment against Defendant, as follows:

- (A) Certifying this action to be a class action, designating Plaintiffs as named representatives of the Class, and designating the undersigned as Class counsel;
- (B) Holding that Defendant has violated state law as alleged herein;
- (C) Awarding Plaintiffs and the Class actual and statutory damages;
- (D) Declaring that Defendant is financially responsible for notifying all Class members of the fraudulent misrepresentations concerning Class members’ purchase of Defendant’s plumbing and drain services;

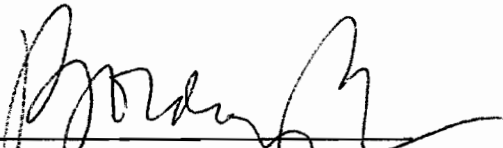
- (E) Declaring the rights of the parties;
- (F) Entering a permanent injunction against Defendant's materially deceptive and misleading practices;
- (G) Awarding Plaintiffs reasonable attorneys' fees and costs, including the costs of investigation;
- (H) Awarding pre-judgment and post-judgment interest, as provided by law; and
- (I) Exonerating Plaintiffs and members of the Class who were fraudulently induced by Defendant into incurring a debt with Wells Fargo Financial National Bank from that debt, and holding Defendant to have assumed those obligations;
- (J) Granting Plaintiffs and the other members of the Class such further relief as the Court deems just and proper.

### **JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED: November 14, 2011

ZIMMERMAN REED PLLP

By: 

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