

IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS  
CIVIL DIVISION

STATE OF ARKANSAS, *ex rel.*  
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v. CASE NO. \_\_\_\_\_

ULTIMATE BUILDERS, LLC

AUSTIN LOGAN d/b/a  
ULTIMATE POOL CONSTRUCTION &  
LOGAN POOL CONSTRUCTION; AND

DWAYNE BOSWELL a/k/a  
DEWAYNE BOSWELL f/d/b/a  
ULTIMATE POOL CONSTRUCTION  
UC LAWNS &  
ULTIMATE DECKS

DEFENDANTS

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COMPLAINT

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The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (“the State”), for its Complaint against Defendant Ultimate Builders, LLC (“Ultimate Builders”); Defendant Austin Logan (“Logan”) doing business as Ultimate Pool Construction and Logan Pool Construction; and Defendant Dwayne Boswell (“Boswell”), also known as Dewayne Boswell, doing business as Ultimate Pool Construction, UC Lawns, and Ultimate Decks, states:

## I. INTRODUCTION

1. This is a consumer protection action brought to redress and restrain violations of the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. § 4-88-101 *et seq.*

2. Defendants advertised that they were licensed and able to install in-ground swimming pools; however, after accepting consumers’ money for the construction of such pools, retainer walls, and other related goods and services, Defendants utterly failed to complete and provide the promised services and goods. Defendants have a history of misrepresenting themselves to consumers, including material falsehoods claiming that they were licensed and insured. Defendants’ history of incomplete jobs and poor workmanship have cost consumers thousands of dollars. When consumers complained to Defendants, they were assured that Defendants would arrive soon to complete the work, but Defendants did not do so.

3. The State seeks an injunction, an order imposing civil penalties, restitution for affected consumers, and other relief against Defendants.

## II. PARTIES

4. Plaintiff is the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State. Pursuant to Ark. Code Ann. § 4-88-104 and 4-88-113, the State may seek civil enforcement of the ADTPA.

5. Defendant Ultimate Builders is a limited liability company organized on December 16, 2020, by “Dewayne Boswell.” On August 27, 2021, Austin Logan was added as a managing member of the LLC, and Dewayne Boswell was removed. Upon information and belief, Austin Logan purchased Ultimate Builders from Dwayne Boswell on August 10, 2021. Ultimate Builders identifies its address on its listing with the Arkansas Secretary of State as 2225 Bill Foster Memorial Hwy, Suite B, Cabot, Arkansas 72023.

6. Defendant Logan, an Arkansas resident at all times relevant to this Complaint, is the current owner of Ultimate Builders. Upon information and belief, Defendant Logan was joint owner of Ultimate Builders with Defendant Boswell from March 2020 until August 10, 2021, at which time Defendants Logan and Boswell entered into an agreement giving Defendant Logan sole ownership of Ultimate Builders. Defendant Logan is a controlling person of Ultimate Builders within the meaning of Ark. Code Ann. § 4-88-113(d). As such, he is personally liable not only for his acts in violation of Arkansas law but also for the acts of Ultimate Builders and its employees or agents thereof. Defendant Logan also did business under the names Ultimate Pool Construction and Logan Pool Construction.

7. Defendant Dwayne Boswell, also known as Dewayne Boswell, an Arkansas resident at all times relevant to this Complaint, did business under Ultimate Builders, LLC until August 10, 2021, at which time he transferred ownership of Ultimate Builders to Defendant Logan. As such, Defendant Boswell

was a controlling person of Ultimate Builders within the meaning of Ark. Code Ann. § 4-88-113(d) from its organization on December 16, 2020, until the transfer of ownership on August 10, 2021. Because Defendant Boswell was a controlling person, he is personally liable not only for his acts in violation of Arkansas law but also for the acts of Ultimate Builders and its employees or agents thereof during the time he acted as a controlling person. Defendant Boswell also did business under the names Ultimate Pool Construction, UC Lawns, and Ultimate Decks.

### **III. JURISDICTION**

8. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104, 11 U.S.C. § 362(b)(4),<sup>1</sup> and the common law of the State of Arkansas. This Court has personal jurisdiction pursuant to Ark. Code Ann. § 16-4-101, which extends jurisdiction to all persons, causes of action, and claims for relief, to the maximum extent permitted by the Due Process Clause of the Fourteenth of the United States Constitution.

9. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, 4-88-112, and the common law of the State of Arkansas.

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<sup>1</sup> Dwayne Boswell and his wife filed a joint Voluntary Petition for Individuals Filing for Bankruptcy on October 21, 2021. *In re* Dwayne Stephen Boswell et al, No. 4:21-bk-12827 (Bankr. E.D. Ark. 2021). Austin Logan filed a Voluntary Individuals Filing for Bankruptcy on January 21, 2022. *In re* Austin G. Logan, 4:22-bk-10182 (Bankr. E.D. Ark. 2022). The pending bankruptcy cases do not affect this Court's jurisdiction over the present case, as pursuant to 11 U.S.C. § 362(b)(4), filing a bankruptcy petition does not operate as an automatic stay when a governmental unit commences an action or proceeding to enforce such governmental unit's police and regulatory power.

#### IV. FACTUAL ALLEGATIONS

10. The installation of an in-ground swimming pool is usually a significant financial undertaking by a homeowner, oftentimes costing tens of thousands of dollars.

11. Dwayne Boswell, and later Austin Logan, operated a business of installing swimming pools at consumers' residences. Boswell organized Ultimate Builders in December of 2020, then Boswell and Logan operated the business as a joint venture. Logan purchased the business from Boswell in August of 2021. Since Ultimate Builders was formed, Logan and Boswell entered into contracts with consumers with deposits and costs ranging from \$8,000 to \$32,000 for the installation of in-ground swimming pools.

12. During 2021, seventeen consumers filed complaints against Ultimate Builders with the Arkansas Attorney General's Office.<sup>2</sup> These consumers are Arkansas residents located in Lonoke, Pulaski, Faulkner, and Conway Counties.<sup>3</sup>

13. In the complaints, consumers detail accounts alleging that Logan lied about holding a contractor's license and an insurance policy, thereby inducing the consumers to enter into a contract with Ultimate Builders to install a swimming pool at the consumer's home. As a result of Logan's misrepresentations, consumers

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<sup>2</sup> See Consumer Complaints Against Ultimate Builders, LLC, attached as Exhibit 1.

<sup>3</sup> *Id.*

suffered loss and harm. In total, these seventeen consumers accrued damages from Ultimate Builders totaling \$415,200.<sup>4</sup>

14. In fact, Logan never held a license by Arkansas Contractors Licensing Board (“ACLB”).

15. Boswell had a contractor’s license from April 9, 2021, until he surrendered his license on September 9, 2021. Logan claimed to operate under Boswell’s license at Ultimate Builders until he purchased the business from Boswell in August 2021; however, during that time, Logan also operated under other company names, Ultimate Pool Construction and Logan Pool Construction, which were not covered under Boswell’s license for Ultimate Builders. Logan withheld from consumers the fact that the license for Ultimate Builders did not cover his activities in operating Ultimate Pool Construction and Logan Pool Construction. Furthermore, the use of multiple business names purposefully confused customers.

16. Generally speaking, Logan, now operating as Ultimate Builders, assured customers that an installation would take only forty-five to ninety days to complete; however, after obtaining money from consumers, Logan would stop working on the project. When questioned by the consumers, Logan continually provided excuses as to why he had stopped work on the project and promised to return and finish—or even start—the work. The little work that was completed

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<sup>4</sup> *Id.*

on these unfinished projects was often of poor quality, and Logan has left many consumers with nothing more than a hole in their backyards.

17. This practice of taking a consumer's money up front and then making excuses for delays and failing to render service has been Logan's overall business model. For example, one consumer signed a contract with Ultimate Builders on May 24, 2021, paying him \$10,000 to begin installing a pool in June 2021. As of the time of the filing of this Complaint, Logan has not even begun working on the project.

18. In some cases, Logan would excavate the dirt necessary to install an in-ground pool, but would then stop working on the project, thereby leaving a large hole in the homeowner's backyard. This creates a dangerous situation for homeowners, their children, and their pets.

- a. For example, one consumer paid \$28,000 to Ultimate Builders, who dug the hole, but never returned to complete the project. This consumer also paid for equipment that she never received.<sup>5</sup>
- b. Another consumer paid Ultimate Builders \$23,000 only to receive minimal work and damage to her property. This consumer paid for supplies that were never delivered, and the supplier has threatened to place a lien on her property because it has not been paid for said supplies.<sup>6</sup>

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<sup>5</sup> See Complaint of Misty Arrowood Against Ultimate Builders, LLC, attached as Exhibit 2.

<sup>6</sup> See Complaint of Kera Gross Against Ultimate Builders, LLC, attached as Exhibit 3.

19. In many instances, Logan has still not completed projects as of the present date.

20. In the few instances in which Logan has completed the promised work, the quality of the finished pool was poor, causing consumers to either spend more money to have another contractor fix the work or live with a defective product.

a. For example, one consumer paid Ultimate Builders \$27,000 for a pool installation. Ultimate Builders told the consumer that the installation would be complete in forty-five days, but it took nine months for Ultimate Builders to complete the work. When the pool was complete, there were many problems, which Logan promised to return to fix but never did.<sup>7</sup>

b. Another consumer who paid \$32,000 for a pool complained of poor workmanship in the finished construction. When this consumer tried to contact the manufacturer, the manufacturer would not deal with the consumer because the accounts were all under Logan's name.<sup>8</sup>

21. In some instances, Logan took money from consumers, telling them the funds were to pay suppliers, only to never receive the supplies and to later discover that the suppliers had not been paid.<sup>9</sup>

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<sup>7</sup> See Complaint of Pam Mulligan Against Ultimate Builders, LLC, attached as Exhibit 4.

<sup>8</sup> See Complaint of Billy Estes Against Ultimate Builders, LLC, attached as Exhibit 5.

<sup>9</sup> See Exhibit 2 and Complaint of Gina Porter Against Ultimate Builders, LLC, attached as Exhibit 6.



22. Logan knew or should have known that his conduct, specifically his failure to begin work consumers had paid for; his failure to install an in-ground pool after excavating the dirt; and his misrepresentations regarding licensing and insurance, would cause harm to consumers.

23. In all cases, the consumers would likely not have entered into any agreement with the Defendants had the systemic practice of delay and excuses been disclosed to the consumers.

24. Some consumers have reported to the Attorney General that due to the delays and poor workmanship, consumers have attempted to cancel their contracts with Ultimate Builders and demand the return of the money they paid to it, but while Logan, as a representative of Ultimate Builders, has promised to refund many consumers, he has not at this time given refunds to any of his customers.

25. Upon information and belief, other persons who have not yet been named as Defendants in this Complaint may have participated in the activities described herein, and additional violations which are not presently known to the state may be discovered and added to this Complaint.

26. Discovery is ongoing, and the State reserves the right to amend this Complaint and to plead further.

## V. VIOLATIONS OF LAW

27. The ADTPA sets forth the State's statutory program prohibiting deceptive and unconscionable trade practices.<sup>10</sup>

28. The business practices of Defendant constitute the sale of "goods" or "services."<sup>11</sup> The same business practices constitute business, commerce, or trade.<sup>12</sup>

29. It is unlawful to "knowingly make a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, approval, or certification of goods or services...."<sup>13</sup>

30. Title 17 of the Arkansas Code Annotated sets forth the regulation and licensing requirements of professions, occupations, and businesses, including home improvement contractors.<sup>14</sup>

31. A home improvement contractor is "any person...who undertakes...the reconstruction, alteration, renovation, repair, modification, improvement, removal, demolition, or addition to any preexisting single family residence or property and structures appurtenant thereto."<sup>15</sup>

32. The installation of an in-ground pool involves "reconstruction, alteration, renovation, repair, modification, improvement, removal, demolition, or

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<sup>10</sup> Ark. Code Ann. §§ 4-88-101, *et seq.*

<sup>11</sup> Ark. Code Ann. § 4-88-102(4) and (7).

<sup>12</sup> Ark. Code Ann. § 4-88-107.

<sup>13</sup> Ark. Code Ann. § 4-88-107(a)(1).

<sup>14</sup> Ark. Code Ann. § 17-25-101 *et seq.*

<sup>15</sup> Ark. Code Ann. § 17-25-502(1).

addition”<sup>16</sup> to a property, and anyone who undertakes this work is a home improvement contractor.

33. Contractors desiring to construct or renovate in-ground swimming pools are controlled by the provisions of Ark. Code Ann. § 17-25-101 *et seq.*, which requires that home improvement contractors be licensed through the Arkansas Contractors Licensing Board.<sup>17</sup>

34. Licensed home improvement contractors may only act under their licenses “in the name under which they are licensed.”<sup>18</sup>

35. Because Logan performs work as a home improvement contractor and enters into contracts to perform home improvement services, and because these contracts are for amounts greater than \$2,000, thus excluding him from the licensing exemption of Ark. Code Ann. § 17-25-513(3), Logan should hold a valid license issued by the Arkansas Contractors Licensing Board.

36. While Ultimate Builders was owned and operated by Boswell, who had a valid license, Logan was exempt from the licensing requirement, as he was a subcontractor of a licensed contractor.<sup>19</sup>

37. Even while Ultimate Builders was owned and operated by Boswell, Boswell’s license did not cover Logan’s actions as a home improvement contractor

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<sup>16</sup> *Id.*

<sup>17</sup> Ark. Code Ann. § 17-25-505(b).

<sup>18</sup> Ark. Code Ann. § 17-25-508.

<sup>19</sup> Ark. Code Ann. § 17-25-513(4).

when Logan acted under the name of Logan Pool Construction or Ultimate Pool Construction.<sup>20</sup>

38. Logan violated the ADTPA when he lied to consumers, saying that he was licensed by the Arkansas Contractors Licensing Board when he was not and that he was insured when he was not. The use of multiple business names further increased the consumer confusion created by these lies.

39. The ADTPA prohibits the use of “concealment, suppression, or omission of any material fact with the intent that others rely on the concealment, suppression, or omission” while selling any goods or services.<sup>21</sup>

40. Logan violated Ark. Code Ann. § 4-88-108 (2) each time he lied about having the requisite licenses to perform the work that he contracted to carry out and intended to create reliance on those lies.

41. The ADTPA prohibits engaging in unconscionable, false, or deceptive acts or practices in business, commerce, or trade.<sup>22</sup>

42. Logan violated Ark. Code Ann. § 4-88-107(a)(10) when he took money from consumers ostensibly to build swimming pools, then failed to complete the projects, either by failing to start the work or leaving a large hole in the consumers’ yards as the project was abandoned and refusing to refund any of the money that consumers had paid him.

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<sup>20</sup> Ark. Code Ann. § 17-25-508.

<sup>21</sup> Ark. Code Ann. § 4-88-108(2).

<sup>22</sup> Ark. Code Ann. § 4-88-107(a)(10).

43. The ADTPA provides that “every person...who directly or indirectly controls another person who is in violation of or liable under this chapter...shall be jointly and severally liable for any penalties assessed and any monetary judgments awarded in any proceeding for civil enforcement of this chapter, if the persons to be held jointly and severally liable knew or reasonable should have known of the existence of the facts by reason of which the violation or liability exists.”<sup>23</sup>

44. Logan, acting on behalf of Ultimate Builders, violated Ark. Code Ann. § 4-88-107(a)(10) by entering into contracts, accepting payment on those contracts, and failing to perform under those contracts when Boswell owned Ultimate Builders.

45. As owner and operator of Ultimate Builders until August 2021, Boswell is a controlling person of Ultimate Builders under Ark. Code Ann. § 4-88-113 for acts occurring until the time of sale, and he is therefore responsible for the acts and practices of Ultimate Builders that occurred while he was a controlling person.<sup>24</sup>

46. Boswell should be held jointly and severally liable for the violations of Ark. Code Ann. § 4-88-107(a)(10) that occurred while he was a controlling person of Ultimate Builders.

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<sup>23</sup> Ark. Code Ann. § 4-88-113(d).

<sup>24</sup> *Id.*

## VI. PRAYER FOR RELIEF

47. The Attorney General may bring a civil action to seek to prevent persons from engaging in the use or employment of prohibited practices.<sup>25</sup>

48. Likewise, the Attorney General may bring a civil action to seek to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been acquired by means of any practices declared to be unlawful, together with other damages sustained.<sup>26</sup>

49. The Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.<sup>27</sup>

50. Any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000 per violation.<sup>28</sup>

51. In addition, any person who violates the provisions of the ADTPA shall be liable to the Office of the Attorney General for all costs and fees, including but not limited to expert witness fees and attorney's fees incurred by the Office of the Attorney General in the prosecution of such actions.<sup>29</sup>

52. A "person" is an individual, organization, group, association, partnership, corporation, or any combination thereof.<sup>30</sup>

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<sup>25</sup> Ark. Code Ann § 4-88-113(a)(1).

<sup>26</sup> Ark. Code Ann. § 4-88-113(a)(2)(A).

<sup>27</sup> Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1).

<sup>28</sup> Ark. Code Ann. § 4-88-113(a)(3)

<sup>29</sup> Ark. Code Ann. § 4-88-113(e).

<sup>30</sup> Ark. Code Ann. § 4-88-102(5).

53. Austin Logan is a “person” who has engaged in unconscionable, false, or deceptive acts or practices in business, commerce, or trade.

54. Dwayne Boswell is a “person” who directly or indirectly controlled another person who engaged in unconscionable, false, or deceptive acts at the time of the control.

55. The State will exercise its right to a trial by jury.

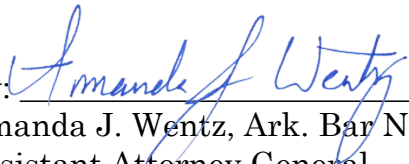
**WHEREFORE**, the above premises considered, the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General, respectfully requests that this Court:

- a. Issue such orders, pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), as may be necessary to prevent the use or employment by the Defendants of the practices described herein, which are violations of the ADTPA;
- b. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), requiring Defendants to pay consumer restitution to those Arkansas consumers affected by the activities outlined herein; in addition, or in the alternative, enter an order requiring Defendants to remit to affected consumers all sums obtained from Arkansas consumers by methods prohibited by Arkansas law;
- c. Impose civil penalties pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by the Defendants in the amount of \$10,000.00 per each violation of the ADTPA proved at a trial of this matter;

- d. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(e), requiring Defendant to pay the State's costs in this investigation and litigation, including, but not limited to, attorney's fees and costs; and
- e. For all other just and proper relief to which the state may be entitled.

Respectfully submitted,

**LESLIE RUTLEDGE**  
**ATTORNEY GENERAL**

By:  \_\_\_\_\_

Amanda J. Wentz, Ark. Bar No. 2021066  
Assistant Attorney General  
Arkansas Attorney General's Office  
323 Center Street, Suite 200  
Little Rock, AR 72201  
Phone: 501.682.1178  
Fax: 501.682.8118  
Email: [amanda.wentz@arkansasag.gov](mailto:amanda.wentz@arkansasag.gov)