

CVL # 53517

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5 State of Arizona

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF MARICOPA

8 In the Matter of:
9 FLEETWOOD ENTERPRISES, INC.
and FLEETWOOD MOTOR HOMES OF
10 CALIFORNIA, INC.,
11
12 Respondents.

NO. CV2000-022482
ASSURANCE OF
DISCONTINUANCE
(Assigned to the
Hon.)

13 The Attorney General of the State of Arizona and Respondents, Fleetwood
14 Enterprises, Inc. and Fleetwood Motor Homes of California, Inc. (hereafter,
15 "Respondents"), hereby agree to the entry of the following Assurance of Discontinuance
16 (hereafter, the "Assurance") pursuant to A.R.S. § 44-1530 of the Arizona Consumer
17 Fraud Act.

18 1. Respondent Fleetwood Enterprises, Inc. is a Delaware corporation doing
19 business at 3125 Myers Street, Riverside, California 92513. Respondent Fleetwood
20 Motor Homes of California, Inc. is a California corporation doing business at 5300 Via
21 Ricardo, Riverside, California 92517.

22 2. Respondent Fleetwood Enterprises, Inc. is in the business of designing motor
23 homes for manufacture and sale by its subsidiaries including Respondent, Fleetwood
24 Motor Homes of California, Inc.

25 3. The Attorney General has reason to believe and therefore alleges that
26 Respondents engaged in the following unlawful acts and practices:

- 1 a. From July 5, 1994 through June 1, 1995 Respondents participated, on behalf
2 of themselves or Fleetwood subsidiaries, in the resale in Arizona of twenty-one
3 motor homes that were repurchased or replaced in the States of California,
4 Oregon, Washington and Arizona. These motor homes were presumably
5 defective under the lemon laws of the aforementioned states
- 6 b. Respondents repurchased the vehicles because Respondents and their
7 authorized repair facilities were allegedly unable to repair substantial defects
8 as required by California or other state's lemon laws, or because Respondents
9 expected that they would be unable to repair the motor homes to the original
10 owner's satisfaction and wanted to avoid state title branding requirements.
- 11 c. The California Lemon Law required Respondents to repurchase or replace any
12 motor home that had a nonconformity that substantially impaired the use,
13 value, or safety of the motor home if a chassis nonconformity could not be
14 repaired after four or more attempts to do so, if a nonconformity in the portion
15 used for household purposes could not be repaired after a reasonable number
16 of attempts, or if the motor home was out of service for repairs for more than
17 thirty days during the first year or 12,000 miles after purchase.
- 18 d. If a repurchased motor home was resold in California, the California Lemon
19 Law required Respondents to tell the new buyer in writing before the sale that
20 the motor home had been repurchased by Respondents because it could not be
21 repaired as required by the California Lemon Law. In addition, Respondents
22 were required to have the new buyer sign the following statement and to file
23 the statement with the titling documents of the vehicle:

24 This motor vehicle has been returned to the dealer or manufacturer
25 due to a defect in the vehicle pursuant to consumer warranty laws.
26

1 e. At the time Respondents repurchased the motor homes, the California Lemon
2 Law was in the process of being amended. As amended, it requires
3 Respondents to disclose to subsequent purchasers the fact that a vehicle has
4 been repurchased by attaching a decal to the vehicle stating "Lemon Law
5 Buyback," by branding the vehicle's title with the inscription "Lemon Law
6 Buyback," and by providing buyers with a disclosure statement before sale that
7 specifies the nature of the defects, the attempts that have been made to correct
8 them, and contains the following disclosure:

9 This vehicle was repurchased by its manufacturer due to a defect in the
10 vehicle pursuant to consumer warranty laws. The title to this vehicle has
11 been permanently branded with the notation 'lemon law buyback.'

12 In addition, the amendments require Respondents to warrant that the homes are
13 free of the defects necessitating the buyback for a period of one year.

14 f. Respondents were aware of the impending amendments and wanted to avoid
15 the new requirements they imposed. Respondents also wanted to avoid the
16 then-existing requirements of the California Lemon Law. They believed they
17 could do so by selling the motor homes outside California.

18 g. Respondents sold the repurchased motor homes in Arizona without disclosing
19 that they had been repurchased or were defective.

20 h. At the time they sold the motor homes Respondents knew or had reason to
21 know that some or all of the motor homes were materially defective.

22 i. The fact that the motor homes had been repurchased or replaced pursuant to
23 the lemon laws of California or other states or were defective were material
24 facts that Respondents intentionally chose not to disclose.

25 j. More specifically, Respondent developed a company policy of re-selling, via a
26 third-party auction house in Phoenix, Arizona, all units that had been
repurchased by Respondent due to litigation or the threat of litigation in the

1 western region of the United States.

2 k. This policy was formally communicated to certain of Respondents'
3 employees, and was preceded by an explanation that stated all of the
4 following:

5 (1) When a vehicle was repurchased pursuant to state lemon laws,
6 many states required the manufacturer to brand the title and notify
7 subsequent purchasers of the vehicle's repair history.

8 (2) There had been some debate as to whether the notice
9 requirements pertained to vehicles that were voluntarily repurchased
10 by manufacturers.

11 (3) Some states, including California, were looking into how
12 manufacturers disposed of vehicles that had been repurchased from
13 dissatisfied customers.

14 (4) Respondent had recently sold several repurchased units through
15 an auction house in Arizona, had received reasonable bids, and the
16 auction employees had handled all paperwork, including titling.

17 (5) Auctions have traditionally been viewed as final sales with no
18 warranties from the seller to the buyer.

19 4. For the purposes of this Assurance:

20 a. "Original Owner" shall mean a vehicle owner from whom Respondents
21 repurchased or replaced a vehicle that was subsequently resold.

22 b. "Original Problem" shall mean problems an Original Owner experienced with
23 a vehicle.

24 c. "Repurchased Vehicle" shall mean any vehicle that Respondents replaced or
25 repurchased because they were required to do so by the laws of any
26 jurisdiction or in response to a request by a purchaser or lessee that a vehicle

1 be replaced or repurchased because of defects.

2 d. "Subsequent Owner" shall mean a person who purchased a Repurchased
3 Vehicle.

4 5. Respondents agree, undertake, and assure that:

5 a. Before offering any Repurchased Vehicle for sale in Arizona, Respondents
6 shall attach a clear and conspicuous written notification to the motor vehicle
7 indicating the motor vehicle has been replaced or repurchased by the
8 manufacturer.

9 b. With regard to Repurchased Vehicles Respondents sold in Arizona from
10 January 1, 1992 to the present to which respondents did not attach written
11 notification indicating the vehicles had been replaced or repurchased,
12 Respondents shall:

13 (1) As to the vehicles Respondents have identified to the Attorney General that
14 are identified in Exhibit A hereto:

15 (a) Pay for the repairs and make the payments indicated on Exhibit B
16 hereto.

17 (b) As to the Vehicles identified on Exhibit C hereto, pay to repair
18 Original Problems experienced by Subsequent Purchasers.

19 (2) With regard to Repurchased Vehicles Respondents sold in Arizona from
20 January 1, 1992 to the present to which respondents did not attach written
21 notification indicating the vehicles had been replaced or repurchased, and that
22 were not identified in Exhibit A hereto (if any), pay to repair Original
23 Problems experienced by Subsequent Purchasers within the earlier of one year
24 or 12,000 miles from the date the subsequent Purchaser purchased a vehicle.

25 (3) For the purposes of this Subsection 5(b), if Respondents must pay for
26 repairs under this Assurance:

- 1 (a) A Subsequent Owner of a Repurchased Vehicle shall notify Respondents
2 of the existence of the owner's claim within one year of the date this
3 Assurance of Discontinuance is filed.
- 4 (b) The Subsequent Owner shall notify Respondents of three repair facilities
5 acceptable to the owner to perform the repairs.
- 6 (c) Within thirty days of receiving such notice, Respondents shall make
7 arrangements satisfactory to one of the three facilities to pay for the
8 repairs, and shall advise the present owner of the facility selected and the
9 repairs for which Respondent has arranged payment.
- 10 (d) If a Subsequent Owner has previously paid to diagnose, repair, or attempt
11 to diagnose or repair an Original Problem, upon proof of payment for such
12 services satisfactory to the Attorney General, Respondents shall reimburse
13 the Subsequent Owner the amount the owner has paid for the services.

14 6. Respondents agree to pay \$17,500.00 (seventeen thousand five hundred
15 dollars and no cents) to the Attorney General upon entry of this Assurance for reasonable
16 costs, as authorized by A.R.S. § 44-1530.

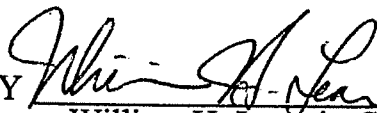
17 7. The parties understand and agree that this Assurance of Discontinuance does
18 not constitute an adjudication as to any legal or factual matter. In agreeing to the entry of
19 said Assurance, Respondents admit that the allegations contained in Paragraphs 3(j) and
20 (k) above are true, but do not admit any of the remaining allegations made by the
21 Attorney General. Respondents also understand that a violation of this Assurance within
22 six (6) years of the filing constitutes prima facie evidence of a violation of A.R.S. § 44-
23 1522. This Court, therefore, retains jurisdiction over the parties and the subject matter
24 for purposes of enabling the State of Arizona to apply to this Court for the enforcement
25 and compliance therewith.

26 . . .

1 8. The parties further understand and agree that this Assurance shall not be
2 construed as an approval of or sanction by the Attorney General of Respondent's
3 business or any of Respondents' past, present or future business practices, and that this
4 Assurance does not in any way limit the right of the Attorney General to bring a legal
5 action against Respondents for any acts which violate the Consumer Fraud Act, A.R.S. §
6 44-1521, et seq., whether or not such acts are in violation of this Assurance of
7 Discontinuance.


8 9. William H. Lear represents that he is an officer of Respondents, Fleetwood
9 Enterprises, Inc. and Fleetwood Motor Homes of California, Inc., and is authorized to
10 enter into this Assurance of Discontinuance.

11
12 FLEETWOOD ENTERPRISES, INC.

13
14 BY 
15 William H. Lear, its Senior Vice
16 President - General Counsel and
17 Secretary

18 11/1/00
19 DATE

20 FLEETWOOD MOTOR HOMES OF
21 CALIFORNIA, INC.

22 BY 
23 William H. Lear, its Senior Vice
24 President - General Counsel and
25 Secretary

26 11/1/00
DATE

EXHIBIT A

Ownership History of Units
Resold in Arizona

<u>Unit I.D.</u>	<u>Original Owner</u>	<u>New Owner</u>
1994 Flair 732DR4717918 1GBJP37NIP3319259	Zora Maksente 200 South 4 th Street Patterson, California 95363 (209) 892-5652	Antonio Ciaravino 8231 East Brent Place Tucson, Arizona 85710 (520) 298-7505
1991 Bounder 733JM4711498 3FCMF53G1MJA00308	Paul Albro Post Office Box 3382 Sedona, Arizona 86340 (602) 282-1068	Earl Gentry 8200 East Krowllwood Tucson, Arizona 85715 (520) 722-7086
1994 Pace Arrow 711VR4453443 3FCMF53G2RJB01154	Robert Shahovskoi 3645 Riverview Drive Redding, California 96001 (916) 241-5964	Desert State RV Sales (no address or telephone number).
1994 Rallye 752TR7720288 1FDKE30G8RHA14098	Robert Bowie 1702 9 th Street Marysville, Washington 98270 (206) 659-0193	Charles Blake 9599 East Banbridge Tucson, Arizona 85747 (520) 574-2362
1994 Arrow 742TR770482 1FOKE30G9RHA33727	Abe Padilla 153 Santa Rosa Pacifica, California 94044 (415) 359-4730	Larry Lee & April Johnson 18073 North 83 rd Drive Peoria, Arizona 85382 (602) 972-6618
1991 Arrow 743YM5220061 1FDKE30G3MHA92166	Paul Mortellaro 6319 Redbird Drive Pico Rivera, California 90660 (213) 948-3119	Dwayne Bonnell 3403 East Main, #1412 Mesa, Arizona 85213 (602) 830-2708
1993 Tioga 741SP7717109 1FDKE30G8NHA99101	John Olds 30033 Big Range Road Canyon Lake, California 92587 (714) 244-3551	Steve Grosvenor 13359 North 89 th Way Scottsdale, Arizona 85260 (602) 661-0636
1994 Coronado 716HR3049423 1GBKP37N9P3317473	Dennis Dibble 13442 170 th South East Renton, Washington 98059 (206) 228-2243	Desert State RV Sales (no address or telephone number).

Unit I.D.

Original Owner

New Owner

1992 Coronado
716HN3047409
1GBKP37N5N3311540

Geraldine Martens
929 East Foothill Blvd., #60
Upland, California 91786
(714) 946-2412

Randy Peckenpaugh
203 East Dartmouth
Mesa, Arizona 85213
(602) 884-5894

1990 Pace Arrow
711JL3042129
1GBKP37W6K335768

Aaron Wilson
13054 Oak Crest Drive
Oak Glen, California 92399
(no telephone number)

Howard Herman
11134 East Edison Street
Tucson, Arizona 85749
(520) 292-3600

1989 Pace Arrow
711KK3041849
17N43042XLW026134

Nathaniel Bailey
233 East 138th Street
Los Angeles, California 90061
(213) 324-3582

Jean Warnecke
1701 Jean
Arnold, Missouri 63010
(314) 296-7465

1991 Southwind
721PM3043339
4CDB5XG22L2101865

Rod Soelter
220 North West 195th
Seattle, Washington 98177
(206) 542-2517

Dave Bormscheine
7130 Miranda Drive
Anchorage, Alaska 99507
(no telephone number).

1989 Limited
713LK5200470
17N330127JW007733

Thomas Staiger
1544 Marble Ct.
Chula Vista, California 91911
(619) 422-8449

James Deppon
(no address or telephone
number).

1992 Flair
732HN4713703
1GBKP37N1N3304004

Arthur Ellerson
4449 South Carpenter Road
Modesto, California 95358
(209) 537-8338

Ronald Cherry
1630 West Calle Tiburon
Tucson, Arizona 85704
(520) 742-1964

1992 Flair
732HN4713197
1GBKP37N9N3300282

Samuel Carter
504 South B Street
Tompoe, California 93436
(805) 736-9920

Paul Flory
6448 East Inglewood Street
Mesa, Arizona 85205
(602) 985-2554

1991 Pace Arrow
711VM3044183
4CDB5XG26M2102910

James Johnson
4712 Glenwood Avenue
Everett, Washington 98203
(206) 259-2263

Max Anderson
102 Emery
Duncan, Oklahoma 73533
(405) 252-5637

1991 Bounder
733SM4710632
3FCMF53G5LJA03324

Leland Graybeal
1045 North East 10th, #30
Grants Pass, Oregon 95727
(503) 471-2014

Henson Auto
(no address or telephone
number).

Unit I.D.
1989 Pace Arrow
711JK3038353
1GBKP37WOJ3332587

1992 Pace Arrow
711EN3045912
1GBKP37N3302710

1990 Pace Arrow
711JL3042974
3FCMF53G3LJAO1992

1991 Pace Arrow
711LM3043558
3FCMF53G4LJA03315

Original Owner
Charles Mobley
Post Office Box 4263
Lancaster, California 93535
(805) 942-9749

Hal Sullivan
33891 Calle Borrege
San Juan Capistrano, Ca 94675
(714) 496-2879

Frank Renda
1011 Cabrillo Avenue
Burlingame, California 94010
(415) 579-5727

Ronald Brooke
7079 Whipple Avenue
San Diego, California '92122
(619) 453-7469

New Owner
Unknown

Harold Williams
18A Box 154 Lake Tapawingo
Blue Springs, Missouri 64015
(816) 229-8651

Donald Binder
730 3rd Avenue, N.W.
Plainview, New Mexico 55964
(507) 534-3416

Keith Broeder
239 East 600 Street
Kaysville, Utah 84037
(801) 544-1429

EXHIBIT B

Vehicle	Original Owner	Subsequent Purchaser	Original Problem to be Repaired or Reimbursed
1991 SouthWind 721PM3043339 4CDB5XG22L2101865	Rod Soelter	David Bormschein	Window leakage, delamination and structural damage secondary to leakage.
1989 Limited 713LK5200470 17N330127JW007733	Thomas Staiger	Howard Herman	Wheel shimmy at high speeds. Reimburse for transmission replacement.
1994 Coronado 716HR3049423 1GBKP37N9P3317473	Dennis Dibble	Harvey/Jordan	New shock absorbers to stabilize control on highway
1991 Pace Arrow 711VM3044183 4CDB5XG26M2102910	James Johnson	Max Anderson	Repurchase unit
1992 Flair 732HN4713197 1GBKP37N9N3300282	Samuel Carter	Paul Flory	Repurchase unit

EXHIBIT B

EXHIBIT C

Vehicle	Original Owner	Subsequent Purchaser(s)
1994 Arrow 742TR770482 1FOKE30G9RHA33727	Abe Padilla	Larry Lee and April Johnson
1990 Pace Arrow 711JL3042129 1GBKP37W6K335768	Aaron Wilson	Unknown
1991 Bounder 733SM4710632 3FCMF53G5LJA03324	Leland Graybeal	James Campbell and Leondra Hartley
1989 Pace Arrow 711JK3038353 1GBKP37WOJ3332587	Charles Mobley	Unknown
1992 Pace Arrow 711EN3045912 1GBKP37N3302710	Hal Sullivan	Harold Williams
1991 Pace Arrow 711LM3043558 3FCMF53G4LJA03315	Ronald Brooke	Keith Broeder

EXHIBIT C