

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ **DIVISION**

STATE OF ARKANSAS *ex rel.*
DUSTIN MCDANIEL, ATTORNEY GENERAL

PLAINTIFF

v. Case No: _____

AQUATIC POOLS, LLC;
AND GLENN YATES

DEFENDANTS

COMPLAINT

COMES NOW, the State of Arkansas *ex rel.* Dustin McDaniel, Attorney General, and for its Complaint against the Defendants Aquatic Pools, LLC, and Glenn Yates (referred to collectively as “the Defendants”), states and alleges as follows:

I. INTRODUCTION

1. The Defendants advertised to consumers that they could install in-ground pools, as well as retainer walls on residential properties. However, after accepting consumers’ money for the construction of in-ground swimming pools, retainer walls, and other related goods and services, the Defendants wholly failed to complete and provide the promised services and goods. This is a consumer protection action brought to redress and restrain violations of the Arkansas Deceptive Trade Practices Act, ARK. CODE ANN. §§ 4-88-101 through 4-88-115.

2. The State seeks an injunction, an order of restitution, the imposition of civil penalties, and the forfeiture of licenses and permits against the Defendants for the violations of the Arkansas Deceptive Trade Practices Act.

II. PARTIES

3. Plaintiff is the State of Arkansas *ex rel.* Dustin McDaniel, Attorney General of Arkansas (“the Plaintiff” or “the State”). Attorney General McDaniel is the chief legal officer of the State of Arkansas. Pursuant to ARK. CODE ANN. § 4-88-104, the State may seek civil enforcement of the Arkansas Deceptive Trade Practices Act (“DTPA”).

4. Defendant Aquatic Pools, LLC is an Arkansas limited liability company formed in 2011 whose principal place of business is in Oklahoma. The company was formerly located at 12202 Rutherford Road, Gentry, Arkansas 72734. Its registered agent for service of process is Glenn Yates, 12202 Rutherford Road, Gentry, Arkansas 72734. However, Glenn Yates no longer resides or has a company location at this address. Aquatic Pools, LLC has an active registration with the Arkansas Secretary of State.

5. Defendant Glenn Yates is an Oklahoma resident, former Arkansas resident, and the owner of Defendant Aquatic Pools, LLC. Defendant Yates resides at RR 5 Box 6340, Stilwell, OK 74960. Defendant Yates, at all times relevant to the circumstances described in the Complaint, operated, controlled, and directed the business activities of Aquatic Pools, LLC, causing, personally participating in, and/or ratifying the acts and practices of Aquatic Pools, LLC described in this Complaint. Defendant Yates is a controlling person of Aquatic Pools, LLC within the meaning of Ark. Code Ann. § 4-88-113(d). As such, he is personally liable for not only his personal acts which violated Arkansas law, but also for the individual and collective acts of Defendant Aquatic Pools, LLC.

III. JURISDICTION

6. The Defendants transacted business in Arkansas and conducted activities sufficient to establish jurisdiction. The Defendants advertised and sold services pertaining to in-ground swimming pools in Arkansas and to Arkansas consumers.

7. This Court has jurisdiction over this matter pursuant to ARK. CODE ANN. § 4-88-104 and the common law of the State of Arkansas.

8. Venue is proper pursuant to ARK. CODE ANN. § 4-88-104 and ARK. CODE ANN. § 4-88-112, and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

9. Commencing at a time no later than 2011, Defendants have marketed and sold in-ground pools to residents of the State of Arkansas. The Defendants advertised that they sell in-ground pools as well as install them. The following is the advertisement on the Defendants' website:

At Aquatic Pools, we are committed to excellence. We are a family company based out of Northeast Oklahoma, and we take pride in our pools. We use the very latest building techniques and technology to meet or exceed industry standards. From the most simple pool to the most elaborate pool, we treat all of our customers with the same attention to detail. We strive to involve you every step of the way to ensure that your pool exceeds your expectations.

See Exhibit A.

10. Arkansas consumers entered into contracts with the Defendants based on these representations as well as other representations the Defendants made on their website and during the sales process. The contract detailed the costs and the services to be rendered. An example of such agreement is attached as Exhibit B. In many instances the Defendants, as specified in various contracts, were also supposed to install retaining walls, fencing, and landscaping. In every circumstance reported to the Attorney General, the costs of these contracts were in the tens of thousands of dollars. In some instances, the consumers took out a home improvement loan

from a lender in order to pay the Defendants. The Defendants were aware of the home improvement loans.

11. The Defendants assured consumers that the services to be rendered would only take four to six weeks. However, after obtaining money from consumers, the Defendants continually made excuses to homeowners for why they had stopped work on the project. For example, in one instance a homeowner entered into a contract with the Defendants on March 30, 2011 for the installation of a 32' x 16' in-ground pool. The Defendants assured the homeowner that the project would take four to six weeks. However, after excavating the dirt to provide room for the installation, the Defendants failed to return to finish the project. The Defendants continued to make excuses to the homeowner via email and continuously promised to finish the project. The Defendants were paid in full for the project on August 9, 2011, but failed to complete the project. The Defendants have still not completed the project as of the present date. Unfortunately, this practice of delays, excuses, and failure to render services has been the Defendants' overall business model.

12. Prompt performance of home improvement contract is a material term of the agreement from a homeowner's point of view. In many cases, the Defendants would excavate the dirt necessary to install an in-ground pool, but would thereafter fail to install the in-ground pool, essentially leaving a large hole in a homeowner's backyard. Of course, this creates a dangerous situation for homeowners and their children. It also could potentially create a liability issue for homeowners. Defendants knew that their conduct, specifically the failure to install the in-ground pool after excavating the dirt, would cause harm to the consumers as well as other innocent parties.

13. In all cases, the homeowners would not have entered into any agreement with the Defendants had the systematic policy of delay and excuses been disclosed to the homeowner.

14. The Office of the Attorney General has received numerous complaints from Arkansas homeowners. Consumers complain of delays in performance and the failure of the Defendants to complete the in-ground pool installations. Despite efforts of the Attorney General, these complaints have not been resolved. The Defendants have failed and refused to refund to Arkansas homeowners the funds paid by such homeowners and held by the Defendants even though they had neither the capacity, nor any reasonable expectation, that they would be able to complete the contracts.

15. Due to delays in commencement of the agreed-upon in-ground pool installation, some homeowners report to the Attorney General that they have attempted to cancel their agreements with the Defendants. The Defendants' response to these requests is to refuse to provide refunds. When Arkansas consumers questioned the Defendants about the delays, the Defendants would make excuses and falsely assure the homeowners that the pool installation would be completed promptly.

16. For example, in one instance similar to that detailed above, a homeowner contracted with the Defendants on April 18, 2013, for the installation of an in-ground pool. The work started a week later, and the Defendants excavated a hole for the in-ground pool. A couple of weeks later the Defendants installed the plumbing and steel. However, from May 15, 2013 through the middle of July the Defendants failed to perform any work on the project. During this two month period, the Defendants on multiple occasions promised the homeowner they would come on a specific date to work on the project. In each instance, the Defendants failed to keep their promise, although the homeowner had already paid the Defendants \$37,600. The

Defendants never completed the project. The homeowner contacted another company in regards to finishing the project. The company informed the homeowner that the Defendants' work was subpar and would have to be redone. The company quoted the homeowner \$80,000 for installation of the in-ground pool.

17. The representations of the Defendants were not accidents or mistakes. The Defendants intentionally made these misrepresentations in order to delay any further action by the homeowner because of their dissatisfaction in the results of the Defendants' work and to obtain additional funds from these consumers and others. The Defendants knew their actions would cause harm to consumers.

18. The Attorney General's office has received eight complaints from consumers who have provided payments for in-ground pool installation as well as other services and have not received the services in full from Defendants. Upon information and belief, it is likely that many more Arkansas homeowners have been defrauded in this manner by the Defendants.

19. In at least one instance, a homeowner, who had taken out a home improvement loan, paid the Defendants over fifty percent of the total cost of the project while the Defendants had only completed ten percent of the work. Nonetheless, the Defendants continued to request more money from the consumer.

20. In regards to home improvement loans, banks generally do not give the consumer all of the funds from the loan up front. Banks typically release money as the project progresses according to a set payment schedule which coordinates with the amount of work that has been completed on a project. In this particular instance with the consumer mentioned above, based upon the small amount of work the Defendants had completed versus the amount they had been paid, the bank refused to release more funds. When the Defendants entered into an agreement

with the consumer, the Defendants had knowledge of the consumer's home improvement loan, the payment schedule and the amount of work that needed to be completed before each of the payments would be released. However, the Defendants were dissatisfied when the bank and consumer would not pay outside of the loan's payment schedule. As a result of not receiving additional money before the corresponding services had been rendered, they packed up their equipment and never communicated with the consumer again.

21. Because of the Defendants' conduct, consumers have been placed in an untenable position because they have provided the funds dedicated to install in-ground pools and other projects to the Defendants and no longer have sufficient funds to find a replacement pool installation company and pay for the pool installation to be finished.

22. In summary, the Defendants used deception to obtain advance payments from Arkansas consumers while only partially providing the services they had agreed to provide. The Defendants converted these funds to their own use and continued marketing. The Defendants had no intention of ever completing consumers' in-ground pools and knew the harm it would cause to consumers.

V. VIOLATIONS OF LAW

23. ARK. CODE ANN. § 4-88-101 through 115, otherwise known as the Arkansas Deceptive Trade Practices Act ("DTPA"), sets forth the State's statutory program prohibiting deceptive and unconscionable trade practices.

24. The business practices of the Defendants constitute the sale of "goods" or "services" within the meaning of ARK. CODE ANN. § 4-88-102(4) and (7). The same business practices constitute business, commerce, or trade within the meaning of ARK. CODE ANN. § 4-88-107.

25. ARK. CODE ANN. § 4-88-107(a)(1) provides that it shall be unlawful to “[k]nowingly make a false representation as to the characteristics, uses, benefits ... of goods or services” The Defendants have engaged in prohibited conduct by misrepresenting the timeframe in which a homeowner could expect the commencement and completion of the in-ground pool installation as well as the other projects. Further, in most instances the Defendants never had the capacity, nor any reasonable expectation, that they would be able to complete the projects, even while affirmatively promising homeowners that the projects would be completed promptly.

26. ARK. CODE ANN. § 4-88-107(a)(10) provides that it shall be unlawful to engage in unconscionable, false, or deceptive acts or practices in business, commerce, or trade. The Defendants have engaged in prohibited conduct by marketing and selling in-ground pools while pursuing an undisclosed business model which was designed to fraudulently extract money from Arkansas consumers and was bound to fail leaving the bulk of the Defendants’ consumers without the goods and services for which they paid. For many of the sales solicited by the Defendants, including many where the Defendants had acquired and retained payment, the Defendants had no capacity, nor any reasonable expectation, of completing the job. This is a deceptive and unconscionable trade practice prohibited by ARK. CODE ANN. 4-88-107(a)(10).

27. ARK. CODE ANN. § 4-88-108 prohibits the use of concealment, suppression, or omission of any material fact in the connection with the sale or advertisement of any goods and services. The Defendants have engaged in prohibited conduct by intentionally failing to inform Arkansas homeowners that it had no capacity, nor any reasonable expectation, of completing the project.

28. The Defendants have engaged in a course of trade or commerce and have engaged in acts or practices that constitute unfair or deceptive acts or practices, each of which is a violation of the Arkansas Deceptive Trade Practices Act.

IV. PRAYER FOR RELIEF

29. Pursuant to ARK. CODE ANN. § 4-88-113(a)(1), the Court may enter such orders as deems necessary to prevent the use of employment of any practices prohibited by the DTPA.

30. Pursuant to ARK. CODE ANN. § 4-88-113(a)(2)(A), the Court may enter such orders or judgments as are necessary 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.

31. Pursuant to ARK. CODE ANN. § 4-88-113(a)(3), any person who violates the provisions of the Arkansas Deceptive Trade Practices Act may be assessed a civil penalty of up to \$10,000 per violation.

32. Pursuant to ARK. CODE ANN. § 4-88-113(b), the court may order the suspension or forfeiture of franchises, corporate charters, or other licenses or permits or authorization to do business in this state.

33. In addition, under the provisions of ARK. CODE ANN. § 4-88-113(e), any person who violates the provisions of the Arkansas Deceptive Trade Practices Act 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.

34. A “person” is an individual, organization, group, association, partnership, corporation, or any combination thereof. ARK. CODE ANN. § 4-88-102(3).

35. Each of the Defendants is a “person” who has engaged in an unconscionable, false, or deceptive act or practice in business, commerce, as set out more specifically above.

36. Plaintiff will exercise its right to a trial by jury.

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

(A) Issue such orders, pursuant 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 Arkansas Deceptive Trade Practices Act;

(B) Issue an order, pursuant to ARK. CODE ANN. § 4-88-113(a)(2)(A), requiring the 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 the Defendants to disgorge all sums obtained from Arkansas consumers by methods prohibited by Arkansas law;

(C) Issue an order requiring the Defendants to comply with requests from those consumers who wish to cancel their service, to discontinue any further efforts to collect money from those consumers, withdraw any consumer accounts that have been referred to a collection agency, and remove any negative credit information from the consumer’s credit record.

(D) 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 Arkansas Deceptive Trade Practices Act proved at a trial of this matter. The total monetary relief sought by the State will exceed the amount necessary to establish federal diversity jurisdiction.

(E) Issue an order pursuant to ARK. CODE ANN. § 4-88-113(b), suspending and forfeiting all of the Defendants' franchises, corporate charters, and any other licenses or permits or authorization to do business in this state which pertain to home improvement.

(F) Issue an order, pursuant to ARK. CODE ANN. § 4-88-113(e), requiring Defendants to pay the State's costs in this investigation and litigation, including, but not limited to, attorney's fees and costs; and

(G) For all other just and proper relief to which the Plaintiff may be entitled.

Respectfully Submitted,

DUSTIN MCDANIEL
Attorney General

By:

/s/ Bart W. Calhoun

Bart W. Calhoun, Ark. Bar No. 2011221

Assistant Attorney General

bart.calhoun@arkansasag.gov

323 Center Street, Suite 500

Little Rock, Arkansas 72201

Facsimile: (501) 682-8118

Telephone: (501) 683-1499

At Aquatic Pools, we are committed to excellence. We are a family company based out of Northeast Oklahoma, and we take pride in our pools. We use the very latest building techniques and technology to meet or exceed industry standards. From the most simple pool to the most elaborate pool, we treat all of our customers with the same attention to detail. We strive to involve you every step of the way to ensure that your pool exceeds your expectations.



Request Information

Name:

Email:

Phone: optional

Request:

Please fill the required fields

If you're looking for high quality and personal service, you've come to the right place. At Aquatic Pools, our customers are our top priority, and we will do everything we can to help you create your backyard oasis.

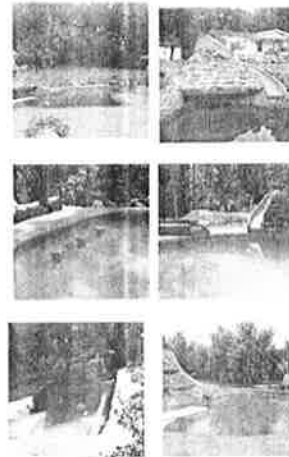
Aquatic Pools put my custom pool in for me last year and did a great job! We couldn't be happier with the results!

The owner and crew was great to work with and did great work.

If you want a great pool at a great value, I highly recommend Aquatic Pools!

-Anthony Pearson

Picture Gallery



Designed by Aquatic Pools, LLC © 2012 using [homestead website templates](#). [Create a website today](#).

Aquatic

Pools, LLC

12202 Rutherford Rd • Gentry, AR 72734 • Ph: (479) 856-5512 • Fax: (479) 736-3689

This contract, made and entered into this 15th day of April, 2013
by and between Aquatic Pools, hereinafter called COMPANY; and
Joshua L. Larcher, ROSS hereinafter called OWNER, whose address
is 739 June Drive, Springdale, AR 72762
Phone(H): 479-422-1281 Phone(W): _____ Fax: _____

COMPANY for GOOD and Valuable Consideration, receipt of which is hereby
acknowledged, agrees to install a Deluxe Concrete Swimming Pool on OWNER'S
Property, described as follows: Lot No. _____ Block _____ Tract _____
Subdivision _____

(City Limits ☐ Yes ☐ No) Items included by Aquatic Pools are marked incl, or marked
in box, with a check mark. Items to be done by owner, or others, are thusly marked.

Shape Freeform Size 20' x 20' x 40' Depth 3 1/2' x 4' x 9'
Perimeter Ft. 135 Approx. Square Ft. 610

1. Permits, steel and concrete per engineered plans yes incl.
2. Excavation, layout and establish approximate elevation for other approval yes incl. (Owner to identify property lines and easements)
3. Dirt left as needed and/or removed (day of excavation only) left in side incl.
4. Fence removal no ☐ 5. Fence replacement no ☐
6. Concrete/Asphalt removed no Sq. Ft. _____ ☐
7. Cut concrete no Linear Ft. _____ ☐
8. Trees removed # no ☐ Stumps removed # no ☐
9. Electrical: Hook-up to pump(s), bonding, timer and switches for pumps(s), and light(s) at pool equip pad owner incl.

(Continued from column 1)

Fire Place w. F.
UV and op. system
Diving Rack
Stainless Screen

PAYMENT SCHEDULE

In the event payment(s) are not made as scheduled below, any and all remaining work to complete the installation will be suspended. No other work shall be performed until payments are made in consonance with the payment schedule, plus receipt of an additional four hundred (\$400.00) to reschedule and restart the work to bring everything to a timely conclusion.

Contract amount	\$ 4700.00
Tax	\$ 0.00
Total	\$ 4700.00
25% due as down payment	\$ 1175.00
20% due day of excavation	\$ 940.00
15% due day of rough plumbing and steel	\$ 705.00
20% due day of concrete shell installation	\$ 940.00
15% due day tile installed and concrete is poured	\$ 705.00
5% due prior to interior finish (plastering)	\$ 235.00

SALESMAN John L. Larcher

OWNER Joshua L. Larcher

10. Electrical footage 0.0 ft. (Changes in electric service, panel or service drop NOT included unless marked here ☐) (Electrical items to be changed are listed in miscellaneous, below) 11. Sprinklers; rerouting & adjustment NO ☐
12. Sprinkler lines encountered capped by yes ☐
13. Backwash line from pad, if required by local authorities yes incl. ☐
14. Directional return inlets PVC wall no in floor yes incl. ☐
15. Main drains # 2 yes incl. 16. Skimmers # 2 yes incl. ☐
17. Therapy jets # no incl. 18. Equip. pad (indoors) (outdoors) yes incl. ☐
19. Pool cleanup PVC In Floor cleaning ☐
20. Light for pool # 3 with 25 Ft. of conduit & J box yes incl. ☐
21. Light for spa # no with 25 Ft. of conduit & J box yes incl. ☐
22. Heater (indoors) (outdoors) (gas) (propane) BTU 400,000 ☐
23. Gas line, with permits Home Ft. owner ☐
24. Filter, size and type 30" Sand Filter incl. ☐
25. Pump(s) # 2 HP 1/2 speed Pool incl. ☐
26. Loveseat 1 ☐ Standard Steps (3) yes from Lodge incl. ☐
27. Maintenance kit (thermometer, wall brush, leaf skimmer, telescopic pole, test kit) (also furnish vacuum head and hose if no PCC 2000) yes incl. ☐
28. Spa Dimensions no depth no ☐
29. Water line tile, 6" X 6" yes incl. ☐
30. Tile trim on (steps) (benches) Linear Ft. yes ☐
31. Cantilever deck yes Sq. Ft. Finish Stamped 54" tile incl. ☐
32. Grey marcite finish gray pebble incl. ☐
33. Pool cover, type no ☐
34. Spa cover, type no ☐
35. Demineralizing chemicals yes ☐
36. Start-up chemicals yes ☐
37. Initial start-up service and instructions yes incl. ☐
38. Clean-up pool construction debris yes incl. ☐
39. Liability, property damage and workmens compensation insurance yes incl. ☐
40. Miscellaneous: UR

UTTERER

CONTRACTOR

THIS CONTRACT IS NOT BINDING UNTIL APPROVED BY CONTRACTOR

OWNER RESPONSIBILITIES RELATED TO POOL CONSTRUCTION AND COMPLETION THEREOF

- I. Provide water for construction of pool.
- II. Water cure all concrete.
- III. Fill pool with water after plaster as instructed by plaster foreman and brush plaster a minimum of 7 days immediately after pool is filled.
- IV. Pool maintenance after pool is plastered.
- V. Enclosure around pool and or door alarms to meet local codes.

THIS IS AN OPEN ENDED CONTRACT. LISTED BELOW ARE POSSIBLE ADDITIONAL CHARGES AND CUSTOMER INFORMATION.

PLEASE READ CAREFULLY.

1. Materials availability, weather, and other factors could extend time of construction by 4 to 6 weeks. See B on reverse side of this document.
2. Possible need for relocation of sewer, gas, water, electric, or telephone lines, and septic tanks. See D-3e on reverse.
3. Electric lines, whether overhead or underground, may need to be moved to meet local codes. See D-3e on reverse.
4. Damage done in access area over which equipment must travel. See D-4 and D-11 on reverse.
5. Adequate electric and gas service must be provided by Buyer. See Item 10 on this page.
6. In some areas there are underground water and/or rock conditions. See Item D-3 on reverse.
7. It is the Owner's responsibility to provide full and accurate information regarding property lines and easements. See Item #2 on this page.
8. In some areas expansive soil may result in damage to the pool shell and decking. Aquatic assumes no liability regarding expansive soil. See Items E-1 and D-4 on reverse.
9. Relocation of pool equipment after excavation of pool will result in additional costs to Owner of \$300.00 plus any additional footages of plumbing and electrical.
- Owner(s) acknowledge that he/she/they have read and received a complete, legible copy of this contract, including the terms and conditions contained on the reverse hereof and all other documents which Owner(s) have signed and initialed.

TERMS AND CONDITIONS A - GUARANTEES AND WARRANTIES

1. Aquatic Pools, LLC warrants to the original buyer that equipment installed pursuant to this contract will be free of defects in materials and workmanship for a period of one (1) year from the date of application of plaster, or from the date of installation of the water, excepting the following items:

(a) Although decks and walks are part of the pool, there is no guarantee or warranty regarding cracking, checking, raising, settling, discoloration or frecking, expressed or implied. This disclaimer and limited warranty agreement is expressly in lieu of any and all representations and warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, whether arising from statute, common law, custom or otherwise. The remedies set forth in this disclaimer and limited warranty agreement shall be the exclusive remedies available to any person. Only cracks exceeding in width the thickness of a dime will be repaired by Aquatic Pools, LLC at no cost to the Owner within the limited warranty period.

(b) Plaster is NOT warranted against checking, discoloration, staining, degree of whiteness, or uniformity of color. Because of the natural curing process of pool plaster there will likely be variations in color throughout the pool. The variations in color are a natural process. When selecting colors other than white marble, there are no guarantees that the colors will not mottle and/or discolor as a result of dyes that are used.

(c) Aquatic Pools, LLC does NOT warrant any work or materials provided by anyone other than Aquatic and shall not be liable for any loss or damage resulting therefrom.

(d) Equipment installed under this contract carries manufacturers' warranty, and servicing or replacement of such equipment shall be charged for if they exceed the limits of said manufacturer's warranty.

(e) Aquatic Pools, LLC warrants that the swimming pool structure will remain structurally sound for as long as the Buyer owns the pool. Should the structure fail during the warranty period, Aquatic Pools, LLC will, upon prompt notice and at no cost to the Owner, repair said structure and marbleite. By definition, the pool structure does not include such things as coping, tile, masonry, coloring, plumbing, piping, decking, and accessories or other appurtenances. This warranty will become void if: a) the pool is not kept full except for a reasonable professionally recommended and supervised maintenance period each year; b) if the pool structure is damaged by reason of the water table rising above the lowest point of the pool when the pool is kept full; c) damage is caused by earth or full ground movement (from water source), earthquake, flood or fire; d) the pool is not maintained as required; e) if the water fails to comply with decking installation requirements as set forth by Aquatic Pools, LLC.

2. Aquatic Pools, LLC PROVIDES NO WARRANTY, EXPRESSED OR IMPLIED, OTHER THAN THOSE CONTAINED HEREIN. Aquatic Pools, LLC DOES NOT WARRANT WORK BY OTHERS. WHETHER PERFORMED PRIOR TO OR CONCURRENT WITH THE WORK TO BE PERFORMED HEREIN, Aquatic Pools, LLC IS NOT LIABLE FOR DAMAGE TO ITS WORK WHEN SAID DAMAGE IS CAUSED BY THE DEFECTIVE WORK OF OTHERS.

3. Defects and failures resulting from mismanagement or neglect by OWNER shall be repaired or serviced at OWNER'S expense.

4. All warranties and guarantees set forth above are subject to complete payment of all contract charges. Said charges to include all Contract Change Order charges incorporated into this contract.

5. Aquatic Pools, LLC shall not be responsible for the replacement of water in the pool or chemicals used in treating said water in emergency to heat said pool as a result of performing repairs under warranty.

B - PERFORMANCE BY AQUATIC POOLS, LLC

1. Aquatic Pools, LLC shall construct a swimming pool in a good and workmanlike manner which shall be equal to or exceed the standards in the industry.

2. Aquatic Pools, LLC hereby warrants to construct the swimming pool by the completion date stated on the front side

(continued from column 1)

(f) Aquatic Pools, LLC will not assume liability for any known, unknown, or unforeseen pollution exposures that may exist or become evident with any work associated with company's performance of this contract.

(g) Requests for warranty service must be made through the company, the installing dealer. Warranties are not effective for conditions resulting from repair or alterations by anyone other than Aquatic Pools, LLC or a person duly authorized by Aquatic Pools, LLC to do such repair or alteration. Damage to plumbing or equipment resulting from freezing, when someone, other than Aquatic Pools, LLC or a person duly authorized by Aquatic Pools, LLC, performs winterization service on the installation will render all related warranties void. Nonwinterization is subject to causing damage to plumbing and equipment.

4. OWNER shall supervise the location of buildings or other improvements and there shall be no liability on part of the contractor for incorrect location thereof, whether on OWNER'S property or the property of a third person. The contract price is based on the following mutual assumption of facts. The site is not fill ground (fill ground means soil is not compacted to 90% and bearing capacity of 1,000 lbs. PSP), has adequate bearing capacity, contains no cesspool, septic tank, gas line, water pipe, drainage pipe, irrigation pipe, or underground electrical conduit or other unusual ground conditions not apparent from an inspection of the surface; that no underground or surface water conditions will interfere with the work or operation of the completed structure or installation; and that there are reasonable means of access for contractor's equipment. It is understood and agreed that if any of the foregoing assumptions of fact should prove mistaken, and if any additional work or materials are required thereby to complete the contract, the same may be performed or installed and shall be added to the contract price at the direct cost thereof, plus 15% thereof. If after the pool is started the soil condition requires extra steel or granite, other than specified on the front of this contract, owner agrees to pay for the additional labor and materials plus 15%. If survey, geological report, topography maps or soil report should be required, OWNER is responsible. Contractor is not liable for any required or desired soils testing. Soils problems discovered before or after construction is the OWNER'S responsibility. OWNER agrees to pay additional charges upon presentation of a written estimate and prior to rendition of additional work. Aquatic Pools, LLC is NOT responsible for damage to vegetation.

5. Should any underground conditions in item 3 above be misrepresented or in error, OWNER agrees to assume all costs for engineering, construction, or excavation in excess of that provided on the front of this contract. Normal excavation is defined as up to eight (8) hours maximum with standard or limited access equipment. OWNER to pay for all charges from time of encountering adverse underground condition. OWNER also agrees to assume the cost of soils reports if required. Additional charges to be based on actual costs plus 15% thereof.

6. OWNER assumes the responsibility and care for all materials, equipment and products delivered to or on his property, whether or not they have been installed.

7. All drainage beyond the pool site sufficient to meet local government agency requirements shall be provided by OWNER. POOL SITE is defined as: the area comprising the water surface area and that portion of the ground surface extending to a distance not more than 4 feet, or that distance required by local code for minimum decking, measured at right angles to the perimeter of the pool water surface.

8. Unless specified on the reverse side, none of the following is included and shall be OWNER'S responsibility: grading, soil compaction, decking and drainage beyond the pool site, retaining walls, fencing, and impounding, placing and compaction of soil required by code to meet minimum slope requirements, drainage beyond the pool deck is solely the OWNER'S responsibility. All water must drain away from the pool deck.

9. Electrical work contemplates no change to existing service panel other than the addition of circuit breakers or fuse blocks to distribute electric current to new outlets. Changes to existing wiring are not included in this contract. Gas meter upgrades are the responsibility of the buyer.

10. OWNER shall obtain any variance or exception required by local government agencies having jurisdiction thereof, and approval of permit from any local association.

11. OWNER agrees to provide access to pool for Aquatic Pools, LLC construction equipment. Said access, whether across OWNER'S property or adjacent property owned by others, shall be provided at no cost and shall be provided to Aquatic Pools, LLC.

E - CONTRACT

1. In the event of Default by OWNER of any provision of this contract, OWNER agrees to pay all collection costs, and interest from date of default. OWNER also grant to Aquatic Pools, LLC the right to enter upon and pass over OWNER'S real property in order to repossess any pumps, heaters, filters, or other appurtenances installed by Aquatic Pools, LLC pursuant hereto.
2. When Aquatic Pools, LLC has incurred any cost as a result of cancellation or abandonment of plans by OWNER, after statutory three day right to cancel, OWNER agrees to pay to Aquatic Pools, LLC \$2,000 in administrative expenses plus any other actual expenses incurred in the performance of its obligations herein.
3. This agreement shall be interpreted in accordance with the laws of the State of ~~California~~ Alabama. Aquatic Pools, LLC has complied their price for constructing this pool based on the sole venue for litigation or arbitration relating to this agreement being ~~the State of California~~ the State of Alabama venue in ~~the State of California~~ the State of Alabama county ~~San Diego~~ Cherokee. The purchaser under this agreement hereby waives any objection to venue, for litigation or arbitration arising from this agreement, in any location other than ~~the State of California~~ the State of Alabama county ~~San Diego~~ Cherokee of an action is brought for collection of sums due and owing pursuant to this agreement, the prevailing party shall be entitled to its court costs and reasonable attorney fees. The parties further agree to consider settling any dispute which may arise from this agreement to arbitration for resolution.
4. Should any part hereof for any reason be declared invalid, such decision shall not affect the validity of any remaining portion; and such remaining portion shall remain in force and effect as if the invalid portion had been eliminated.
5. No failure of Aquatic Pools, LLC to exercise any power given to it hereunder, or to insist upon strict compliance by OWNER, shall constitute a waiver of Aquatic Pools, LLC right to subsequently demand exact compliance with all terms hereof.
6. The contract contemplated hereby shall jointly and severally bind all signing as OWNER, their heirs, and representatives, and shall inure to the benefit of Aquatic Pools, LLC assigns.
7. The contract price is subject to increase if actual construction has not begun within 90 days of the date of signing due to buyer delays.
8. This contract is binding upon both parties if: OWNER has represented to Aquatic Pools, LLC that OWNER will pay CASH for work performed. If OWNER obtains financing, this contract is binding only if OWNER can qualify for said financing. When financing is obtained, this contract shall become incorporated into the financing agreement and all dates, terms and conditions shall be subject to the dates, terms and conditions of said financing agreement.
9. Aquatic Pools, LLC may assign or subcontract all or any portion of the work to be done.
10. Aquatic Pools, LLC does not warranty and in no way shall be liable for work performed, which is not included in this contract, even though financing for such work may have been arranged by Aquatic Pools, LLC.
11. Aquatic Pools, LLC expressly denies responsibility or liability or consequential damages arising out of or as a result of, the use of ownership of OWNER'S pool or spa.

ACKNOWLEDGMENT PURSUANT TO MAGNUSON-MOSS FEDERAL WARRANTY ACT: OWNER ACKNOWLEDGES THAT THE SALES REPRESENTATIVE FOR Aquatic Pools, LLC HAS ORALLY INFORMED OWNER THAT HE HAS COPIES IN A BINDER OF THE WARRANTIES FOR THE WARRANTED PRODUCTS BEING OFFERED FOR SALE. OWNER ALSO ACKNOWLEDGES THAT HE HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT THE WARRANTIES AT ANY TIME DURING THE SALE'S PRESENTATION.

EACH OWNER ACKNOWLEDGES THAT: (1) BEFORE SIGNING THIS CONTRACT HE RECEIVED AND READ A LEGIBLE, COMPLETELY FILLED IN COPY OF THIS CONTRACT; (2) UPON SIGNING, HIS COPY WAS ALSO SIGNED BY THE PARTIES HERETO; (3) HE RECEIVED A COPY OF EVERY OTHER DOCUMENT HE SIGNED DURING THE CONTRACT NEGOTIATIONS, INCLUDING THE ATTACHED EXHIBIT DRAWING, PRIOR TO COMMENCEMENT OF ANY WORK; (4) HE HAS READ ALL TWO PAGES HEREIN AND ANY ATTACHED PLANS AND SPECIFICATIONS AND AGREES TO BE BOUND BY ALL THE TERMS AND CONDITIONS HEREIN CONTAINED; (5) OWNER FURTHER ACKNOWLEDGES THAT HE HAS READ AND RECEIVED AN ATTACHED DUPLICATE NOTICE OF

C - MODIFICATION OF PLANS, DRAWINGS OR SPECIFICATIONS

1. OWNER and Aquatic Pools, LLC agree that any plan or scale drawing furnished to, and initiated by both OWNER and Aquatic Pools, LLC is merely a descriptive of the specifications herein and in case of conflict between specifications herein and any plan or scale drawing the specifications contained herein shall prevail.
2. No additional work other than contained in the specifications herein, shall be done by Aquatic Pools, LLC without prior written authorization. Any such authorization shall be in a Contract Change Order. The said Contract Change Order shall set forth the agreed changes and consideration therefore, and upon signing by both OWNER and Aquatic Pools, LLC shall be incorporated into this contract.
3. Compensation for all changes to be made is due and payable upon completion of the change order.
4. Aquatic Pools, LLC reserves the right to substitute equipment of equal quality in the event of nonavailability to Aquatic Pools, LLC.

D - REPRESENTATIONS AND DUTIES OF BUYER

1. OWNER agrees to make payments called for by this Contract on time. Aquatic Pools, LLC may, at its option, stop work until scheduled payments made by OWNER.
2. If the completion of the project is delayed by causes within the control of the OWNER, the contract price shall be increased by an amount equal to the increase cost to Aquatic Pools, LLC, resulting from the delay.
3. OWNER makes the following material representations as an inducement for Aquatic Pools, LLC to make this contract:
 - (a) Aquatic Pools, LLC has made no independent investigation and therefore has no knowledge of unknown underground conditions on OWNER'S property.
 - (b) OWNER warrants that there is within the pool site is compacted too at least 90% and has a minimum bearing capacity of 1,000 pounds per square foot.
 - (c) OWNER warrants that none of the existing conditions exist within the pool site: ground water, rock formations, boulders, expansive soil. Boulders are defined as those too large to be moved by a Skidsteer.
 - (d) OWNER warrants that there will be no additional local conditions that may be imposed on the pool site by existing soil conditions or proposed adjacent structures.
 - (e) OWNER warrants that there are no underground pipes, sewage systems, structures, or utility lines within the pool site, or in the alternative, if any of the above items are within the pool site they will be removed or relocated at OWNER'S expense, unless otherwise provided for in this contract.

(continued next column)