

STATE OF IDAHO )  
County of BONNER )<sup>ss</sup>

FILED \_\_\_\_\_

AT \_\_\_\_\_ O'clock \_\_\_\_M  
CLERK, DISTRICT COURT

\_\_\_\_\_  
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

<p>RICKIE A. VOORHIES and LINDA L. VOORHIES, husband and wife</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>NORTH IDAHO GROUP, LLC dba CENTURY 21 ON THE LAKE, ARROWHEAD RANCH WATER COMPANY, MICHAEL D. BENNETT and THE ESTATE OF ROBERT VERNON HILL, by and through the Personal Representative ROBERT J. HILL,</p> <p style="text-align: center;">Defendants.</p>	<p>CASE NO. CV-2008-993</p> <p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p>
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A two-day court trial was held in this matter on October 18 and 19, 2010, only as to plaintiffs claims that defendant Arrowhead Ranch Water Company and Michael D. Bennett violated the Idaho Consumer Protection Act. I.C. § 48-601, *et seq.* At the conclusion of the trial the Court ordered the parties to simultaneously submit proposed findings of fact and conclusions of law and any post-trial briefing or concluding arguments, by October November 9, 2010. Defendants timely submitted proposed findings of fact and conclusions of law and a post-trial memorandum on November 9, 2010. On November 17, 2010, plaintiffs submitted a Ex Parte Motion for Extension of Time to File Post Trial Brief, an Affidavit of Todd M. Reed in Support of Ex Parte Motion and a proposed Order to Allow Additional Time for Plaintiffs' Counsel to file Post Trial Brief. Defendants did not object, so the Court signed the Order to Allow

Additional Time for Plaintiffs' Counsel to file Post Trial Brief on November 17, 2010, allowing plaintiffs until November 24, 2010, to file a post trial brief. On November 24, 2010, plaintiffs filed Plaintiffs' Proposed Findings of Fact and Conclusions of Law. No post-trial brief was filed by plaintiffs. Following the two-day court trial held October 18 and 19, 2010, and the Court having read all post-trial pleadings filed, this Court makes the following Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

1. Arrowhead Ranch is a subdivision of 12 lots in Bonner County.
2. Approximately 15 years ago, Michael Bennett bought 7 lots with the intent of building speculation homes on them.
3. In pursuing this course of action, Michael Bennett engaged Hank Hester to drill a well on Lot 3. The well produced more water than was needed for a single family residence.
4. Because of the volume of water available through the well, Michael Bennett engaged an engineer to pursue getting approval from the required state agencies for a private water system.
5. The engineer obtained the necessary permits from the applicable agencies for operation of a private water system, which was approved to serve 9 residences.
6. Michael Bennett hired Michael Stewart, a local attorney, to draft a water service agreement template for Michael Bennett's use in conjunction with the private water system. Michael Stewart provided an agreement with blanks to be filled in, including the name of the user, the cost of connection that the user agreed to pay for the privilege of being on the system; and a minimum monthly flat fee rate, as well as blank signature lines.
7. Michael Bennett used this water service agreement template with all individuals whom used the private water system. The terms negotiated for the connection fee were not always the same

between each agreement. Michael Bennett and his wife, Martha Bennett, operated the private water system under the business name Arrowhead Ranch Water Company.

8. Michael Bennett and Martha Bennett did not charge the same connection fee to those users who purchased a speculation home from them because the provision of water with a reduced or without a connection fee was one of the negotiated terms on the sale of the speculation home.
9. Michael Bennett and Martha Bennett were husband and wife in the year 2000. They are now divorced. They jointly continue to own the water system. Michael Bennett handles to actual operation of the water system.
10. In August 2000, Michael and Martha Bennett entered into a water service agreement with Robert V. Hill to supply water to Lot 7 of Arrowhead Ranch subdivision.
11. Robert V. Hill used an accounting service, Creative Management, to handle payment of his accounts.
12. The water service agreement contained a termination clause which provided if the user fell into arrears for 90 days or more that Bennetts had the option of immediately terminating the agreement by giving written notice to the user at the user's address via certified mail, return receipt.
13. It was not uncommon for Robert V. Hill to fall into a ninety day arrearage on his water bill. Bennett's bookkeeper sent Hill's bookkeeper notice on more than one occasion that the agreement would be terminated if the bill were not brought current. Bennett's bookkeeper Linda Palmer testified the last payment she received on Hill's behalf was in November 2007. Palmer testified that on February 14, 2008, she prepared a letter to Hill in care of Creative Management, informing them that the water bill had not been paid since November 5, 2007, that \$174.00 had to be paid in full by February 25, 2008, or the water would be shut off and the contract would be null and void. Exhibit 4. Palmer testified she sent Exhibit \$ at Bennett's direction.

14. Robert V. Hill died on or about August 2, 2007 at the age of 61.
15. The estate of Robert V. Hill was probated in Bonner County Case No CV 2007-01819. Exhibit J.
16. A notice to creditors in Robert V. Hill's probate case was published in the Sandpoint Daily Bee for 14 days commencing on the 10<sup>th</sup> day of November, 2007 and ending on the 24 day of November, 2007. Exhibit J.
17. Neither Michael Bennett nor his bookkeeper, Linda Palmer, saw the notice in the Daily Bee during its two week publication.
18. Although there is no record in the probate file admitted as Exhibit J, the reasonable inference to be drawn from the evidence is that Robert V. Hill's son, Robert J. Hill, obtained ownership in Lot 7 through the estate.
19. Robert J. Hill sold Lot 7 by warranty deed recorded as Instrument No. 742339, Records of Bonner County, to Rick and Linda Voorhies, husband and wife, on or about December 3, 2007. The transaction closed December 7, 2007.
20. At or near the time of the purchase, Rick and Linda Voorhies were informed by Robert J. Hill's realtor, Century 21, that Lot 7 was serviced by a community water system. Rick and Linda Voorhies were unaware of the water service agreement between Robert V. Hill and the Bennetts.
21. Michael Bennett had no communications with Rick and Linda Voorhies prior to their purchase of Lot 7. Michael Bennett testified he always allowed contract assignments upon sale of a parcel when his permission was sought before the sale. Michael Bennett testified Mr. Hill was not current and neither Mr. Hill nor his estate sought permission from Michael Bennett to assign the contract to the Voorhies prior to the sale to the Voorhies. The Court finds Michael Bennett's testimony credible. Voorhies argue: "Furthermore, at the time of trial and as opposed to Bennett's prior testimony and affidavits, he does supply water to individuals without a water

service agreement and, in fact, had supplied water to other individuals well after termination of the water agreement.” Plaintiffs’ Proposed Findings of Fact and Conclusions of Law, p. 5, ¶ 21. Voorhies next argue: “CHARLES CHARLEBOIS testified that he has been provided water for years without any water services agreement. Furthermore, he was allowed to assume this water service agreement, however, the transfer was done without any written type of agreement presented.” Plaintiffs’ Proposed Findings of Fact and Conclusions of Law, p. 5, ¶ 22. The Court finds that such is not at all relevant to Voorhies’ claims of violation of the Consumer Protection Act. Voorhies finally argue: “Through Mr. Bennett’s own testimony, it was clearly demonstrated that other individuals were provided with water and were allowed to transfer water without any difficulty whatsoever.” Plaintiffs’ Proposed Findings of Fact and Conclusions of Law, p. 5, ¶ 23. The Court finds that none of these arguments by Voorhies are at all relevant to Voorhies’ claims of violation of the Consumer Protection Act. None of these arguments contradict the testimony of Michael Bennett that he always allowed contract assignments upon sale of a parcel *when his permission was sought before the sale*. Neither Hill, Hill’s estate, Century 21, nor Voorhies sought Bennett’s permission before the sale. None of these arguments contradict the testimony of Michael Bennett and Linda Palmer that Hill (and Hill’s estate) were delinquent in the payment of the monthly fees to Bennett.

22. Following their purchase of Lot 7 on December 3, 2007, Rick and Linda Voorhies contacted other utility providers and notified them that they were the new owners of the house, including the electrical utility company, Northern Lights, and the telephone company, Verizon.

23. Rick and Linda Voorhies did not contact Michael Bennett and let him know that they were the new owners of Lot 7. Arrowhead Ranch Water Company is not listed in the phone book as a separate entity. Michael Bennett is listed in the phone book. Based upon documents that they saw in closing, Rick and Linda Voorhies were aware that Arrowhead Ranch Water Company

operated the system and that there was a monthly water service charge owed to the water company.

24. On or about February 14, 2008, Michael Bennett directed Linda Palmer to send a notice to Robert V. Hill that his account was 90 days in arrears because it had not been paid since November 5, 2007. Exhibit 4. The notice did not immediately terminate the contract as allowed, but gave Mr. Hill until February 25, 2008 to pay the bill or the contract would be cancelled. *Id.*
25. At the time that Bennett directed Palmer to send the letter, he was unaware that Robert V. Hill was deceased. Linda Palmer was unaware at the time she sent the letter that Mr. Hill was deceased. Linda Palmer testified she did not know Robert V. Hill was deceased until after February 25, 2008. As of February 25, 2008, both Bennett and Palmer were unaware that the property had been sold to Rick and Linda Voorhies on December 3, 2007.
26. Michael Bennett traveled to Arizona around the time the termination letter was sent to Robert V. Hill to assist his mother during her recovery from knee surgery.
27. Linda Palmer received back the return receipt verifying delivery of the letter to Creative Management signed for by Pat Amtstutz. The date of receipt was not included on the return receipt.
28. Pat Amstutz, owner of Creative Management, contacted Linda Palmer some time after receiving the notice and informed her that Michael Bennett had died. She did not inform Ms. Palmer that the residence had been sold.
29. Linda Palmer informed Michael Bennett that Robert V. Hill had died and that the bill had not been paid by the designated date. The exact date of this communication is unknown, however, it occurred while Michael Bennett was in Arizona.
30. After the contract was terminated, Michael Bennett negotiated a contract with Robert (Fred) and Shelley Vincent to provide water to Lot 11. Exhibit 11. The Vincents owned Lot 10 in

Arrowhead Ranch and had previously requested that Bennett enter into a water service agreement with them for water for Lot 11, which they also owned, if capacity became available. The Vincents agreed to pay a \$16,000 connection fee as part of their water service agreement. Exhibit 11, p. 2, ¶ 4.

31. Upon his return to the area, Michael Bennett physically disconnected Lot 7 from the water system. Mr. Bennett believes he returned some time in late March, April or early May of 2008, however he does not recall the exact date of his return. Voorhies testified that this disconnection occurred June 1, 2008. The Court finds the exact date to be not relevant.
32. On or about March 21, 2008, Linda Voorhies sent a letter to Linda Palmer notifying her that they were the new owners of Lot 7 and tendering a payment to purportedly cover the months of December, January and February at a monthly water fee of \$35 per month. The check was dated March 21, 2008. Linda Voorhies obtained Linda Palmer's contact information from her neighbor, Charles Charlesbois. The amount to be paid per month was contained in her purchase documents.
33. Linda Palmer returned the check along with a note that Bennett had directed her to return the check. The note also provided Bennett's contact information.
34. Mrs. Voorhies and Bennett engaged in a telephone conversation near the time the check was written wherein Bennett relayed that that the water did not go with the land, that Voorhies should talk to Century 21 and that Bennett would require Voorhies pay a \$16,000 connection fee if they wanted to enter into a water service agreement with Bennett. Voorhies argue "It is important to not that Mr. Bennett's first couple communications with the Plaintiffs revolved around Mrs. Voorhies' testimony that Mr. Bennett told them that Century 21 would have to pay for the hookup and that he had done this before." Plaintiffs' Proposed Findings of Fact and Conclusions of Law, p. 4, ¶18. The Court does not find such fact relevant.

35. It is disputed whether Voorhies attempt to pay occurred before the disconnection. The court finds from the evidence before it that the attempt to pay occurred before the disconnection.
36. Bennett agreed to temporarily reconnect Voorhies to the system while Voorhies sorted the matter out with their seller, and the realtors. The reconnection occurred within a day or two of Voorhies' request for restoration of the water service.
37. When Bennett was reconnecting the water service, he had a chance encounter with Rick Voorhies on Voorhies' property. At that time, Mr. Voorhies relayed to Bennett that he had purchased the property under the belief that it was entitled to water from a community water system, and that he and his wife were unaware of any water service agreement that gave Robert V. Hill the right to use the water based on the terms of the agreement. Bennett informed Voorhies that he had already contracted to commit the capacity to another user. Bennett indicated he would leave the water temporarily connected to allow Voorhies time to try and work a solution with his seller and the realtors.
38. Bennett spoke to Mrs. Voorhies again a few days before June 5, 2008. At that time, Bennett again reiterated that the terms to the water service agreement would include a \$16,000 connection fee. Mrs. Voorhies refused to agree to this clause.
39. The water was disconnected a second time on June 5, 2008. On the same date, Todd Reed, attorney for Voorhies, sent a letter on behalf of Voorhies to Bennett. Bennett was unaware of Reed's letter at the time he disconnected the water a second time.
40. Voorhies were able to circumvent the disconnection by utilizing a hose attached to their neighbor's house, which was also on the same water system, and back feeding their house with water.
41. During the interim that Voorhies water was disconnected the second time and the date the court entered the injunction in this matter, Voorhies estimate that they spent \$100 on Laundromat

charges and that their grass seed failed to germinate because they chose not to water the lawn they had just started as to avoid overage charges to their neighbor from their water consumption.

42. Bennett was unable to consummate the sales agreement with Vincent because of this suit.

Approximately a year later, Bennett entered into a water service agreement with Vincents on capacity that became available after the commencement of this suit. As a term to that agreement, Vincents paid a \$16,000 connection fee.

43. Voorhies and Bennett never consummated an agreement for water service due to their failure to agree to the material price term in the template contract titled “connection fee”, which term encompasses more than the physical cost of connecting the Voorhies residence to the water system.

44. Subsequently, Bennett disconnected the water

45. The connection fee of \$16,000 was less than the estimated cost of \$40,000 for the Voorhies to drill their own well.

46. Bennett did nothing to prevent Voorhies from drilling a well. Voorhies chose not to pursue this alternative because of the cost.

47. Bennett did not take advantage of any physical infirmity, ignorance, illiteracy, inability to understand the language of the agreement or similar factor suffered by Voorhies.

48. Bennett did not enter into a consumer transaction with Voorhies wherein the price grossly exceeded the price at which similar goods or services were readily available in similar transactions by similar persons.

49. Bennett did not induce Voorhies to enter into a transaction that was excessively one-sided in favor of the alleged violator as not transaction was agreed to between the parties.

50. Neither party intentionally sought to take advantage of the other. The situation the parties find themselves in arose through a comedy of errors attributable to misinformation about Voorhies’

rights to water service; a failure of the parties to be aware of each other and a legitimate inability to reach an agreement on terms for water service.

51. Robert J. Hill and Century 21 materially misrepresented to Voorhies that Lot7 was entitled to water service from the Arrowhead Ranch Water Company.
52. Robert J. Hill and Century 21 were not agents of Bennett. Bennett is not liable for any misrepresentations made by Robert J. Hill or Century 21 in this matter.

#### CONCLUSIONS OF LAW

1. The purpose of the Idaho Consumer Protection Act is to protect both consumers and businesses against unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade or commerce. I.C. § 48-601.
2. The Idaho Consumer Protection Act is to be construed to be remedial. I.C. § 48-601.
3. Bennett engages in commerce or trade by providing water service to water users. I.C. § 48-602.
4. Voorhies are consumers under the act. IDAPA 04.02.01.020.13.
5. Voorhies failed to prove sales conduct or a pattern of sales conduct that would outrage or offend the public conscience as Voorhies only grounds in support of this claim was that the price proposed by Bennett was excessive.
6. Because no agreement was reached between the parties, there is no remedial action available to Voorhies under the act.
7. Because there is no agreement for services, Voorhies have no damages associated with overpayment for the service.
8. Voorhies suffered no ascertainable loss because they did not receive something other than what they bargained for from Bennett.

9. The Court specifically finds as a matter of fact and as a matter of law, that the following claimed by Voorhies (Plaintiffs' Proposed Findings of Fact and Conclusions of Law, p. 6, Conclusion of Law ¶ 8) were NOT a violation of the Consumer Protection Act:
- a. Demanding payment of Sixteen Thousand Five Hundred Dollars (\$16,500.00 [\$16,000]) for a water hookup, when in fact, there was absolutely no additional expense to Arrowhead/Bennett.
  - b. Demanding that the Plaintiffs had to pay for a water hookup and execute an agreement, when other individuals were provided free transfer of their water services agreement, as well as no additional fee. Furthermore, individuals are allowed to operate and utilize the water without any actual agreement at all with Arrowhead.
  - c. The amount of Sixteen Thousand Dollars (\$16,000.00) is exorbitant and not related to any actual expense and/or value at the time that it was demanded of plaintiffs.
10. The expense of providing the water and its relationship to the amount demanded is not relevant, the value of providing water is not relevant, the fact that other individuals were allowed a transfer is not relevant and the amount demanded (\$16, 000.00) is not relevant. None of these propositions contradict the testimony of Michael Bennett that he always allowed contract assignments upon sale of a parcel *when his permission was sought before the sale*. Neither Hill, Hill's estate, Century 21, nor Voorhies, sought Bennett's permission before the sale. None of these propositions contradict the testimony of Michael Bennett and Linda Palmer that Hill (and Hill's estate) were delinquent in the payment of the monthly fees to Bennett. None of these propositions has any significance under the Idaho Consumer Protection Act because excessive price alone is not protected under the Idaho Consumer Protection Act. SB 1439 Comments of Attorney General, Defendant Bennett's Post-Trial Memorandum, pp. 2-4. None of these propositions has any significance under the Idaho Consumer Protection Act because Voorhies do not suffer from the absence of meaningful choice. *Id.* Voorhies "choice" was to pay Bennett \$16,000, or, per Voorhies' own evidence, drill their own well at \$40,000. That is a meaningful choice, and indeed the "choice" offered by Bennett is significantly less expensive than Voorhies other choice. However, Voorhies unjustifiably argue their "choice" is between having this water

supply transferred for free, and transferred for the “exorbitant” price of \$16, 000. That unjustified argument by Voorhies ignores the fact that Voorhies predecessor in interest *failed to seek Bennett’s permission for assignment prior to the sale*. That unjustified argument by Voorhies ignores the fact that Voorhies predecessor in interest was *delinquent in their payments to Bennett*. That unjustified argument by Voorhies ignores the fact that Voorhies predecessor in interest had their agreement *terminated* due to such delinquency. Bennett had nothing to do with any of this. Voorhies’ predecessor in interest and the realtor involved were named in the Complaint filed by Voorhies in this matter. There has been no appearance by any of these parties in the two and one half year life of this lawsuit. Indeed, there is no indication in the file that any of these parties have been served with summons in this lawsuit during the past two and one half years. It is with these parties that Voorhies remedy, if any, lies. Voorhies have expressed an unwarranted sense of entitlement to a water supply, as Voorhies argue this Court should find as follows:

The Court further concludes that based upon the Findings of Facts and the evidence at the time of trial, the actions of Arrowhead was an attempt to extort Sixteen Thousand Dollars (\$16,000.00) from an individual consumer when they had no other option. The Court concludes that water supplied to a dwelling is of such a meaningful purpose that the consumer is not in a position where they can negotiate fairly. The Court Concludes that the Idaho Consumer Protection Act is set up for exactly this purpose and the specific code sections apply.

Plaintiffs’ Proposed Findings of Fact and Conclusions of Law, pp. 6-7, Conclusion of Law ¶ 9. Nothing could be further from the truth. Voorhies base that misguided entitlement on the Idaho Consumer Protection Act. The Idaho Consumer Protection Act simply does not apply in Voorhies’ situation. Voorhies have not met their burden of proving a violation of the Consumer Protection Act, and, accordingly, Voorhies’ Idaho Consumer Protection Act claims must be dismissed.

11. Voorhies' failure to achieve the benefit of their bargain (water service as represented in the purchase) stems from misrepresentations made to them by Century 21 and Robert J. Hill that they were entitled to continuing water service from Arrowhead Ranch Water Company. Bennett is not liable for these misrepresentations.
12. Defendants Bennett and Arrowhead are the prevailing party in this litigation, due to the dismissal of plaintiffs' claims of violation of the Idaho Consumer Protection Act and due to all other claims brought by plaintiffs being dismissed at summary judgment on July 26, 2010. As to the Idaho Consumer Protection Act claims by Voorhies, Bennett and Arrowhead are entitled to costs as the prevailing party under I.C. § 48-608(5). As to all other claims, Bennett and Arrowhead are entitled to costs under I.R.C.P. 54(d)(1)(A).

#### ORDER

IT IS HEREBY ORDERED plaintiffs have not met their burden of proving a violation of the Consumer Protection Act, accordingly, plaintiffs claims of a violation of the Consumer Protection Act are DISMISSED.

IT IS FURTHER ORDERED defendants are the prevailing party in this litigation, due to the dismissal of plaintiffs claims of violation of the Idaho Consumer Protection Act and due to all other claims brought by plaintiffs being dismissed at summary judgment on July 26, 2010. As to the Voorhies' Idaho Consumer Protection Act claims, Bennett and Arrowhead are entitled to costs as the prevailing party under I.C. § 48-608(5). As to all other claims, Bennett and Arrowhead are entitled to costs against Voorhies under I.R.C.P. 54(d)(1)(A).

IT IS FURTHER ORDERED the temporary restraining order entered June 23, 2009, is rescinded and has no effect.

IT IS FURTHER ORDERED counsel for defendants shall prepare a judgment consistent with these Findings of Fact, Conclusions of Law and Order, and consistent with the

Memorandum Decision and Order: 1) Granting Plaintiffs' Motion to Strike, and 2) Granting in Part and Denying in Part Defendant Arrowhead Ranch Water Company's and Defendant Michael D. Bennett's Motion for Summary Judgment, filed July 26, 2010.

DATED this 3<sup>rd</sup> day of December, 2010.

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John T. Mitchell, District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of December 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Todd M. Reed FAX (208) 263-4438

Susan P. Weeks FAX (208) 664-1684

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Jeanne Clausen, Deputy Clerk of Court